(2009) 11 P&H CK 0181

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 94 of 2009

Commissioner of Central Excise APPELLANT

Vs

Modern Alloys RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2010) 258 ELT 364

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This appeal filed by the revenue u/s 35G of the Central Excise Act, 1944 (for brevity, ''the Act'') challenges order dated 28-11-2008, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, ''the Tribunal''). The Revenue has claimed that following substantive question of law would arise for determination of this Court:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the octroi receipts containing details of vehicle No., description and quantity of goods issued by the State Revenue Authority authenticating removal of goods but without consignor''s name & 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 parties enabling them to take Cenvat credit fraudulently?

2. Having heard learned Counsel for the revenue we find that the matter is no longer res Integra. A similar question of law came up for our consideration in the case of Commissioner of Central Excise, Chandigarh v. Swastik Steel Works (CEA No. 47 of 2009, decided on 8-7-2009) 2009 (243) E.L.T. 343 (P & H) and other connected appeals. In the said case the Tribunal has placed reliance on the findings recorded by the Commissioner (Appeals) that no reliance could be

placed on the octroi receipts which do not contain any iota of evidence that the material mentioned therein had been cleared/sold by one M/s. Surbhi Gas Service, Mandi Gobindgarh. The receipts only depicted the description of the goods and vehicle number but do not establish by any evidence that the octroi receipts relate to M/s. Surbhi Gas Service as it did not contain any reference to their name or their bill number. It was further held that no enquiry was made by the Revenue from the Octroi Post Authorities as to how and on what basis octroi receipts were issued and, therefore, the charges against the dealer-assessee remained unsubstantiated. Accordingly, the aforementioned appeals were dismissed holding that no question of law much less a substantive question of law would arise for determination of this Court because pure findings of fact were recorded. Same is the position in the instant appeal. Accordingly, there no merit in the instant appeal and the same is also dismissed.