(2006) 11 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Commr. of C. Ex. APPELLANT

Vs

Myron Electricals Pvt. Ltd. RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Citation : (2008) 11 STR 85

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the revenue against the order dated 24-8-2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi Principal Bench, New Delhi (for short, ''the Tribunal'') in Appeal No. E/454/04/NB(S), proposing following substantial question of law:

Whether a manufacturer can avail credit on inputs on the strength of invoices issued by a dealer from the premises other than for which Central Excise registration has been granted under Rule 174 read with Rule 52AA of Central Excise Rules, 1944?

2. The assessee claimed Modvat credit during the period from January 2000 to August 2000. The department issued a show cause notice disputing the claim of the assessee on the ground that the registered dealer had stopped functioning from the registered premises w.e.f. 30-9-1999. The adjudicating authority confirmed this demand and imposed penalty which was upheld by the appellate authority. The Tribunal has accepted the appeal of the assessee holding that payment of duty, receipt of inputs and use of inputs in the final product stood proved and as per clarification from the Board, credit could not be disallowed, once payment of duty and receipt and use of inputs was established.

3. We have heard learned Counsel for the revenue and perused the findings recorded.

4. Only contention raised is that there was a statutory requirement that invoice should have been issued by the dealer from the premises registered with the department.

5. This contention has no merit and over-looks the clarification by the Board itself in the circular relied upon by the Tribunal, namely, Circular No. 441/7/99 dated 23-2-99 as well as Notification No. 7/99-C.E. amending Rule 57G of the Central Excise Rules, 1944, to the effect that if the goods were received and payment of duty and use thereof was verifiable, credit could not be denied merely on the ground that the documents did not contain all the particulars.

In view of the above, we are of the view that no substantial question of law arises.

The appeal is dismissed.

