(2012) 10 AHC CK 0244

In the Allahabad High Court

Case No : Writ Tax No. 260 of 2012 with W.T. No''s. 704 and 1785-1793 of 2011

Shivalik Coal Traders APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Citation : (2013) 288 ELT 493

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Aloke Kumar and Udai Chandani, for the Appellant; Madhur Prakash and Shakti Dhar Dube, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri Aloke Kumar and Shri Udai Chandani, learned counsel appearing for the petitioners. Shri Madhur Prakash and Shakti Dhar Dube appear for the respondents. The petitioners are private limited companies engaged in the trading of coal. They purchase coal from Coal India Limited in e-auction. None of the petitioners is a manufacturer, or a consumer of coal as a manufacturer.

2. The Coal India Limited was earlier availing the exemption vide Notification No. 1/2011- C.E., dated 1-3-2011 after the coal was made exigible to central excise for the first time by the Finance Act, 2011, on payment of central excise duty at 1%, without any benefit of CENVAT Credit.

3. In the interest of the company and in public interest, the Coal India Limited has decided to avail CENVAT credit under the provisions of CENVAT Credit Rules, 2004. It proposes to pay the central excise duty on coal @ 5% + 0.15 as cess. Accordingly, Coal India Limited has informed all the CIL production units by its letter dated 7-3-2011, that the central excise duty @ 5% (including 0.15% cess) on coal may be levied to enable it to avail the CENVAT credit under the provisions of CENVAT Credit Rules, 2004 and in this view of situation, the central excise

duty has been imposed @ 5.15% so as to enable the company to avail CENVAT credit.

4. A similar question came up for consideration at the instance of the traders before a Division Bench of Gauhati High Court, Guwahati. The Gauhati High Court held as follows :-

Learned counsel for the appellant submitted that since as per notice dated 3-3-2011, Coal India decided to give option to its customers in terms of notification providing for concessional rate of excise duty, and the appellants having given such option, the appellants could not be required to pay excise duty @ 5%.

Learned counsel for Coal India supports the order of learned Single Judge and submits that the notice issued by Coal India was in terms of notification providing for concessional rate of excise duty which entitled a manufacturer to such concessional rate if it did not avail CENVAT credit, it has no relevance for traders who could not avail CENVAT credit. There was no occasion for the traders in such a fact situation to avail CENVAT credit on the purchase of manufactured goods.

After due consideration, we do not find any ground to interfere with the view taken by learned Single Judge.

It is clear that the appellants are only traders purchasing manufactured goods having no liability to pay central excise duty. Their liability, if any, could arise only on manufacturing and in respect of such liability claim for Cenvat Credit could be made. Till manufacturing was done, question of Cenvat Credit did not arise nor question of exercising option arises. Trader was liable to pay duty element to seller under a contract. The Coal India opted for availing CENVAT facility in respect of inputs used by it and not to avail of concessional rate of exercise duty in terms of notification dated 1-3-2011. In such a situation, Coal India could not be disentitled from reimbursing itself of the central excise duty paid by it.

In view of above, we do not find any merit in this appeal.

The appeal is dismissed.

5. Shri Aloke Kumar, learned counsel appearing for the petitioners submits that the decision of the Coal India Limited is against the public interest. The petitioners as traders will not be able to pass CENVAT credit and that the ultimate burden will fall on the consumers.

6. We are informed by the parties, that only 10% of the coal is sold by Coal India Limited to the traders. The Coal India Limited has decided to avail CENVAT credit under the CENVAT Credit Rules, 2004 in order to avoid the cascading effect of the central excise duty, and to ultimate benefits to the end users of 90% of the coal.

7. We respectfully agree with the reasoning given by the Gauhati High Court and

do not find any merit in these writ petitions. All the writ petitions are dismissed.