(2010) 03 P&H CK 0089

In the Punjab And Haryana At Chandigarh

The Commissioner, Central Excise Commissionerate — APPELLANT

Vs

Paul Steel (P) Ltd. — RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 3A

Citation : (2010) 177 ECR 86 : (2010) 254 ELT 33 : (2010) 103 SCL 442

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Shorn of necessary details, the facts, relevant for disposal of present appeal and emanating from the record, are that the respondent- assessee M/s Paul Steel Private Limited (for brevity "the assessee") was engaged in the manufacture of iron, non-alloy and alloy steel ingots. The assessee adopted the compounded levy scheme on non alloy steel ingots with effect from 1.8.1997 by paying duty at the rate of Rs. 5 lacs per month as full and final payment. According to the revenue, during the scrutiny, it revealed that the assessee had availed the modvat credit in excess as per notification dated 1.8.1997 and availed the same under modvat scheme as well. Consequently, a show cause notice was issued on the premises that the assessee having opted to work under the compounded levy scheme on non alloy steel ingots cannot utilize the input stage credit for discharging duty liability on alloy steel ingots.

2. In the wake of show cause notice, the assessee filed the reply, inter-alia, explaining that it also produced the alloy steel ingots, which were not recovered by the capacity based scheme and the compounded levy scheme is only applicable to non alloy steel ingots. It was claimed that the alloy steel ingots are covered under the modvat credit scheme and the assessee has rightly availed the same.

3. The explanation put forth by the assessee did not find favour and the

Adjudicating Authority disallowed the modvat credit and ordered its recovery, vide impugned order dated 1.12.1998 (Annexure A1).

4. Aggrieved by the impugned order (Annexure A1), the assessee filed the appeal and the Commissioner Customs and Central Excise (A) accepted the same, vide order dated 17.10.2000 (Annexure A2).

5. The appeal filed by the revenue was accepted and the matter was remanded by the Customs, Excise & Gold (Control) Appellate Tribunal, vide order dated 8.8.2001 (Annexure A3)

6. After remand, the Commissioner (Appeals) rejected the appeal of the assessee, vide impugned order dated 30.7.2003 (Annexure A4).

7. Again aggrieved by the impugned order (Annexure A4), the assessee filed the appeal, which was accepted by the Customs, Excise and Service Tax Appellate Tribunal, vide impugned order dated 1.5.2006 (Annexure A5).

8. The revenue did not feel satisfied with the impugned order (Annexure A5) and filed the present appeal.

9. The appeal was admitted to determine the following questions of law:

i) Whether the CESTAT is correct in holding that the respondent could pay the duty from the Modvat account on the stocks manufactured prior to opting for compounded levy scheme and cleared subsequently, when they were working under the compounded levy scheme, and when during the compounded levy period they were not entitled to avail Modvat credit on the inputs in terms of notification No. 34/97-CE(NT) dated 1.8.1997?

ii) Whether any Modvat credit balance lying with the respondent as on 1.8.1997 and earned on inputs used in manufacture of alloy steel ingots or non alloy steel ingots stood lapsed in terms of Rule 57F(17)(c) of Central Excise Rules, 1944, and could not be utilized for payment of duty on any excisable goods?

10. Assailing the impugned order (Annexure A5), the learned Counsel for the revenue has argued that once the assessee has adopted the compounded levy scheme, then it cannot avail the modvat credit under the modvat scheme and since the modvat credit lying with them had lapsed, which is liable to be recovered from it (assessee) under Rule 57(1) read with Section 11A of the Central Excise Act, 1944 (for short "the Act"). Thus, he prayed for acceptance of the appeal.

11. Hailing the impugned order, on the other hand, the learned Counsel has argued that since the compounded levy scheme was applicable only to non alloy steel ingots, so the assessee has rightly availed the modvat credit, with regard to alloy steel ingots and no interference is warranted, in this respect.

12. Having regard to the rival contentions of the learned Counsel for the parties and having gone through the record of the case with their valuable help, we are

of the considered view that there is no merit in the present appeal.

13. It is not a matter of dispute that the assessee was engaged in manufacture of iron, non alloy and alloy steel ingots. It has adopted the compounded levy scheme. The assessee was required to pay the duty u/s 3A of the Act with effect from 1.8.1997, as per notification Nos. 30 and 31 of 1997. The modvat credit of specified duty lying un-utilized stands lapsed, as per the provisions of sub Rule 17(c) and (d) of the Rule 57F of Central Excise Rules (hereinafter to be referred as "the Rules"). The compounded levy scheme is only applicable to production of hot re-rolled products of non alloy steel ingots and not otherwise. There is no specific provision authorizing the authority to demand back credit of duty in respect of inputs lying in stock or contained in the finished product lying in stock on specified date. Thus, it would be seen that even as per Rule 57 F (17)(c) and (d), the un-utilized credit would lapse, which was balance as on 1.8.1997 in respect of only those goods, on which the compounded levy scheme was made applicable, i.e. non alloy steel and not on alloy steel ingots.

14. Again, it is not a matter of dispute that the assessee has utilized the credit of the duty paid on inputs, which were specifically utilized by the manufacturer of alloy steel ingots only and they have not availed the credit of duty paid on inputs used for non alloy steel ingots.

15. In the light of the aforesaid reasons, it is held that the assessee was entitled to pay duty from modvat account of the manufacturer prior to opting for compounded levy scheme with regard to non alloy steel ingots and it (assessee) was also entitled to avail the modvat credit on the inputs used for production of alloy steel ingots. Thus, the questions are answered against the revenue, in the obtaining circumstances of the case.

16. For the reasons recorded above, the instant appeal is hereby dismissed.

