(2014) 08 AP CK 0135

In the Andhra Pradesh High Court

Case No : C.E.R.C. Nos. 3-10 of 2001 and 11-13 of 2002

Sri Vishnu Cements Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 12-08-2014

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

Citation : (2015) 320 ELT 99

Hon'ble Judges : L.N. Reddy, J;T. Sunil Chowdary, J.

Bench : Division Bench

Judgement

L.N. Reddy, J.?In this batch or central Excise Reference Cases filed under Section 35H(1) of the Central Excise Act, 1944 the question that arises for consideration is as to whether the petitioner, i.e., assessee is entitled to the Modvat credit for the high speed diesel oil used by it for generation of captive power for its cement plant. The Assessing Officer, the Appellate Commissioner and the Tribunal took uniform view that the petitioner is not entitled to the Modvat credit. They contend that Section 112 of the Finance Act, 2000 (for short ''the Act'') is only clarificatory in nature and it does not have any retrospective effect. Heard learned Counsel for the petitioners and learned Counsel for the respondent.

2. It is no doubt true that the high speed diesel utilized by the petitioner in generating power can be treated as one of the inputs for manufacture of the end product, viz., cement. However, not every item, which suffered Excise duty, which goes into the manufacture of item, would qualify for the Modvat credit. Rule 57B of the Central Excise Rules, 1944 (for short ''the Rules'') enlists the goods or items, which qualify for the credit. The high speed diesel oil was never mentioned in the Rule and, by process of interpretation, in certain cases, it was allowed. However, the Act has put an end to the uncertainty.

3. The relevant clause of the Act reads as under:

"Clause 108 seeks to deny credit of the duty paid on high speed diesel oil when used in the manufacture of excisable goods with retrospective effect from the 16th day of March, 1995. It was never the legislative intention to permit credit of duty paid on high speed diesel oil. The clause also seeks to validate the action taken in the past on this basis. This amendment has become necessary to overcome certain judicial pronouncements."

4. Clause 108 of the Act, in its legislated form, was challenged in several matters. In Sangam Spinners Ltd. Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court upheld the validity of the Act. Hence, the C.E.R.Cs. are dismissed and we decline to answer the questions framed therein.