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Commissioner of Central Excise Vs. Kumar Steels

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Court : Delhi

Decided On : Sep-01-1999

Reported in : 2000(68)ECC547; 2000(116)ELT15(Del)

Judge : Arun Kumar and; D.K. Jain, JJ.

Acts : Central Excise Act, 1944 - Sections 35E(4), 35G(1) and 35G(3); Central Excise Tariff Act, 1985; Central Excise Rules, 1944 - Rules 57A, 57F(2), 57F(3), 57G, 57G(1) and 57G(2)

Appeal No. : Central Excise Act Case No. 1/99

Appellant : Commissioner of Central Excise

Respondent : Kumar Steels

Advocate for Def. : P.K. Mittal, Adv.

Advocate for Pet/Ap. : Sameer Agarwal, Adv

Disposition : Petition dismissed

Judgement :

1. By this petition under Section 35G(3) of the Central Excise Act, 1944 (for short theAct) the Revenue seeks a mandamus to the Customs, Excise and Gold (Control) Appellate Tribunal to state the case and refer the following questions for the opinion of this Court.

'1. Whether on the facts and in the circumstances of the case the application filed by the respondent under Rule 57F(2) amounted to a declaration under Rule 57G which categorically prescribes that an independent declaration shall be filed and that the party filing shall obtain a dated acknowledgment of the said declaration.

2. Whether the requirements of Rule 57G are mandatory and cannot be taken as substitute by the filing of an application under Rule 57F(2).'

2. Briefly stated, the material facts leading to the filing of the present petition are that the assessed is engaged in the manufacture of stainless steel flats, steel ingots, M.S. ingots, covered by Chapter 72 of the Central Excise Tariff Act, 1985. On the allegation that the respondent-assessee had not filed a declaration under Rule 57G read with Rule 57A of the Central Excise Rules, 1944, a show cause notice was issued to it for wrongly availing and utilising Modified Value Added Tax (for short 'MODVAT') to the tune of Rs. 738,597/-, but the same was withdrawn subsequently. However, on a motion by the Commissioner (Review), Central Excise, under Section 35E(4) of the Act, the order dropping the proceedings initiated by issue of the said show cause notice was reviewed by the Commissioner Central Excise (Appeals), New Delhi. The Commissioner (Appeals) took the view that the assessed had wrongly availed of Modvat credit on the inputs used in the manufacture of stainless steel flats without filing the mandatory declaration under Rule 57G and the credit was utilised against payment of duty on the said final product. He, accordingly held that the show cause notice issued by the adjudicating authority was wrongly withdrawn.

3. Being aggrieved with the said order, the assessed preferred an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal, mainly on the plea that the Commissioner (Appeals) had not granted personal hearing to them. Accepting the plea, the Tribunal remanded the case back to the Commissioner (Appeals) for re-adjudication. The Commissioner (Appeals) reiterated the afore noted view taken earlier. The assessed again challenged the said order by preferring further appeal to the Tribunal. While accepting the stand of the assessee, the Tribunal held as follows :

'We find that in the instant case, the appellants had made a declaration in the classification list effective from 6-3-1992 stating that they will be availing modvat credit on S.S. Flats. We also note that the appellants had, while taking permission for sending the goods to the job workers under Rule 57F(2) of the Central Excise Rules, 1944, had clearly indicated that they will be manufacturing S.S. Flats. We also note that the Asst. Collector had allowed them permission during the relevant period for this purpose. When these two are read together, we note that there was substantial compliance with the requirement of filing a declaration for purposes of Rule 57G(2)...'

'In the instant case, we note that there was a definite declaration in the classification list as also the permission accorded to the appellants by the Department clearly brought out that the appellants were manufacturing S.S. Flats.'

4. Thus, the Tribunal held that all the requisite particulars required to be furnished in a declaration under Rule 57G(2) were available on the record of the Revenue in the form of a definite declaration in the classification list as also in the permission accorded by the Revenue to the assessed for manufacturing stainless steel flats as the final product.

5. The Revenue's application under Section 35G(1) of the Act having been dismissed by the Tribunal, the present petition has been filed.

6. We have heard Mr. Sameer Aggarwal, learned counsel for the Revenue and Mr. P.K. Mittal, learned counsel for the assessee.

7. It is submitted by Mr.Aggarwal that the provisions of Rule 57G(1), are mandatory in nature and thereforee, it is obligatory for every manufacturer, intending to take credit of the duty paid on the inputs, to file a declaration indicating the description of the final products; the inputs intended to be used in each of such final products and obtain a dated acknowledgement from the Department and mere filing of a classification list/application under Rule 57F(3) does not absolve a manufacturer from complying with the provisions of Rule 57G(1) and thus, the Tribunal's final conclusion that filing of declaration in the form of classification list was substantial compliance with Rule 57G, gives rise to the

afore noted question of law.

8. We are unable to agree with learned counsel for the Revenue. Though, having regard to the language of Rule 57G(1), it could perhaps be argued that the said Rule is mandatory in nature but we find that in the instant case the Tribunal has nowhere held that the application filed by the assessed under Rule 57F(2) amounted to filing a declaration under Rule 57G(1), as is sought to be projected in the proposed questions. As noted above, what the Tribunal has found is that the information furnished by the assessed is substantial compliance of the requirements of Rule 57G. On a pointed query by the Court, learned counsel for the assessed has candidly admitted that but for non-filing of declaration under Rule 57G(1), the assessed is otherwise entitled to the Modvat credit, it has claimed.

9. Having regard to the facts found by the Tribunal in the instant case, we deem it unnecessary to call for reference on academic questions.

10. We do not find any infirmity in the impugned order of the Tribunal declining to make a reference to this Court. Consequently, the petition is dismissed. No costs.

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