(2012) 10 CHH CK 0008

In the Chhattisgarh High Court

Case No : C.E.R. No. 6 of 2001

Commr. of Cus. and C. Ex., Raipur — APPELLANT

Vs

Kanoi Paper and Industries Ltd. — RESPONDENT

Date of Decision : 10-10-2012

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

Citation : (2013) 289 ELT 419

Hon'ble Judges : Abhay Manohar Sapre, Acting C.J.;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Garry Mukhopadhyaya, for the Appellant; Neelabh Dubey, Counsel, for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, Actg. C.J.

1. This is an application made by the Commissioner, Customs and Central Excise, u/s 35H(1) of the Central Excise Act, 1944, praying for calling the questions of law, which are said to arise out of the order dated 3-2-2000 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (in short "the Tribunal") in Case No. E/S/1667/99-NB with E/A. No. 2913/99-NB(S). The respondent is a company engaged in the business of manufacture of paper. The question arose before the Central Excise Authority as to whether the assessee is entitled to claim Modvat Credit on two items namely Wire Mesh and Felt used by the assessee in the manufacture of paper, treating them to be Inputs. The Tribunal by the impugned order answered the issue in favour of the assessee and hence, this application by the Revenue against the order of the Tribunal.

2. According to the applicant-Revenue, the following questions of law are proposed:

(i) Whether the Wire Mesh and Felt which are part and parcel of Paper making machinery would fall under the definition and ambit of Input as given under Rule

57A or Capital Goods as defined under Rule 57Q?

(ii) Whether the reliance placed by the CEGAT on its own earlier decision was correct, when the legality of earlier decision has already been challenged before the next Appellate Authority?

3. The aforesaid two questions are answered by the Tribunal in favour of the assessee by placing reliance upon a decision of the Tribunal in the case of 1996 (66) ECR 1 72 in which it has been held that Wire Mesh and Felt used by the assessee in the manufacture of paper are entitled for the benefit of Modvat Credit as Inputs.

4. In our opinion, since the decision of the Tribunal is based upon its earlier decision and no decision of the Supreme Court or High Court is cited either way and therefore, the questions proposed are referable questions of law with a view to examine as to whether the view taken by the Tribunal in Union Carbide case (supra) is just and proper or it requires any modification. In other words, the questions proposed are questions of law and being referable one to this Court, the application made by the applicant-Revenue deserves to be and is, accordingly, allowed.

5. The Tribunal is, accordingly, directed to refer the aforesaid two questions of law alongwith statement of case drawn up by the Tribunal to this Court as per provisions of Section 35(H)(1) ibid for its answer on merits. No cost.

