(2001) 09 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : C.C.E.S. No. 39 of 2001

Commr. of C. Ex., Commissionerate-I — APPELLANT

Vs

Ludhiana Beverages Ltd. — RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G(1), 35G(3)

Citation : (2001) 67 ECC 78 : (2000) ECR 240 : (2001) 134 ELT 349

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Rajesh Gumber, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—M/s. Ludhiana Beverages Ltd. are engaged in the manufacture of certain soft drinks. They availed of the Modvat

credit for the months of April and May, 1994, on the basis of the original copies of the invoices. This credit was disallowed by the Authority on the

ground that the benefit was admissible only on the basis of duplicate copy and not on the basis of the original invoice. Aggrieved by the action of

the Authority, the respondent filed an appeal. It was dismissed by the Commissioner. The order of the Commissioner was challenged before the

Customs, Excise & Gold (Control) Appellate Tribunal. Vide order dated De-jember 2,1996, the Tribunal accepted the claim of the respondent. It

followed its earlier decision in 1996 (87) ELT 119 . Having held that the benefit could not be denied merely because the respondent had produced

the original invoice, the Tribunal remanded the case to the Assistant Commissioner for de novo decision.

2. The Revenue felt aggrieved. It filed a petition u/s 35G(1) of the Central Excise

Act, 1944 (hereinafter referred to as the ''Act'') for reference to

this Court. It raised, the following questions for reference :-

Whether Modvat credit is admissible on the original copy of invoices issued prior to 20-5-94 in terms of Notf. No. 23/94-C.E. (N.T.), dated 20-

5-94 ?

Whether the Notification No. 23/94-C.E. (N.T.), dated 20-5-94 covers the invoices issued prior to 20-5-94 ?

3. The Tribunal dismissed the application. Hence this petition u/s 35G(3) of the Act.

4. Mr. Gumber, learned Counsel for the Revenue contends that under the Rule, as originally existing, the benefit of Modvat was admissible only on

the basis of duplicate copy of the invoice. It was only vide notification dated May 20,1994 that the following amendment was made :

(2A) Notwithstanding anything contained in Sub-rule (2) a manufacturer can take credit of the inputs received in the factory on the basis of the

original invoice, if the duplicate copy of invoice has been lost in transit, subject to the satisfaction of the Assistant Collector.

5. An original document cannot be worse than a duplicate copy. If a credit is admissible to the Unit on the basis of a duplicate copy, we see no

rationale for denying it merely because the original invoice is produced. In our view, the amendment only clarifies the position. It makes explicit

what was implicit in the original provision. Still further, it deserves notice that the Tribunal has merely followed an earlier decision. It has not been

shown that the Revenue had challenged that decision. Why a different attitude in this case? There is no answer.

6. There is another aspect of the matter. The Tribunal has remanded the case to the Assistant Commissioner for de novo decision. The matter has

yet to be finally decided.

7. In view of the above, we find that no question which may require decision arises. The petition is dismissed in limine.