(2002) 02 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Case No. 128 of 2001

Commissioner of Central Excise, Chandigarh-I	APPELLANT
Vs	
L.R. Alloys (P) Ltd.	RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57A
Central Excises and Salt Act, 1944 — Section 35H

Citation : (2002) 83 ECC 23 : (2002) 141 ELT 337

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

Bench : Division Bench

Advocate : Kamal Sehgal, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The respondent is engaged in the manufacture of iron and steel products. It availed of Modvat credit to the tune of Rs. 2,65,716/-. The claim as made by the assessee was disallowed on the ground that the document had been endorsed more than once. According to the instructions issued by the Central Board of Excise and Customs vide letter, dated January 23, 1989, Modvat credit is not available on a challan, which had been endorsed ''more than once.'' The order passed by the Assessing Authority was challenged by the respondents. The Appellate Authority accepted the appeal. Aggrieved by the order, the Revenue approached the Tribunal. Its claim was rejected. Hence, this petition for a direction to the Tribunal to refer the following question for the opinion of this Court :-

"Whether benefit of Modvat credit is allowable on a SAIL challan endorsed twice, while Board''s instruction issued vide C. No. 263/26/88-CX-8 (Circular No. 1/89-CX-8, dated 23-1-89) are for allowing such benefit on SAIL challans endorsed once only?"

2. Mr. Sehgal contends that in view of the circular issued by the Board, the

assessee could not have claimed Modvat credit However, the Counsel does not dispute that there is nothing on record to show that any one had actually derived any benefit in pursuance to the first endorsement. Still further, it is also not disputed that the circulars issued by the Board are not binding on the quasi-judicial authorities under the Act. It is also clear to us that the purpose of the instructions could only be to ensure that chance of double benefit being derived was eliminated. Nothing more. In the present case, nothing of the sort has happened.

3. In view of this factual position, we find that no question of law arises. As a result, no cause for asking the Tribunal to make a reference exists.

4. The petition is accordingly dismissed in limine.

