

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.723 of 2009

Commissioner of Central Excise, Patna 5th Floor, C.R. Building, Birchand Patel Marg, Patna.

... .. Appellant/s

Versus

M/s Camco Steels (P) Ltd. Mahatma Gandhi Nagar, Kankarbagh, Patna-800020, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.D. Sanjay, Addl. S.G. Mr. Alok Kumar Agrawal, CGC Ms. Priya Gupta, Adv. Mr. Mohit Agarwal, Adv.
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 02-05-2019

Heard Mr. S.D. Sanjay, learned Additional Solicitor General for the appellant who appears with Mr. Alok Kumar Agrawal, learned Central Government Counsel.

This appeal is directed against the order of the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (hereinafter referred to as 'the Tribunal') in Excise Appeal Nos. 624 to 627 of 2008 and in so far as the appeal in hand is concerned, it arises against the order passed in Excise Appeal No.626 of 2008 whereby, the order passed by the Commissioner of Central Excise, Patna has been set aside, to allow the appeal.

This appeal is preferred under Section 35-G of the Central Excise Act, 1944 which allows an appeal to the High Court on a



substantial question of law and thus it is taken for consideration at pre-admission stage under Order 41 rule 11 of the Code of Civil Procedure.

While according to the assessee, being a manufacturer of small agricultural implements for classification as agricultural machinery, they were exigible to Nil rate of duty, the department had other views and it is this dispute which led to the proceeding which ultimately culminated in the order of 'the Tribunal' who have decided in favour of the assessee.

It is while questioning the assessment order in appeal that the assessee also raised an issue of accruing benefit of input tax credit under the provisions of Modvat Credit Procedure because according to the assessee, while his stand yet is that the goods were not exigible to duty even otherwise, if they would be subjected to tax, then in view of the input tax already suffered by the goods, following the Modvat Credit Procedure, yet the goods would not be exigible to any Excise Duty rather there would be a credit yet in favour of the assessee. According to the assessee, since he had closed his business house he would not claim any refund of the tax so deposited.

In support of his claim, the assessee relied upon a judgment of the Supreme Court reported in **1995(77) ELT 511 (Formica India Division vs. Collector of Central Excise) : 1995 Supp. (3) SCC 552** where the Supreme Court while addressing similar issue had opined in favour of the assessee opining that the assessee should be given the benefit of the input tax credit and which could not be denied. It is



bearing note of the judgment of the Supreme Court rendered in the case of **Formica India Division** (supra) as well bearing note of the credit available at the hands of the assessee which was much in excess of the duty in demand that ‘the Tribunal’ has decided in favour of the assessee to allow the appeal.

Having considered the submissions advanced on behalf of the appellant, we find no reasons to interfere with the opinion of ‘the Tribunal’ which is in tune with the legal position settled by the Supreme Court on an identical matter and thus finding the issue concluded we hold that no substantial question arises in the present appeal for inviting admission. The appeal is disposed of accordingly.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Anjula/skpathak

AFR/NAFR	NAFR
CAV DATE	NA
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