(2012) 07 AHC CK 0270

In the Allahabad High Court

Case No : Central Excise Appeal No. 153 of 2004

Commissioner of Cus. and C. Ex. APPELLANT

Vs

Teletube Electronics Ltd. RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G(1)

Citation : (2013) 292 ELT 324 : (2013) 22 GSTR 57

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Ramesh Chandra Shukla, for the Appellant; Nishant Mishra, Counsel, for the Respondent

Judgement

1. We have heard Shri R.C. Shukla for the Central Excise Department. Shri Nishant Misra appears for the respondents. In this Central Excise Appeal u/s 35G(1) of the Central Excise Act, the following questions of law, have been framed for consideration of the Court.

(i) Whether MODVAT Credit can be availed by the assessee on the basis of certificate issued by superintendent preventive?

(ii) Whether the finding of facts for clandestine removal of goods recorded by adjudicating authority and the same has been upheld upto CEGAT can be overlooked in subsequent proceedings?

The facts leading to filing of this appeal are summarised as follows: -

On an inspection made by the Central Excise Department Officers, for stock verification of the finished goods, namely, picture tubes and monitors, 9,417 glass shelves were found short. M/s. Teletube Electronics Ltd., immediately reversed the MODVAT Credit of Rs. 10,63,676/-. A penalty of Rs. 1,00,000/- was imposed on the assessee which was reduced to Rs. 50,000/- in appeal, vide order dated 26-4-1996. Thereafter, the assessee had taken suo motu credit of Rs. 10,63,676/- vide RG 23-A Part-II, Entry No. 589, dated 5-9-1997, on the strength of the certificate issued by Superintendent (Prev.), Central Excise, Meerut. A show cause notice dated 31-3-1998 was issued to the respondent-assessee. The Assistant Commissioner, Central Excise Division-III, Ghaziabad, vide order dated 29-9-1999, confirmed the demand of Rs. 10,63,676/-. The appeal filed by the assessee was rejected by Commissioner (Appeals), Customs & Central Excise, Ghaziabad vide order dated 24-3-2003. The Customs, Excise & Service Tax Appellate Tribunal, New Delhi, vide order dated 6-10-2003, allowed the appeal of the assessee, which is under challenge in this Appeal.

2. The Tribunal found that the duty paying documents, on the basis of which the credit was taken initially at the point of receipt of the glass shells in the factory, were not disputed. When the alleged shortage was pointed out, the assessee intimated that 9,417 glass shells were stored at outside the factory godown. The credit in respect of these glass shells, which were removed outside the factory from time to time, was reversed vide single entry No. 60 dated 23-4-1993 in the RG 23-A Part-II. No credit was taken, as no corresponding payment of duty was made at the point of clearance of the glass shells. The Tribunal did not agree with the department that these glass shells were removal from the stock of inputs in a clandestine manner, and found that in any case, the assessee firm has been penalized.

3. It is submitted by Shri R.C. Shukla that the Company was required to follow Rule 57G of the Central Excise Rules, 1944. In the present case, the certificate relied upon was not a certificate of the Superintendent of Central Excise or by the proper officer in the Customs area under Rule 57-E of the Central Excise Rules.

4. We do not find that the Tribunal has committed any error in allowing the credit, as it has recorded the findings that the glass shells were not going to any customer but were to be shifted to a location outside the factory. Non-generation of invoice was the only deficiency in the whole transaction, but this does not erase the duty-paid character of the glass shells, which were received from outside the factory. The re-entry of these glass shells in the factory for use in the manufacture of final product has to be held as entry of duty-paid inputs and the credit cannot be disallowed.

5. We do not find substance in the contention of the learned counsel for the department that the goods on which the duty has been paid, if they were removed from the factory premises either for the shortage of space or that the goods were required to be polished, would not get the benefit of Modvat credit on re-entry.

6. In the order awarding penalty, there is no such finding that the goods were brought from outside the factory, without payment of duty. It was only because of reversal of entry on duty-paid goods, the penalty was imposed. An affidavit of Gajender Kumar Yadav, Assistant Manager (Finance) of M/s. Teletube Electronics Ltd. has been filed enclosing certificate of Superintendent (Preventive), verifying that the glass shells were stored outside the factory due to shortage of space in

the factory premises. The penalty order could not be a ground, for not allowing Modvat Credit on the finished goods. The grounds raised in the appeal do not raise any substantial questions of law to be considered in the appeal. The appeal is accordingly dismissed.

