Collector of Central Excise Vs. Sham Agro Metal Steels Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-16-1997

Reported in : (1997)(96)ELT376TriDel

Appellant : Collector of Central Excise

Respondent : Sham Agro Metal Steels Pvt. Ltd.

Judgement :

1. The Revenue has filed the above Reference application seeking to refer the following question said to have arisen out of the Tribunal's Final Order No. A/1389/96-NB, dated 14-5-1996.

"Whether GP1 endorsed after 31-3-1994 but on or before 30-6-1994 are valid documents for availing Modvat credit as per Notification No. 16/94-C.E. (N.T.), dated 30-3-1994, since GP 1 ceases to be a prescribed document after 31-3-1994." 2. The brief facts of the case are that the respondents herein are engaged in the manufacture of MS ingots falling under sub-heading 7206.90 of the Schedule to the Central Excise Tariff Act, 1985 and availing credit of duty paid on inputs used in relation to the manufacture of finished products. They took credit of Rs. 83,363/- on the basis of GP 1s issued on or before 31-3-1994 but endorsed subsequent to that date. Taking of credit on the strength of these gate passes was objected to by the department and proceedings for recovery of the said amount were initiated resulting in debit and confirmed the demand against the respondents. The Collector of Central Excise (Appeals) allowed the appeal of the respondents on the ground that since gate passes had been issued before 1-4-

1994 although they were endorsed after that date, and credit was taken before 30th June 1994, they would be valid duty paying document in terms of Notification 16/94-C.E., dated 30-3-1994. The Revenue's appeal to the Tribunal was rejected holding that these gate passes were valid duty paying documents relying upon the Tribunal's order in the case of Moosa Haji Patrawala reported in 1996 (13) RLT 350 (Tribunal).

3. The learned DR places on record a copy of the Tribunal's Reference order in the case of Moosa Haji Patrawala bearing No. 3406/96-WRB, dated 7-10-1996 in which the following question has been referred to the Hon'ble Bombay High Court: "Whether gate passes issued prior to 1-4-1994 but endorsed after that date would fall under the coverage of Entry No. 10 in the Table to the Notification 16/94-C.E., dated 30-3-1994 and would consequently become eligible documents for taking credit under the Modvat Scheme." Since an identical question of law has already been referred to the jurisdictional High Court, I allow this Reference application and refer the question of law as same question has already been referred to the Bombay High Court to the High Court of Punjab and Haryana at Chandigarh. The Registry to draw up the statement of facts.