Cce Vs. Industrial Cables Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-2000

Reported in : (2000)(69)ECC514

Judge : J Balasundaram, A T V.K.

Appellant : Cce

Respondent : industrial Cables Ltd.

Judgement :

1. The Revenue has filed the above application under Section 35-G(1) of the Central Excise Act, 1944 for reference of the following question of law purported to have arisen out of Tribunal's Final order No.310/98-NB dated 4.5.98: Whether Rule 57I as it stood prior to amendment effected on 6.10.88 is independent of Section 11A and can be invoked for recovery of Modvat credit taken wrongly, without any limitation from the date of credit or whether it is subject to the provisions of limitation prescribed under Section 11A.2. The brief facts of the case are that the respondents are engaged in the manufacture of Electric wires and cables falling under CET sub-heading 8544.00 and availing Modvat credit on certain inputs for the manufacture of their final product. During the period 7.4.86 to 12.4.86, they had availed of credit of Rs. 2,78,660.20 P on certain items without filing any declaration for them under Rule 57G of the Central Excise Rules, 1944. The demand was therefore, raised for recovery of credit and the Assistant Commissioner confirmed the demand which was upheld by the Commissioner (Appeals). The assessees filed an appeal before the Tribunal which set aside the

impugned order holding that the demand raised vide show cause notice of April 1987 was barred by limitation since the assessee had filed RT 12 returns and therefore, the notice should have been issued within a period of six months from the date of filing of the return.

3. According to the Revenue, Rule 57I of the Central Excise Rules, as it stood at the material point of time (prior to 6.10.88) did not provide for any period of limitation for recovery of wrongly availed credit and therefore, the demand was within time.

4. We have considered the submissions of the learned DR and perused the records. We find that an identical question has been referred to the High Court in the case of Dawson Electric Industries v. CCE, New Delhi reported in 1988 (102) ELT 30. We therefore, refer the following question of law to the Hon'ble Punjab & Haryana High Court at Chandigarh for its considered opinion: Whether prior to 6.10.88 Rule 57I of the Central Excise Rules, 1944 was subject to the provisions of Section 11A of the Central Excise Act, 1944?