(2010) 11 P&H CK 0579

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 162 of 2010

Commissioner of Central Excise APPELLANT

Vs

Didar Steel Complex Ltd. RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 35G

Citation : (2010) 11 P&H CK 0579

Hon'ble Judges : Rakesh Kumar Jain, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 (for short, "the Act") against the order dated 6.8.2009 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi proposing to raise following substantial questions of law:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the Octroi receipts issued by the State Revenue Authority authenticating removal of goods, without consignor''s name and address and his bill No. , do not constitute sufficient evidence for holding that the goods covered under the Octroi receipts were not received by the Respondents them to take Cenvat Credit fraudulently

2. Show Cause Notice u/s 11A of the Act was issued to the Assessee alleging wrongful availment of MODVAT Credit without actually receiving the goods. The Assessee contested the allegation and claimed that the goods were duly delivered, which was evidenced not only by octroi receipts but also by transportation documents. The adjudicating authority upheld the plea of the Assessee and dropped the proceedings. Appeal of the revenue against the said order was dismissed by the Commissioner (Appeals) and also by the Tribunal. It was held that the Assessee had received the goods accompanied not only by

octroi receipts but also by invoice. There was evidence of entry in the registers apart from goods receipt showing transportation and other documents.

3. We have heard learned Counsel for the Appellant.

4. The adjudicating authority, the appellate authority and the Tribunal have concurrently found that the Assessee did actually receive the goods and had not claimed Cenvat Credit merely on the basis of octroi receipts without actually receiving the same. Contention now raised that since the invoices did not carry consignor''s name and address, it should have been held that the goods were never received by the Assessee. At best, omission of name of the consignor in the bill may be a circumstance to be taken into account but when there was sufficient independent evidence of receipt of goods, the finding recorded cannot be held to be perverse on the basis of contention raised.

5. No substantial question of law arises.

6. The appeal is dismissed.

