courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(2010) 12 P&H CK 0571

High Court Of Punjab And Haryana At Chandigarh

Case No: C.E.A. No. 165 of 2010

Commissioner of Central Excise		APPELLANT
	Vs	
Mamta and Co.		RESPONDENT

Date of Decision: Dec. 16, 2010

Acts Referred:

- Central Excise Rules, 1944 - Rule 57CC
- Central Excises and Salt Act, 1944 - Section 2, 3, 35G
- CENVAT (Credit) Rules, 2001 - Rule 57CC

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.
This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 (for short, "the Act") against the order of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi dated 19.10.2009, proposing to raise following substantial questions of law:

(i) "Whether the duty chargeable u/s 3 of the Central Excise Act, 1944 can be adjusted against the amount of 8% of the value of exempted goods under erstwhile Rule 57CC of Cenvat Credit Rules, 1944?

(ii) Whether the Central Excise duty liability on S.S. Patta Patti ordered to be adjusted against payment of 8% of the value of exempted goods is legally correct?

2. The Respondent-Assessee is a manufacturer of stainless steel circles which are either cleared on payment of duty or used in manufacture of utensils. The Assessee claimed benefit of notification No. 67/95-CE dated 16.3.1995 for captive use of raw material in manufacture of stainless steel circles on the ground that final product was exempt from

duty. Vide order dated 26.4.2002, duty demand was raised against the Assessee which was upheld in appeal vide order dated 19.9.2003 with the modification that duty liability was to be adjusted against modvat reversal in accordance with the judgment of the Tribunal in the case of 2002 (141) ELT 803 . On further appeal, the matter was remanded and on re-adjudication, demand was confirmed but the duty paid under Rule 57CC of the Central Excise Rules, 1944 was directed to be adjusted. On appeal before the Commissioner, the Commissioner upheld the adjustment in favour of the assessee with the following Observations:

5. I have carefully gone through the facts of the case and the ground of appeal. The revenue has contended that the duty liability on SS Patta Patti has been allowed to be adjusted against the amount of 8% paid on the value of utensils and further that the adjustment has been allowed relying on the Hon''ble Tribunal''s order in the case of 2002 (141) ELT 803 that duty liability on colled rolled Patta Patti would be adjusted to the extent of duty liability paid by the noticee by way of adjustment of MODVAT/Cenvat Credits. As per C.E.A. No. 165 of 2010 revenue, in the present case, adjustment of confirmed duty liability has been allowed from the amount which is not duty i.e. amount of 8% paid on the value of utensils in terms of provisions contained in the erstwhile Rule 57CC of the Central Excise Rules, 1944. The revenue has contended that the adjustment so allowed is not legally correct also not strictly in accordance with the directions contained in the aforesaid CESTAT order in as much as the adjustment had to be allowed of duty already paid, whereas here the adjustment has been allowed not against duty but against the amount paid @ 8%. The revenue has pleaded that there is plethora of legal pronouncements holding that the amount paid under Rule 57CC is not duty. In this connection, it is observed that the Commissioner (Appeals) vide Order-in-Appeal No. 456/AGK/PCK/03 dated 11.09.03 and 492/AGK/PCK/03 dated 19.09.03 had directed that the duty liability on hot rolled patta patti would be adjusted to the extent of duty already paid by way of adjustment of MODVAT/Cenvat Credits. But the Revenue has not filed appeal against the said orders of the Commissioner (Appeals) has attained finality. If the revenue was of the view that adjustment is not legally correct then they should have filed appeals against the said Orders-in-Appeals at that time. The cases have been remanded back for fresh decision by the CESTAT on the appeals filed by the Respondent against the said Orders-in-Appeal for limited purpose to decide whether the process of cold rolled products amounts to manufacture u/s 2(f) of the Central Excise Act, 1944 and on the valuation aspect of the products. The adjudicating authority has C.E.A. No. 165 of 2010 correctly followed the directions of the CESTAT and allowed adjustment for the amount already paid/debited by Respondent in terms of Rules 57CC of the Central Excise Rules, 1944 as ordered by the then Commissioner (Appeals) vide the above referred Orders-in-Appeal. The judicial discipline demands that the adjudicating authority follow the directions of the Higher appellate authority which have attained finality.

3. The above view has been upheld by the Tribunal as under:

5. There is no dispute by the revenue in its appeal that the order of adjudication made by the assessing authority is wrong. We make it clear that the goods are manufactured at different points of time and at different stages. Therefore, the authority should examine concurrently the duty liability at different stages and grant proper adjudication. If there is no liability at any stage of manufacture, Appellant Assessee should not be demanded the duty. While directing so we also keep in mind that revenue has not gone in appeal against the order of adjudication allowed by the Ld. Adjudicating Authority. In absence of appeal by revenue, the relief granted by lower authority cannot be denied. Therefore, the Assessee should get relief granted by lower appellate authority.

4. We have heard learned Counsel for the Appellant.

5. It is not disputed that in the earlier round of litigation, the order of the adjudicating authority, allowing adjustment, was C.E.A. No. 165 of 2010 never put in issue by the revenue. This being the position, the view taken by the Commissioner and the Tribunal that the same could not be challenged in second round of litigation, cannot be held to be erroneous. Once it is so, the questions raised do not arise for consideration and cannot be held to be substantial questions of law.

6. The appeal is dismissed.