Commissioner of Central Excise Vs. Ashok Arc

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Court : Jharkhand

Decided On : Aug-04-2005

Reported in : 2006(193)ELT399(NULL)

Judge : S.J. Mukhopadhaya and; Narendra Nath Tiwari, JJ.

Acts : Central Excise Act, 1944 - Sections 35F and 35H(1); ;Central Excise Rules, 1944 - Rule 57F, 57F(3), 57F(12) and 57F(13)

Appeal No. : Taxation Case No. 1 of 2003

Appellant : Commissioner of Central Excise

Respondent : Ashok Arc

Advocate for Def. : Pankaj Kumar and; Sumeet Gadodia, Advs.

Advocate for Pet/Ap. : J.P. Gupta, ASG and; A. Anand, JC to ASG

Judgement :
ORDER

S.J. Mukhopadhaya, J.

1. This petition under Section 35H(1) of the Central Excise Act, 1944 has been preferred on behalf of the Revenue raising a doubt relating to legality and propriety of the order dated 30th April, 2002, passed by the Customs, Excise & Gold

(Control) Appellate Tribunal, Eastern Bench, Kolkata (hereinafter to be referred as 'CEGA Tribunal') in Appeal No. E-680/2001. By the said order, the CEGA Tribunal has accepted the stand of the appellant (respondent herein), set aside the order dated 5th September, 2001, passed by the Commissioner (Appeals), Customs & Central Excise, Patna and directed the Revenue to refund the amount in cash to the respondent-appellant.

2. The respondent M/s. Ashok Arc, Panchet Road, Chirkunda, District-Dhanbad claimed refund of Rs. 42,503.51 (rupees forty two thousand five hundred three and fifty one paise only) pursuant to Order Nos. A-598-599, dated 19th May, 1998, passed by the CEGA Tribunal in 1, 2 Appeals E-3441, 3442/93. The said amount was debited by the respondent from MODVAT Account under Section 35F of the Central Excise & Salt Act, 1944. The Deputy Commissioner, Central Excise, Ranchi, while sanctioned a sum of Rs. 3,150/- (rupees three thousand one hundred and fifty only) for payment through cheque, ordered that the balance amount of Rs. 39,353.51 (rupees thirty nine thousand three hundred fifty three and fifty one paise only) be made available to CENVAT Account, it having been debited by the respondent from its MODVAT Account. The respondent M/s. Ashok Arc, Dhanbad, initially moved in appeal before the Commissioner (Appeals), Customs & Central Excise, Patna, and prayed for refund of total amount in cash and to set aside the order, passed by the Deputy Commissioner, Central Excise, Ranchi. The appeal was rejected vide order dated 5th September, 2001, passed by the Commissioner (Appeals), Customs & Central Excise, Patna, in Appeal 414/JSR/CE/Appeal/2001, which was the impugned order before the CEGA Tribunal.

3. We have considered the submissions, made by the Counsel for the Revenue. He particularly relied on Sub-rules (12) and (13) of Rule 57F of the Central Excise Rules, 1944. It has been submitted that the CEGA Tribunal while passing the impugned order dated 30th April, 2002, has overlooked the provisions, wherein, it is stipulated that the credit of specified duty allowed in respect of any inputs may be utilised by manufacturer of the final products towards payment of duty of excise on any of the following :

(a) On any of the final products in the manufacture of the final products; or

(b) On the waste, if any, arising in the course of manufacture of the final products; or

(c) On the inputs themselves if such inputs are removed as such under Sub-rule(3) to Rule 57F.

4. In this petition, the Revenue has raised the following question for reference:

Whether the learned Tribunal has gravely erred in allowing the Appeal and directing the authority to refund the pre-deposit amount in cash when the same has been deposited through RG 23A Pt.-II i.e. MODVAT account and under the provisions of Central Excise Rules, 1944 no such refund in cash is permissible?

5. On hearing the parties, we find that the aforesaid issue was raised by the Revenue before the CEGA Tribunal, which answered the same in favour of the respondent by the impugned order dated 30th April, 2002. The stand of the learned Counsel for the Revenue that the amount should have been adjusted in RG-23A Part-II account can not be accepted, there being no such RG-23 Part-II account available respect of the finished goods. Similar issue was decided by Andhra Pradesh High Court in the case of Deccan Sales Corporation, reported in : 1982(10)ELT885(Bom) , as noticed by the CEGA Tribunal and, in fact, no credit account is being maintained by the respondent on account of raising of exemption limit. As the respondent will not be in a position to utilise the credit, the CEGA Tribunal has rightly held that the Revenue should refund the amount to the respondent in cash. There being no substantial question of law, raised for reference, we are not inclined to ask the Tribunal to refer any issue.