

(2013) 07 JH CK 0100
Jharkhand High Court
Case No: W.P.T. No. 7008 of 2012

Akshay Steel Works Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: July 19, 2013

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35F

Citation: (2014) 304 ELT 518 : (2013) 22 GSTR 329 : (2013) 41 STT 95

Hon'ble Judges: Prakash Tatia, C.J; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: Sumeet Kr. Gadodia and A.K. Mahato, for the Appellant; Deepak Roshan, for the Respondent

Judgement

1. Heard counsel for the parties. The petitioner's application for exemption from the condition of pre-deposit was rejected by the Commissioner, (Appeals), Central Excise and Service Tax, Ranchi. However, the petitioner was permitted to comply with the pre-deposit u/s 35F of the Central Excise Act. The petitioner's contention is that petitioner reversed the amount of Rs. 21,58,103/- and also has given break up of other tax including cess. Petitioner gave this information along with copy of the Form-RG 23A Part II vide petitioner's letter dated 21.2.2012. According to the petitioner, petitioner was entitled to adjustment of this credit entry against the condition of pre-deposit and, therefore, he immediately complied with the order of the Appellate Tribunal and intimated so to the Appellate Tribunal. In-spite of such communication, which was duly received and which has been duly admitted in the counter affidavit filed by the respondents, the Appellate Authority dismissed the petitioner-appellant's appeal mainly on the ground that the petitioner failed to deposit the amount as required u/s 35F of the Central Excise Act.

2. Learned counsel for the petitioner further submitted that such adjustment is permissible in the view taken by the Customs, Excise and Service Tax Appellate

Tribunal, West Zonal Bench, Mumbai, Court No. 1 in the case of Finolex Cables Ltd. Vrs. Commissioner of Central Excise, Pune-I, copy of which has been placed on record as Annexure-8. The same view has been taken by the CEGAT, Court No. 1, New Delhi in the case of 1996 (83) ELT 396 . Even the Allahabad High Court in the case of [India Casting Company Vs. CEGAT](#), has taken the same view.

3. Learned counsel for the respondents submitted that as per Rule-3 of the Cenvat Credit Rules, 2004, such credit can be allowed for the purposes mentioned in Sub-Rule (1) of Rule 3 of the Cenvat Credit Rules, 2004 and, therefore, no other adjustment is permissible. Learned counsel for the respondents also submitted that the said rule is in consonance with Section 35F of the Central Excise Act.

4. We have considered the submissions of learned counsel for the parties and perused the facts of the case as well as laws relied upon the parties. Rule 3 of the Cenvat Credit Rules, 2004 allows an assessee to take the benefit of his credit under any of the category as mentioned under Sub-Rule(1) of Rule 3 of the Cenvat Credit Rules, 2004. We are of the considered opinion that this is not a provision, which prohibits the assessee to adjust the said credit against its liability created by either order which is sought to be challenged in appeal requiring the deposit of the amount u/s 35F of the Central Excise Act. In view of the above reasons, we are of the considered opinion that the petitioner was entitled to have this adjustment of his credit amount against his liability u/s 35F of the Central Excise Act.

5. The order, by which the petitioner's appeal was rejected dated 4.9.2012, also appears to be non-speaking order. The Commissioner, Appeal did not even consider the petitioner's contention and the plea that the petitioner has already deposited the amount by way of adjustment so as to discharge his liability u/s 35F of the Central Excise Act. Be that as it may, since we are of the view that such adjustment is permissible in law, therefore, this writ petition is allowed and the order dated 4.9.2012 (Annexure-5) is set aside. The petitioner's appeal is competent, which may be dealt with in accordance with law by the Appellate Authority.