(2001) 09 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : CCES No. 36 of 2001

CCE APPELLANT

Vs

Maheshwari Woollen Mills and Another RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35H

Citation : (2001) 99 ECR 15

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Revenue has filed this petition u/s 35H(1) of the Central Excise Act, 1944. It claims that the following question of law arises for the opinion of this Court:

Whether circumstantial evidence placed on records is not sufficient to prove the clandestine manufacture and removal of the goods?

2. Mr. Gumber, learned Counsel for the Revenue contends that the first respondent was manufacturing worsted woollen yarn and selling it. Thus, Excise duty and penalty etc. had been validly levied. The Tribunal has erred in reversing the order. Is it so?

3. There is a delay of two days in filing the petition. Mr. Gumber prays that the delay be condoned. Even if we overlook the delay, there is no merit in the petition.

4. A perusal of the order passed by the Customs, Excise & Gold (Control) Appellate Tribunal shows the following finding has been recorded:

While the case of the Revenue is based on the discrepancies in the purchases and supplies of the yarn, we consider that for demand of duty what was required was the fact of manufacture. We have carefully gone through the evidence on record but we do not find that any plausible case has been made out to substantiate the allegation that the yarn supplied to DGS&D was the yarn manufactured by the appellants themselves in their mill. For establishing the allegation of such a nature, we consider that type of material placed on record, was not alone sufficient.

5. We find that no material has been placed on record to controvert the conclusion drawn.

6. The case was posted before this Bench yesterday, viz. on September 17, 2001. We had asked Mr. Gumber, learned Counsel for the Revenue to check up if there was even an iota of evidence on the file to show that the respondents had facility for manufacture of worsted woollen yarn. The Counsel has today very fairly stated that he has not been able to find any finding on the file. However, he submits that in paragraph 34, the Commissioner has observed that "there is a very strong case of the Department that the noticee had the worsted system in their factory premises situated at 186, Industrial Area A. Ludhiana from where they had issued the bills to the DGS&D".

7. Why? There is no discussion about the manufacturing facilities, purchase of raw material, details of manufacture, packing, despatches etc. In the absence of any evidence this vague observation cannot lead to the inference that the respondent had the facility for manufacturing worsted woollen yarn. In fact, it appears, as noticed by the Tribunal, that it was on the basis of "the discrepancies in the purchases and supplies of yarn", that the demand was raised. Since positive evidence of availability of the facility has not been pointed out, we find no infirmity in the view taken by the Tribunal. Thus, no question of law arises for the opinion of the Court.

8. The petition is accordingly dismissed in limine.