Court No. - 35

Case :- CENTRAL EXCISE APPEAL No. - 311 of 2011
Appellant :- Commissioner Of Customs And Central Excise
Respondent :- M/S International Tobacco Co. Ltd.
Counsel for Appellant :- S.P. Kesarwani, S.C.,B.K.S. Raghvanshi
Counsel for Respondent :- Prashant Mishra,Rohan Gupta,Yashwant Varma

Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Heard Shri Pravin Kumar learned counsel for the appellant and Shri Navin Sinha, learned Senior Counsel assisted by Shri Raghav Nayar, learned counsel for the respondent.

This is a Central Excise Appeal under Section 35-G of the Central Excise Act, 1944 against the order passed by the Tribunal dated 01.07.2011 for the period of 2008. The question of law sought to be answered by the order of this court dated 4.11.2001 is as under:

" Whether bills of entry in the name of M/s Godfrey Phillips India Ltd. and not bearing the endorsement of proper office of Customs are valid documents under Rule 9 of the CENVAT Credit Rules, 2004 so as to entitle the respondent (a distinct manufacturer) to avail CENVAT Credit?"

The facts of the case are that the respondent took CENVAT Credit on imported capital goods, which were in the nature of machine and which had been brought in the name of M/s Godfrey Phillips India Ltd.; Friends Colony, New Delhi. The said machines were then diverted to the assessee. The department has come in appeal taking a ground that the said diversion was made in violation of Rule 9 of the CENVAT Credit Rules, 2004.

However, on facts it is clear as recorded by the Tribunal that there was no dispute about the duty paid nature of the capital goods and receipt of same by the assessee and used also for its own internal purposes. No violation of Rule 9 of the CENVAT Credit Rules, 2004 has been recorded by the Tribunal.

On the contrary learned counsel for the assessee has argued that the requirement of Rule 9(2) were fully satisfied in the case of assessee. Rule 9(2) of the CENVAT Credit Rules, 2004 reads as hereunder:

"9(2)-No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

In view of the findings of fact recorded by the Tribunal, no questions of law arises.

The appeal is accordingly dismissed.

Order Date :- 5.1.2017
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(Vinod Kumar Misra, J.) (Bharati Sapru, J.)