(2004) 03 JH CK 0075

In the Jharkhand High Court

Case No : Tax Case No. 2 of 2002

Commissioner of Central Excise APPELLANT

Vs

SAIL, Bokaro Steel Plant RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Central Excise Rules, 1944 — Rule 57CC(1)
Central Excises and Salt Act, 1944 — Section 11A, 35H

Citation : (2004) 3 JCR 102

Hon'ble Judges : P.K. Balasubramanyan, C.J;Tapen Sen, J

Bench : Division Bench

Advocate : P.K. Prasad, for the Appellant; S.P. Majumdar and Rajiv Ranjan, for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel on both sides.

2. This is an application by the Commissioner of Central Excise and Customs u/s 35(H) of the Central Excise Act, 1944 for issuing a direction to the Appellate Tribunal, Kolkata to refer the following questions of law said to be arising out of the decision of the Tribunal :--

(i) Whether the learned Tribunal has committed an error of law in holding that the liability of the assessee to pay an amount equal to 8% of the price of the excisable goods in terms of Rule 57CC (1) of Central Excise Rules. 1944 is neither modvat credit nor duty?

(ii) Whether the learned Tribunal has gravely erred in allowing the appeal and setting aside the order for recovery of the sum of Rs. 5,61,56,938/- calculated at the rate of 8% of the cokes sold to outside parties in terms of Rule 57CC (1) of the Central Excise Rules, 1944 on the ground that no machinery has been provided in the Act, or the Rules, for recovering such amount, without considering the provisions of Section 11 of the Central Excise Act, 1944 which lays down the procedure for recovery of any sum of any kind payable to the department or provisions of Section 11A for recovery of duty?

(iii) Whether the provisions of Central Excise Acts and Rules have been wrongly interpreted by the Appellate Tribunal inasmuch as that despite adjudication of liability of the assessee to make payment of any sum under the Act and the Rules, the department is rendered unable to recover the adjudicated amount in case the assessee defaults in paying the same?

(iv) Whether the provisions for adjustment of credit in terms of Rule 57CC (1) having not been complied, the assessee who consequently becomes liable to pay the amount as provided under Rule 57CC (2) and fails to discharge its liability, can be proceeded u/s 11, of the Act for recovery of the said amount?

3. Counsel for the applicant submits that the question whether when the liability subsists, it cannot be enforced in the alleged absence of Rules providing for recovery as found by the Tribunal arises for decision in addition to the other interlinked questions as formulated. Counsel for the respondent submitted that the Tribunal has followed the view of the Bombay Bench of the Tribunal and the Petition for Special Leave to Appeal to Supreme Court against the decision of the Bombay Bench of the Tribunal, was rejected by the Supreme Court and in that situation, there is no warrant for compelling a reference as prayed for. On considering the relevant facts in the light of the arguments raised before us and noticing the reasons stated in its decision by the Tribunal, we are of the view that the Central Excise and Gold Control Appellate Tribunal should be compelled to refer to this Court the questions as formulated above for decision. We, therefore, allow this application and direct the Customs, Excise and Gold (Control) Appellate Tribunal, Kolkata to refer the above questions to this Court in terms of Section 35(H) of the Central Excise Act, 1944.