(2004) 08 P&H CK 0176

In the Punjab And Haryana At Chandigarh

Case No : C.S.E.S. No. 75 of 2001

Service Iron and Steel Rolling Mills — APPELLANT

Vs

CEGAT — RESPONDENT

Date of Decision : 09-08-2004

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

Citation : (2004) 117 ECR 932 : (2004) 174 ELT 153

Hon'ble Judges : N.K. Sud, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Counsel for the petitioner prays that time to deposit Rs. 1,000/- in terms of order dated 17.7.2004 be extended. We accept this prayer and direct the petitioner to deposit the amount of Rs. 1,000/- within two weeks from today.

2. Assessee has filed this reference application u/s 35H of the Central Excise Act, 1944 seeking direction to the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi (for short ''the Tribunal'') to refer the question of law arising out of its order dated 4.8.2000 for the opinion of this Court. The Tribunal has declined the claim of the assessee for deemed credit on rerollable material on the ground that as per Govt. Order No. TS/36/94-TRU, dated 1.3.1994, the benefit is available only to SSI units availing the exemption under Notification No. 1/93-CE, dated 28.2.1993 and assessee having crossed the clearance limit of Rs. 75 lakhs could not be said to be such a unit. The Tribunal for this purpose has placed reliance on the decision of a Larger Bench of three judges in case of Digambar Foundary and Ors. v. CCE, Allahabad and Ors. 2000 (38) RLT 435.

3. Learned Counsel for the petitioner pointed out that prior to the Larger Bench the Tribunal itself had granted the necessary relied by following its earlier order in the case of Vishal Steel Rolling Mills v. CCE reported in 1997 (23) RLT 323. He has further pointed out that at revenue''s instance reference on this question has

already been granted.

4. In this view of the matter, we are satisfied that the following question of law arises out of the order of the Tribunal for the consideration of this Court:

Whether the Tribunal was correct in holding that the benefit of deemed credit to a unit availing of the exemption in terms of Notification No. 1/93-CE, dated 28.2.1993 was not available after it crosses the value of clearance of Rs. 75 lakh?

5. We, therefore, direct the Tribunal to draw up a statement of the case and refer the afore-mentioned question to this Court for its opinion.

6. The petition stands allowed.