(2012) 08 CHH CK 0005

In the Chhattisgarh High Court

Case No : Tax C. 41/09

Union of India APPELLANT

Vs

M/s. Bharat Aluminum Co. Ltd. RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11(B)(2), 35(G)

Citation : (2012) 08 CHH CK 0005

Hon'ble Judges : Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Smiti Sharma, for the Appellant; Aditya Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

Abhay Manohar Sapre, J.—This is an appeal filed by the Revenue (Commissioner of Central Excise) u/s 35(G) of the Central Excise Act, 1944 (for short called "The Act") against the order dated 21/11/2005 passed by Principal Bench of Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short called "The Tribunal") in Appeal No. E/4076-86/03-NB(S). By impugned order, the Tribunal allowed the assessee''s appeal and in consequence, set aside the order of Commissioner of appeals impugned in the said appeal.

2. So the short question that arises for consideration in this appeal is whether Tribunal was justified in allowing assessee''s appeal thereby justified in setting aside of the order passed by the Commissioner of appeals?

3. This appeal was admitted for final hearing on following substantial questions of law:-

a. Whether the learned CESTAT was correct in setting aside the order of Commissioner (Appeals) and allowing the appeal of the party with consequential relief, ignoring the statutory provisions of Rule 173L of the erstwhile Central Excise Rules, 1944?

b. Whether the learned CESTAT has acted according to law in respect of the purview of the doctrine of "unjust enrichment" as per the provisions of Section 11(B)(2) of the Central Excise Act, 1944?

4. Facts of the case are short:-

5. The respondent (assessee) at the relevant time was a public sector undertaking. It is engaged in the business of manufacture and sale of Bauxite and Aluminium in different forms such as Aluminium Sheets etc. The appellant sells their finished items to several parties all over the Country. The items manufactured by the appellant are excisable under the Act. At times, the goods sold by the appellant to various parties are returned by the purchasers of the goods to the appellant due to myriad reasons such as: either they are not as per their specifications, or that they are not as per their requirements, or that they are not as per quality standards etc. The appellant then on their receipt use them for remaking the goods in their manufacturing process and then submit the refund claim under Rule 173-L of the Rules claiming refund of duty which they had paid at the time of clearance earlier such returned goods.

6. It is this claim which was made by the respondent (assessee) under Rule 173-L of the Rules on the assertion that certain duty paid material was returned to the appellant by some parties which was then used by the appellant in its remanufacturing process on its receipt from such parties to enable them to claim the refund of the duty paid by them on such returned goods. It was however, rejected by the adjudicating Authority and by the Commissioner of Appeals but was allowed by the Tribunal by impugned order when the Tribunal proceeded to allow the assessee''s appeal and allowed their refund claim which they had made before the adjudicating Authority. It is against this order of the Tribunal the Revenue (Commissioner of Central Excise) has filed this appeal.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal and hence it merits dismissal.

8. In our considered opinion what persuaded the Tribunal to allow the assessee''s appeal was the fact that the assessee as a fact was able to prove that they actually received the goods from their respective purchasers and the same were then actually used in remixing in their manufacturing process. Since the appellant (Revenue) was not able to dispute this factual aspect of the matter and hence the Tribunal held that the claim made by the assessee under Rule 173-L appears to be genuine and can not be rejected on the ground that a particular form was not maintained or not filed for cross checking. In other words, since the factum of receipt of goods and its consequent use in manufacturing process was conclusively held proved by documentary evidence and hence the benefit of refund of the duty paid on such sold goods was given to the respondent (assessee).

9. In such a factual scenario and finding of fact recorded by the Tribunal and that too based on undisputed facts, as is clear from the following finding of the

Tribunal "I find that in this case the appellants have demonstrated that their returned goods have been used in the manufacture of the finished goods and the department does not dispute the same". We do not find any good ground to differ with the view taken by the Tribunal.

10. In our opinion also no case whatsoever was made out for contravention of Rule 173-L against the assessee and instead it was rightly held that due compliance of Rule 173-L of the Rules was made by the assessee thereby holding them entitled to claim the refund of the duty paid by them on the finished goods sold and which were returned to them due to certain reasons by the respective purchasers and which they actually used in manufacturing process again.

11. After all when the facts are established with adequate evidence and Authorities are otherwise satisfied with the substantial compliances made by the assessee then Rules of procedure can not be used against the assessee to deny them the benefit of Rules.

12. In this appeal also, the learned counsel for the appellant (Revenue) was not able to successfully assail this material factual finding recorded by the Tribunal. His only submission was that there was contravention of Rule 173-L and hence claim should have been dismissed. We do not agree to this line of argument in the light of what we have held supra. In the light of foregoing discussion, we find no merit in the appeal, which fails and is accordingly dismissed.

No order as to costs.

