(2001) 12 AHC CK 0064

In the Allahabad High Court

Case No : Central Excise Reference Application No. 104 of 2000

Unicast (P) Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 57GG
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2003) 155 ELT 224

Hon'ble Judges : S.K. Sen, C.J;S. Rafat Alam, J

Bench : Division Bench

Advocate : Bharatji Agrawal and Piyush Agrawal, for the Appellant; S.P. Kesharwani, for the Respondent

Final Decision : Disposed Of

Judgement

1. We have heard Sri Bharatji Agrawal, Senior Advocate for the applicant and Sri S.P. Kesharwani, learned Counsel for the opposite party.

2. We are of the view that out of eight questions only question Nos. 1, 2, 3, 4, 5 and 6 from the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi raise substantial question of law which are as under :

(i) Whether M/s. P.C.T. Ltd. having supplied the raw material to the applicant-company (job worker) and the applicant having received the said raw material directly from the supplier, was entitled for the benefit of Modvat credit under the Central Excise Rules?

(ii) Whether, admittedly, the applicant being the job worker and the inputs having been despatched to the job work''s factory premises, hence in view of the Circular No. 146/57/95-CE., dated 12th May, 1995, the applicant was entitled to the benefit of Mod-vat credit?

(iii) Whether Modvat Rules only require that there may be a document showing proof of payment of excise duty and the certificate contained in the invoice was only to show that the inputs are being despatched to the job worker''s factory premises even though the said invoice was in the name of M/s. P.C.T. Ltd. for whom the job work was done by the applicant showing proof of the payment of duty, the applicant was entitled for the Modvat credit?

(iv) Whether when the manufacturer is a job worker, the inputs are not being purchased by him and therefore the invoices in respect of the inputs cannot be in his name?

(v) Whether, in the absence of transfer by title by endorsement in the documents of title, the property in the goods is never transferred by the endorser in favour of the endorsee and the Appellate Tribunal was not justified in denying the benefit of Modvat credit to the applicant on the ground that they were not concerned with the nature of the endorsement made by M/s. P.C.T. Ltd.

(vi) Whether, there being no sale of the inputs to the applicant by M/s. P.C.T. Ltd. or anyone else, there can be no invoice in the name of the applicant hence the applicant was entitled for the benefit of Modvat credit and since P.C.T. Ltd. is not a dealer, hence it was not required to follow the procedure in terms of Rule 57GG?

3. We accordingly directed the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi to draw up statement of the case and refer the aforesaid questions to this Court for its opinion.

4. The reference application stands disposed of accordingly.

