**(2009) 06 BOM CK 0078**

**In the Bombay High Court**

**Case No :** Central Excise Reference No. 4 of 1997

The Commissioner of Central Excise — APPELLANT

Vs

Moosa Haji Patrawala P. Ltd. — RESPONDENT

**Date of Decision :** 10-06-2009

**Acts Referred:**
Central Excise Rules, 1944 — Rule 57G

**Citation :** (2009) 167 ECR 28 : (2009) 243 ELT 35 : (2009) 22 STT 90

**Hon'ble Judges :** J.H. Bhatia, J;F.I. Rebello, J

**Bench :** Division Bench

**Advocate :** Vijay Kantharia and Suresh Kumar, for the Appellant; None, for the Respondent

## Judgement

J.H. Bhatia, J.—At the request of the Commissioner of Central Excise, the appellant, this reference was made by the Customs, Excise and Gold (Control) Appellate Tribunal (In short ''CEGAT'') and the following question has been referred to this Court for consideration and decision.

Whether gate passes issued prior to 1.4.94 but endorsed after that date would fall under the coverage of entry No. 10 in the Table to the Notification No. 16/94CE( NT) dated 30.3.94 and would consequently become eligible documents for taking credit under the Modvat Scheme ?

Admittedly prior to Notification No. 16/1994-CE(N.T.) dated 30th March, 1994 under Rule 57G of the Central Excise Rules, 1944, credit of modvat was given. As per the position prevailing prior to 30th March, 1994 when the purchaser re-sold input to third party, he would make an endorsement on the gate passes issued by the manufacturer of the input. Procedure was changed and in stead of endorsement on the gate passes, invoice was required to be produced as per the above referred Notification. Certain documents were prescribed for the purpose of giving credit of modvat under the said Rules. After the opening paragraph, Notification reads as follows:

 

Provided that the documents have been issued before the 1st April, 1994 and the credit under the said rule has been taken on or before the 30th June 1994.

This proviso was followed by the table. Relevant Entry No. 10 reads as follows:

In column No. 3 to the Entry No. 10 prescribed documents were endorsed gate passes/subsidiary gate-passes/certificates. Admittedly gates-passes were required to be issued by the manufacturer under the procedure then prevailing and as and when the purchaser of the inputs resold inputs to third party, he would make an endorsement on the gate-pass, which would authorise purchaser to take benefit of the credit of the duties paid on the goods. From the language of the said Notification, it is clear that benefit could be given if the documents would have been issued before the 1st April and credit had been taken on or before 30th June, 1994. From this it is clear that gate-passes could be issued before 1st April, 1994 and the benefit of credit could be taken on or before 30th June, 1994. Transaction of sale or re-sale could take place any time prior to 30th June and on endorsement of same being made, benefit could be taken on or before 30th June, 1994. The language of the Notification nowhere requires that the endorsement should also be made before 1st April, 1994. According to the Revenue, endorsement should also have been made on the gate-passes on or before 1.4.1994. This objection was rejected by the Tribunal by observing that endorsed gate-pass is not comparable to the issue of gate-pass because what is mentioned in the proviso to the Notification is that documents should have been issued which only means gate-pass should have been issued on or before 1st April, 1994. In view of the language, there is no reason to read in the notification that the endorsement should also have been made on or before 1st April, 1994.

2. It may be noted that in Commissioner of Central Excise, Ahmedabad-I v. Gujarat Medicraft Pvt. Ltd., reference was made at the behest of the Commissioner of Central Excise , Ahmedabad-I before the Gujarat High Court and Gujarat High Court after considering the language of the said Notification and the scheme, came to conclusion that it was open to the assessee to get the benefit of the gate-passes, which were issued prior to 1-4-1994 but was endorsed after 1.4.1994 but before 30.6.1994. Similar reference as made before this Court, was made before the Gujarat High Court and Gujarat High Court has answered the reference against the Revenue. The learned Counsel for the respondents points out that authority of Gujarat High Court has been followed by Punjab & Haryana High Court in CCE, Commissionerate-I, Chandigarh Vs. Suraj Udyog, as well as by Himachal Pradesh High Court in Commissioner of Central Excise v. Saras Poly Pack 2008 (232) E.L.T. 418 (H.P.). The learned Counsel also pointed out that the Central Board of Excise & Customs has issued Circular No. 600/37/2001-CX dated 19th November, 2001 wherein it is specifically stated that judgment of Gujarat High Court in the reference of M/s. Krishna Chemicals, Ahmedabad passed on 22.11.2000 wherein it was held that gate passes issued prior to 1.4.1994 but endorsed thereafter would be valid documents for availment of credit, subject to credit being taken on or before 30th June, 1994

 

has been accepted by the Board and instructions were issued that the all the pending cases be decided by following the ratio of judgment. It appears that reference in Krishna Chemicals was decided by the Gujarat High Court alongwith the reference in case of Gujarat Medicraft Pvt. Ltd. In view of the above authorities and the circular issued by the Central Board of Excise and Customs, Revenue can not take a different view.

3. Taking into consideration the language of the Notification, interpretation of the same by different High Courts as well as the above referred circular, we answer the reference in affirmative.

 