(2001) 11 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : C.C.E.S. No. 51 of 2001

Union of India (UOI) APPELLANT

Vs

Calcutta Steel Industries RESPONDENT

Date of Decision : 07-11-2001

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

Citation : (2002) 79 ECC 155

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Revenue has filed this petition u/s 35H(1) of the Central Excise Act, 1944. It prays that the Tribunal be directed to refer the following question for the opinion of this Court:

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. 16/94 (NT) dated 30.3.94 and would consequently become eligible document for taking credit under the Modvat Scheme?

2. A few facts may be noticed.

Respondent No. 1 is engaged in the manufacture of iron and steel products. It claimed a Modvat credit of Rs. 92,450. This claim was disallowed by the Assistant Commissioner. A penalty of Rs. 10,000 was also imposed. It was held that the gate passes on the basis of which Modvat credit had been claimed had been issued prior to March 31, 1994, and endorsed thereafter. Since an invoice system had been introduced, the claim for Modvat credit was not admissible.

3. Aggrieved by the order, the respondent filed an appeal, which was accepted by the Commissioner. The Revenue appealed to the Tribunal. Relying upon its decision in Moosa Haji Patrawala Pvt. Ltd. v. Commissioner of Central Excise,

Bombay-I 1996 (13) R LT 350 , the Tribunal dismissed the petition. Hence the present petition for a direction to the Tribunal to make the reference.

4. Mr. CM. Sharma, learned Counsel for the petitioner, very fairly states that the Revenue has accepted the correctness of the view taken by the Tribunal in the case of Moosa Haji Patrawala (supra). Consequently, the counsel prays that this petition may be dismissed.

5. Ordered accordingly.

