

(2010) 10 P&H CK 0347

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 8568 of 2010

Dee Kay Exports

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision: Oct. 26, 2010**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 11A, 35E(2)

Citation: (2011) 264 ELT 366 : (2011) 30 STT 117**Hon'ble Judges:** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Adarsh Kumar Goel, J.

This petition seeks quashing of Show Cause Notice dated 19.2.2010, Annexure P-5, u/s 11A of the Central Excise Act, 1944 (for short, "the Act"), requiring the Petitioner to show cause why the demand of duty may not be raised with interest and why penalty be not levied for alleged wrongful availment of CENVAT Credit on inputs/input services.

2. Grievance of the Petitioner is that identical Show Cause Notice dated 4.2.2008 was earlier issued to the Petitioner, which was contested by the Petitioner and after due consideration of stand of the Petitioner, the said notice was dropped vide order in original dated 29.10.2009. Plea of the Petitioner that CENVAT Credit on inputs/input services had not been wrongfully availed, was upheld. The finding recorded is as under:

3.2 The noticee in their reply have submitted that they have not availed any cenvat credit of duty paid on inputs / input services for the manufacture of agricultural grade ZnSO₄. Verification report was sought from Range Superintendent Assistant Commissioner, CX Division, Yamuna Nagar and Assistant Commissioner, CX Division, Yamuna Nagar vide letter C. No. V(28) Demand/DK/YNR/01/2008/4320 dt. 01.10.09

has confirmed and forwarded the verification report of Range Officer vide his letter dt. 25.09.09 stating that the noticee had not availed any cenvat credit of duty paid on inputs/input services for manufacture of zinc sulphate and that question of payment of amount equivalent to cenvat credit availed does not arise.

Once the matter has been finalised with above finding, the adjudicating authority had no jurisdiction to issue a fresh Show Cause Notice in the same matter.

3. In the reply filed, stand taken is that after passing of the order, in original, it came to the notice of the department that the noticee had misrepresented/suppressed the material facts relating to availment of CENVAT Credit and in such a situation, second Show Cause Notice by same authority was justified.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Petitioner submitted that once the matter has been finalised on merits, the adjudicating authority had no jurisdiction to initiate proceedings in the same matter without a provision to that effect in the Act. As per statutory Scheme, only remedy of the department against an alleged erroneous order of adjudicating authority is to invoke power u/s 35E(2) of the Act. Reliance has been placed on following judgments:

i) [Union of India \(UOI\) and Another Vs. Vicco Laboratories, ;](#)

ii) M/s. Twenty First Century Steels (P) Ltd. v. CCE C.W.P. No. 1991 of 2009 decided on 17.3.2009 (P and H);

iii) [Jai Hind Oil Mills and Co. Vs. Union of India, ;](#)

iv) [Associated Cement Companies Limited Vs. Union of India,](#) and

v) [Rewa Gases Pvt. Ltd. Vs. Assistant Collector of C. Ex., Satna, .](#)

6. Learned Counsel for the Respondents has not been able to show any provision in the Act under which the issue could be reopened by the same authority by way of second Show Cause Notice. He has not been able to dispute the applicability of judgments relied upon on behalf of the Petitioner.

7. Accordingly, this writ petition is allowed and notice dated 19.2.2010, Annexure P-5, is quashed.

8. It is, however, made clear that the Respondents will be at liberty to take such other proceedings in the matter as may be permissible under the law.