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(2002) 05 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Case No : CCES No. 84 of 2002

Commissioner of Central Excise — APPELLANT

Vs

Sukhna Paper Mills and Another — RESPONDENT

Date of Decision : 22-05-2002

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

Citation : (2002) 82 ECC 469

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Revenue has filed this petition u/s 35H(1) of the Central Act, 1944. It maintains that the following questions of law arise for the opinion of this Court;

1. Whether, ''Wire Mesh" & ''Felts'' which at best can be termed as parts of machines, used in the manufacture of "Kraft Paper" can be considered as ''inputs'' and Modvat credit be allowed in terms of Rule 57A of the Central Excise Rules, 1944?

2. Whether, Hon''ble Tribunal''s Order has any weightage when the Larger Bench decision, on which the Hon''ble Tribunal has relied upon has been referred to the High Court by the Tribunal itself?

Mr. Rai, who appears for the Revenue, very fairly states that the matter has been considered by the Bench in GCR No. 14 of 1999 decided on January 14, 2002. It has been held that "if the two products are treated as inputs, the assessee is entitled to Modvat credit under Rule 57-A. However, if these are excluded from inputs by virtue of the Explanation and are included in the category of machines, etc., then the Modvat credit shall be admissible under Rule 57-Q. In the ultimate analysis, the credit is admissible.

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2. In view of the above, the counsel submits that the matter is concluded against the Revenue.

3. Resultantly, no question of law arises for the opinion of this Court. The petition is, accordingly, dismissed in limine.

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