

(2010) 05 KAR CK 0040

In the Karnataka High Court

Case No : Central Excise Appeal No. 24 of 2006

Commr. of C. Ex.

APPELLANT

Vs

Fitwel Tools and Forgings (P) Ltd.

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 57AD, 57AH
CENVAT Credit Rules, 2002 — Rule 12, 6

Citation : (2010) 256 ELT 212 : (2010) 20 STR 733

Hon'ble Judges : N.K. Patil, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : T.N. Venkata Reddy, for the Appellant; M.A. Narayan, for the Respondent

Judgement

N.K. Patil, J.—The appellant assailing the legality and correctness of the order impugned dated 4-7-2005 passed by the CESTAT, Bangalore, in Appeal No. 1103/05 vide Annexure-A has presented this appeal.

2. The appeal was admitted to consider the following substantial questions of law:

(i) Whether the forgings which are of input nature not utilised in the final product but used for manufacture of capital goods, in the factory of manufacturer of the final product is covered under the Rule 57AH of the erstwhile Central Excise Rules, 1944/Rule 12 of Cenvat Credit Rules, 2002?

(ii) Whether the notification No. 67/95-C.E., dated 16-3-1995 is applicable for the mould and dies which are further used in the manufacture of forged components on job work basis and cleared the same at NIL rate of duty?

3. The brief facts of the case are that the respondent herein filed the appeal No. 1103/2005 before the CESTAT contending that during the course of audit of the assessee's financial records by the audit department, it was noticed that the assessee has wrongly availed the Cenvat credit on the inputs i.e., die blocks which are used in the manufacture of moulds and dies and in turn these moulds

and dies are used in the manufacture of goods processed on job work basis and cleared the same without payment of duty contrary to the provisions of erstwhile Rule 57AD of Central Excise Rules, 1944 read with Rule 6 of CENVAT inasmuch as they were wrongly availing Cenvat credit on the inputs stated above. Therefore, a show-cause notice was issued by the Asst. Commissioner of Central Excise to the assessee. Thereafter, he passed an order demanding the assessee to pay the amount that was wrongly availed, along with interest and penalty. Being aggrieved by the said order, the respondent-assessee filed an appeal before the competent authority who in return without considering the relevant material on record and without assigning valid reasons proceeded to allow the appeal filed by the respondent. Hence, the appellant has preferred this appeal seeking appropriate relief.

4. We have heard the learned Counsel for the parties.

5. After careful perusal of the order impugned, it is manifest on the face of the order that the Tribunal has committed a grave error in passing the order impugned without assigning any valid reasons and without any discussion. By merely following the order passed in similar matters it has proceeded to pass the impugned order, allowing the appeal filed by the respondent. Hence, we are of the opinion that the impugned order is cryptic in nature and such a non-speaking order cannot be sustained.

6. For the foregoing reasons, the instant appeal is allowed and the impugned order passed by the Tribunal dated 4-7-2005 Vide Annexure "A" is hereby set aside and the matter stands remitted back to the Tribunal for fresh consideration, strictly in accordance with the provisions of the Act, after affording reasonable opportunity to the parties and dispose of the matter as expeditiously as possible. All the grounds urged by the parties are left open.