(2012) 07 AHC CK 0248

In the Allahabad High Court

Case No : Central Excise Appeal No. 18 of 2005

Commissioner of Customs and Central Excise — APPELLANT

Vs

Samtel Color Ltd. — RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G(2)

Citation : (2013) 292 ELT 42

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

Bench : Division Bench

Advocate : K.C. Sinha, A.K. Nigam, B.K.S. Raghuvanshi and S.P. Kesarwani, for the Appellant; Nishant Mishra, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Sri B.K.S. Raghuvanshi for the appellant-department. Sri Nishant Mishra appears for the respondent-assessee. This Central Excise Appeal u/s 35G(2) of the Central Excise Act 1944, was admitted for hearing on the following substantial questions of law:-

(a) Whether inputs damaged in fire could be considered as inputs not used in the manufacture of final products and accordingly duty involved on such inputs liable to be recovered?

(b) Whether summary disposal by the Appellate Authority without going into the merit of the case could be considered a proper and legal order?

(c) Whether credit available on capital goods, which were damaged in fire and could not be installed, liable to be recovered in view of the specific provision of sub-rule (7) of Rule 57Q of the erstwhile Central Excise Rules, 1944?

2. A demand was raised on the basis of two show cause notices dated 16-1-1988 and 9-2-1998, pertaining to fire accident took place on 18-7-1997 and 24-1-1997, for recovery/reversal of Modvat credit amounting to Rs. 69,15,016/-

and Rs. 95,04,020/- respectively. The Assistant Commissioner, Central Excise Div. III, Ghaziabad, dropped the demand to the tune of Rs. 66,37,590/- and 86,49,445.86.

3. The Department filed the appeals on the ground that the Adjudicating Authority has worked out the amount of Modvat credit on the basis of insurance claim filed by the respondent, without mentioning as to the admissibility/ correctness of the same; the Adjudicating Authority had accepted the case of respondent on hypothetical submission, instead of checking out authenticity of the demand, and that no effort was made by the Adjudicating Authority to ascertain whether the materials were actually issued for manufacture or not. It was also pleaded before the Appellate Authority that the Adjudicating Authority has not verified the excise records relating to imported goods on which countervailing duty had been paid.

4. The Tribunal found that the Commissioner (Appeals), noticed the fact that the Adjudicating Authority had dropped a part of the demand of duty after verifying from the records in respect of those capital goods on which no Modvat credit was availed by the respondent. The Commissioner (Appeals) also recorded a finding that the appeal was filed on vague pleas. The Revenue simply pleaded that the demand was dropped without any verification. The Tribunal further found that the plea was raised, without any evidence to rebut the findings of fact given by the Commissioner (Appeals).

5. We do not find any error of facts or in law in the findings recorded by the Tribunal that the Adjudicating Authority had taken into consideration all the discrepancies pointed out by the department before the appellate authority. It has taken into account the method of computation of demand; extent of Modvat credit reversable on capital goods; whether duty is demandable and Modvat credit is reversible on the finished goods/inputs, which are in the nature of ''work in process'' and whether customs duty is demandable on damaged plant & machinery parts, equipments, etc.

6. The question No. (a) whether inputs damaged in fire could be considered as inputs not used in the manufacture of final products and accordingly duty involved on such inputs liable to be recovered, does not arise for consideration inasmuch as the Tribunal found that the demand of duty in respect of those capital goods on which no Modvat credit was availed by the respondent after verifying from the record, was dropped. On the question No. (b), we find that the Tribunal, after going into the merits of the matter, had found that the appeal was dismissed after finding that the Adjudicating Authority has considered all the issues, and that the Revenue was raising vague pleas before the Appellate Authority.

7. The findings of the Adjudicating Authority as affirmed by the Appellate Authority and the Tribunal that the part of demand of duty in respect of those capital goods on which no Modvat credit was availed by the respondent after

verifying from the records was dropped. The question No. (c) thus is based on findings of fact, and does not call for consideration. The appeal is accordingly dismissed.

