(2007) 02 CAL CK 0042

In the Calcutta High Court

Case No : Writ Petition No. 2291 (W) of 2007

Burdwan Iron and Steel Company (P) Ltd. and Another — APPELLANT

Vs

Commissioner of Central Excise and Others — RESPONDENT

Date of Decision : 16-02-2007

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 25(1)
Central Excises and Salt Act, 1944 — Section 11A, 11AC, 35B

Citation : (2007) 2 CALLT 647 : (2007) 2 CHN 647 : (2008) 230 ELT 419

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Pratap Chatterjee, S. Dutta and S. Sengupta, for the Appellant; Pradip Tarafder and Sucharita Roy, for the Respondent

Judgement

Soumitra Pal, J.—In the writ application the petitioners - the petitioner No. 1 being a private limited company carrying on business as a manufacturer of excisable goods and the petitioner No. 2 one of its directors - have challenged the order dated 11th December, 2006 passed by the Commissioner of Central Excise Bolpur Commissionerate under the Central Excise Act, 1944 confirming a demand of Rs. 69,50,934/- against the petitioner No. 1 u/s 11A of the Central Excise Act, 1944 (for short ''the Act'') and against the imposition of penalty of an equal sum under Rule 173Q of the Central Excise Rules, 1944 and Rule 25(1)(a) read with Section 11AC of the Act on several grounds.

2. Learned Advocate appearing on behalf of the excise authorities relying on the judgment of the Apex Court in Chanan Singh and Sons Vs. Collector Central Excise and Others, submitted since order passed by the Commissioner of Central Excise is an appealable order u/s 35B of the Act, the writ petition is not maintainable. Moreover, as the petitioners were supplied with the documents sought for, the basis of calculation was disclosed and sufficient opportunity was given to present their case and as the issues are dependent on facts found on the basis of intelligence reports prepared by the anti-evasion officers, the writ

petition does not come within the exceptions as propounded by the Apex Court.

3. Learned senior Advocate appearing on behalf of the petitioner submitted that the demand is for the period from 17th July, 2000 till 6th June, 2001 The Commissioner while passing the order had relied on the balance sheet prepared upto 31st March, 2001 which is the sole evidence Even assuming that the basis of the demand till 31st March, 2001 is just and proper, the demand for the months of April to June, 2001 exceeds evidence and, hence, perverse It appears that authorities relied on the purchase value and not on the consumption and though no impropriety was found in the RT 12 forms submitted from time to time, yet Section 11A of the Act was invoked to confer jurisdiction on the alleged ground that the petitioner No. 1 had tried to conceal production and clearance of goods In support of his submission reliance was placed on the judgment of the Supreme Court in In the Matter of the Appropriate Authority and Another Vs. Smt. Sudha Patil and Another,

4. It appears that the proceedings have been initiated on the basis of intelligence reports prepared by the anti evasion officers It was alleged that there had been a suppression of actual production and clearance by the petitioner No. 1 without payment of central excise duty Such an allegation of suppression and fraudulent transaction, a question of fact shall automatically attract the extended period of limitation u/s 11A of the Act In the writ jurisdiction High Court cannot embark upon enquiry of evidence as such an exercise is within the purview of the Tribunal - the final fact finding authority The principles of law laid down in the judgment of the Apex Court in Appropriate Authority v. Sudha Patil (supra) are not applicable to the facts of this case Therefore, no order is passed on this application The petitioner is at liberty to approach the appropriate forum It is made clear that I have not gone into the merits of the case.

5. No order as to costs.

6. Urgent xerox certified copy of this order, if applied for, be given to the appearing parties on priority basis.

