

(2010) 10 P&H CK 0330

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 125 of 2005

Groz Beckert Asisa Pvt. Ltd.

APPELLANT

Vs

Commissioner of Central Excise and Another

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2011) 264 ELT 220 : (2011) 30 STT 114

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Assessee u/s 35G of the Central Excise Act, 1944 against the final order No. A/1318/04-NB (SM) dated 22.9.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal").

2. The Assessee imported Non Alloy Steel Hosiery Needle Wires, Cold Rolled High Carbon Non-Alloy Steels Strips, Tempering Oil, Butt Cutt/Tail for the manufacture of their final product which were used as inputs. At the time of import custom duty was paid on the value of the goods on the basis of price mentioned in the invoice and on that basis MODVAT credit was availed on clearance of final products. The Department issued show cause notice dated 28.4.1997 alleging illegal availment of MODVAT Credit and proposing demand of duty on the ground of discrepancy in description of weight in invoice issued by the foreign supplier and the bill of entry. Thereafter, order-in-original was passed which was upheld by the Appellate Authority and the Tribunal. The Tribunal held:

The original authority in the de-novo order gave finding that since there are two different quantitates shown in the bill of entry and the corresponding invoice and from the submissions made by the party it cannot be established that whether the quantity shown in the bills of entry is correct or the quantity shown in the

invoice is correct and the party has not been able to prove that the quantities in the relevant bills of entries were shown wrong due to clerical mistake. Therefore, he confirmed the demand. The Commissioner (Appeals) also upheld the demand. Shri Sudeep Singh, learned Advocate again reiterated the same pleadings but he could not establish with any evidence that what was the actual quantity received in the factory as no amendment to the bill of entries was made. Shri Singh only states that the bill of entry was assessed as shown in the invoice.

3. This appeal was admitted to consider the substantial questions of law raised in paras 12(iv) and 12(v) i.e.:

(iv) Whether the Adjudicating Authority while adjudicating on the issue of admissibility of MODVAT Credit can go into the correctness of the quantities mentioned in the Bills of Entry on the basis of which credit is being availed or it is necessary to get the bills of entry amended from the Customs?

(v) Whether the invoices on the basis of which the Bills of Entry are filed cannot be referred to, while ascertaining the quantities of material involved in the particular Bills of Entry or the quantities mentioned on it are to be taken on the face of it?

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Appellant submitted that bill of entry was assessed on the basis of invoice value and not on the basis of weight. Discrepancy in the invoice of foreign supplier and in the bill of entry about the weight was on account of an obvious clerical error and had no bearing on the MODVAT Credit taken on the basis of duty actually paid.

6. It is not disputed that duty in question was duly paid by the Petitioner. It is also not disputed that there was no discrepancy about the value of goods. The only dispute is about discrepancy in the weight of goods as described in the bill of entry and in the invoice issued by the foreign supplier which was on account of a clerical error. This aspect was not appreciated by the Adjudicating Authority. Thus, substantial question of law as to perversity of finding recorded by the authorities arises and has to be answered in favour of Appellant.

7. Accordingly, we allow the appeal, set aside the impugned order and remand the matter to the Adjudicating Authority for a fresh decision in accordance with law.

8. The Appellant may appear before the Adjudicating Authority for further proceedings on 20.12.2010.