(2002) 05 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : CCES No. 44 of 2002

CCE, Commissionerate-I, Chandigarh — APPELLANT

Vs

Pee Jay Apparels (P) Ltd. — RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC, 35H(1)

Citation : (2002) 143 ELT 506

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Ramesh Chahal and Rajesh Gumber, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The respondent is engaged in the manufacture of woollen hosiery. During the year 1995-96, the respondent got 14629 Kgs of woollen yarn in the form of straight reel hanks. It converted the material into cones on winding machines before it was used for the manufacture of ''woollen hosiery.''

2. On April 12, 1999, the respondent was served with a show cause notice calling upon it to explain as to why duty amounting to Rs. 1,70,714.40 be not levied. The respondent showed cause. On June 30, 1999, the Additional Commissioner confirmed the proposed levy. He also imposed penalty at 100%. The respondent was further held liable to pay interest in case of delay in depositing the dues. The respondent''s appeal against the order was dismissed by the Appellate Authority vide order dated October 17, 2000. On second appeal before the Tribunal, the respondent contended that it has been carrying on the work of manufacture of woollen hosiery for several years. It was under the bonafide belief that no duty was payable on change in the form of yarn from plain reel hanks into cone yarn. Since the woollen hosiery was exempt from levy of excise duty, the respondent had not got itself registered or deposited the levy. In any case, the assessee contended that there was no intention to evade duty. Thus, the action of the Authority in extending the limitation, imposing the levy as also the penalty etc.

was illegal.

3. The Tribunal after examination of the case found that "the appellant was manufacturing woollen hosiery products over a period of time____". The item was exempt from levy of duty. The respondent was not required to file any intimation under the rules as prevalent at the relevant time. There was no suppression or misstatement. There was no evidence of fraud or collusion. There was no evidence to indicate any "intention to evade payment of duty". Still further, it was held that the period of demand was "much before the introduction of Section 11AC___". Therefore, "no penalty u/s 11AC was imposable". Resultantly, the appeal was accepted.

4. Aggrieved by the order of the Tribunal, a copy of which is at Annexure P-3, the Revenue has filed the present petition.

5. After hearing the learned Counsel and perusing the record, we find that the Tribunal has examined the entire evidence. It was come to a firm finding of fact that there was no intention to evade payment of duty. Thus, there was no ground to extend the period of limitation or to impose any penalty, especially when Section 11AC was not even enacted at the relevant time. It is a pure finding of fact. Thus, no referable question of law arises for the opinion of this Court.

6. In view of the above, the petition is dismissed in limine.

