(2016) 07 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 9421 of 2001 (O&M)

M/s Happy Forgings Pvt. Ltd. — APPELLANT

Vs

Commissioner of Central Excise — RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:
Central Excise Rules, 1944 — Rule 57-Q

Citation : (2016) 339 ELT 359 : (2016) 3 PLR 843

Hon'ble Judges : Mr. Rajesh Bindal and Mr. Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Mr. Deepak Gupta, Advocate, for the Appellant; Mr. Anshuman Chopra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—The grievance of the petitioner is that though it was entitled to benefit of modvat credit on purchase of tray casting used in the process of manufacture of tiny powder, in terms of circular No.276/110/96-TRU dated 2.12.1996, however, the same was wrongly denied to it.

2. The submission is that in October/November, 1997, the petitioner purchased tray casting as capital goods. In terms of the aforesaid circular, it was entitled to modvat credit as per Rule 57Q of the Central Excise Rules, 1944 (for short, ''the Rules''). The department issued show cause notice on 1.5.1998 proposing to deny the modvat credit. Vide order dated 30.9.1998, Assistant Commissioner, Central Excise, Ludhiana denied modvat credit to the petitioner. However, in appeal, the order passed by the Assistant Commissioner was set aside by the Commissioner (Appeals), Central Excise & Customs, Chandigarh on 23.8.1999, while relying upon an earlier decision of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short, ''the Tribunal'') on the issue. The department preferred appeal before the Tribunal, which was allowed vide order dated 15.3.2000. The petitioner at that stage could not refer to the circular issued by the department entitling it to the benefit of modvat credit on purchase

of tray casting. Immediately, rectification application was filed, which was rejected vide order dated 8.9.2000 by the Tribunal holding that there is no mistake apparent on record. He further submitted that even for the subsequent period, the Tribunal allowed modvat credit on tray casting purchased by the petitioner vide order dated 7.3.2001, while relying upon circular No.276/110/96-TRU dated 2.12.1996. Once the claim of the petitioner is squarely covered in terms of the circular issued by the department, the petitioner should not be denied the benefit thereof. Merely because he had not been able to cite the circular at the relevant time, when the appeal was heard, though it was the duty of the counsel appearing for the department to have produced the same, the petitioner could not be denied the benefit admissible to it. Rather, the department should not have preferred the appeal against the order passed by the first Appellate Authority once the claim of the petitioner was in consonance with the circular issued by the department.

3. On the other hand, learned counsel for the respondents did not dispute the fact that the petitioner is entitled to benefit of modvat credit in terms of circular No.276/110/96-TRU dated 2.12.1996, however, he submitted that the circular having not been brought to the notice of the Tribunal at the time of hearing of the appeal, the benefit was not admissible to the petitioner.

4. Heard learned counsel for the parties and perused the paper book.

5. The basic facts, which are not in dispute are that the petitioner purchased tray casting. It is entitled to modvat credit on the duty paid on purchase thereof in terms of Rule 57Q of the Rules read with circular No.276/110/96-TRU dated 2.12.1996. Initially, the department issued show cause notice dated 1.5.1998 to the petitioner proposing to deny the modvat credit. By passing the order, the Assistant Commissioner, Central Excise, Ludhiana, denied that benefit to the petitioner. This was despite the fact that the department had already issued the circular clarifying the position that modvat credit was available on tray casting. Though the Commissioner (Appeals), Central Excise & Customs accepted the contention of the petitioner, but again despite existence of the circular of the department, the order was impugned by the department before the Tribunal, who accepted the appeal filed by the department. Once it is not in dispute that the petitioner is entitled to the benefit of the modvat credit on the eligible capital goods, namely, tray casting in the present case, as was clarified even by the department by issuing circular No.276/110/96-TRU dated 2.12.1996, the denial thereof to the petitioner is totally illegal. Even if the petitioner had failed to refer to the circular at the time of hearing of the appeal before the Tribunal, in fact, it was the duty of the department itself to have taken care of the circular and not indulge any party in unnecessary litigation, as even the facts suggest that very initiation of the proceedings against the petitioner to deny the benefit of modvat credit was after the circular had already been issued, which entitled the petitioner to the benefit of modvat credit. Even if that was so, still when the matter was again brought to the notice of the Tribunal by the petitioner by filing

rectification application, necessary rectification should have been made by the Tribunal in the facts and circumstances of the case. It is also a fact that even for the subsequent period, the petitioner was allowed modvat credit on the same goods on the basis of the clarification issued vide circular No.276/110/96- TRU dated 2.12.1996.

6. For the aforesaid reasons, the writ petition is allowed. The orders passed by the Tribunal are set aside. The petitioner is held entitled to benefit of modvat credit on tray casting.

7. Sd/- Harinder Singh Sidhu, J.

