Commissioner of Central Excise Vs. Customs, Excise, Gold Control Appellate Tribunal and Srf Limited

Commissioner of Central Excise Vs. Customs, Excise, Gold Control Appellate Tribunal and Srf Limited

SooperKanoon Citation : sooperkanoon.com/812445

Court : Chennai

Decided On : Jan-20-2005

Reported in : 2006(202)ELT753(Mad)

Judge : Markandey Katju, C.J. and ;D. Murugesan, J.

Acts : Central Excise Act, 1944 - Sections 35H(1); Central Excise Rules, 1944 - Rule 57A, 57A(1) and 57C; Customs Tariff Act, 1975 - Sections 3

Appeal No. : R.C.P. No. 41 of 2002

Appellant : Commissioner of Central Excise

Respondent : Customs, Excise, Gold Control Appellate Tribunal and Srf Limited

Advocate for Def. : K.S. Venkatagiri, Adv. for ;Lakshmi Kumaran, Adv. for R2

Advocate for Pet/Ap. : K. Veeraraghavan, A.C.G.S.C.

Disposition : Application rejected

Judgement :
ORDER

1. By this reference application under Sec. 35H(1) of the Central Excise Act, 1944, the applicant, viz. Commissioner of Central Excise, Chennai I Commissionerate,

Chennai has framed the following question to be referred to us for out opinion :

'1. Is the Hon'ble Tribunal right in ruling that the assessee can avail the exemption available in Notification or pay duty, when the input in question in wholly exempt from duty vide Notification No. 5/99 dated 28.2.1999 and when Rule 57C of Central Excise Rules 1944 is categorical in placing an embargo on taking of credit on inputs if the final product is wholly exempt from payment of duty?'

2. Learned standing counsel for the department, Shri Veeraraghavan, has contended that since the raw material of the assessee had been exempted from duty vide Notification dated 28.2.1999, he could not claim MODVAT Credit. However, from the perusal of the impugned order, it appears that, in fact, duty was paid by the assessee's supplier despite the aforesaid notification. It may be that the supplier was unaware of the exemption notification or it may be that some condition of the notification was not complied with but, nevertheless, the fact remains that duty was paid by the assessee's supplies. This factual position is not disputed.

3. Rule 57A(1) of the Central Excise Rules reads as follows :

'Rule 57A. Applicability. (1) The provisions of this section shall apply to such finished excisable goods (hereafter, in this section, referred to as the final products) as the Central Government may, by notification in the Official Gazette, specify in this behalf for the purpose of allowing credit of any duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereafter, in this section, referred to as the specified duty) 'paid' on the goods used in the manufacture of the said final product (hereinafter, in this section, referred to as the inputs)'

4. A perusal of section 57A(1) shows that the terminology used therein is 'paid' and not 'payable'. This distinction, in our opinion, is important because it indicates that we have to take into account the factual state of affairs. In other words, we have to consider whether the duty has actually been paid on the rae material and not whether duty was payable or not. In the present case, it is not in dispute that the assessee's supplier in fact that paid the duty on the raw materials supplied to

the assessee and the department accepted this excise duty. The concept of MODVAT is that if the raw material suffered duty then relief should be given so far as the excise duty on the final product is concerned. For instance, if a manufacturer of coat purchases cloth on which the manufacturer of cloth has paid excise duty say Rs. 20/-, then if the excise duty on the coat is say Rs. 100/-, the sum of Rs. 20/- has to be deducted from it and only Rs. 80/- is payable by the coat manufacturer. This is no doubt a rough and ready example but it illustrates the concept of MODVAT. Since the very concept of MODVAT is to mitigate double taxation, if the raw material has suffered excise duty then relief should be granted in respect of duty payable on the final product.

5. In view of the above discussion, we do not find any error of law in the order of the Tribunal. Hence, we reject the reference application.