(2016) 10 BOM CK 0060

In the Bombay High Court

Case No : Central Excise Appeal No. 124 of 2005

Commissioner Of C. Ex. and Cus., Nashik APPELLANT

Vs

M.K. Kotecha RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Citation : (2016) 342 ELT 161

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Ms. P.S. Cardozo, Advocate, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. appeal of the Revenue was listed for direction only in order to find out as to whether in the light of the subsequent instructions issued by the Ministry, anything would survive in this appeal.

2. However, our attention was invited to the impugned order by Ms. Cardozo.

3. We have perused the said order carefully and anxiously.

4. Though the matter is listed for direction, we can dispose it of at this stage itself. There is no opposition to this course. The Tribunal having found that the only case of the Revenue against the assessee was that the assessee had collected the duty amount from their principals. On the other hand, the assessee argued that the contracted value agreed upon by both the parties was inclusive of excise duty and the assessee''s customers were not concerned whether the contractor paid nil rate of duty or concessional rate of duty. Reliance upon only one document was placed and that was a running account bill. The Tribunal rendered a finding of fact that the bills were raised by the assessee taking into consideration all costs, including excise duty payable but that would not attract by itself Section 11D of the Central Excise Act, 1944. The evidence that is required to be brought with regard to collection of duty from the customers was

lacking. Therefore, there was no obligation to deposit or credit the fund with the amount of duty.

5. We do not think that such a finding of fact and as rendered by the Tribunal requires interference in this Court''s further appellate jurisdiction.

6. We have also perused the show cause notice and the annexures thereto, and particularly our attention is invited to Page 34 of the paper-book. It is started in the show cause notice that the assessee had availed concessional rate of duty under Notification No. 175/86. The assessee was not aware of the rates of excise duty taken in the tender and denied about awareness of preparation of tender papers on the basis of project report. The show cause notice itself alleges that the assessee has paid the central excise duty as per the manufacturing cost and that he has not compared the price with others. In the face of such an allegation in the show cause notice and when reliance is placed on a single piece of evidence, we do not think that in its further appellate jurisdiction this Court can enter into the domain of appreciation and appraisal of oral and documentary evidence. The documentary evidence having been appreciated and consistent with the case of the Revenue, there is no perversity in the order of the Tribunal. The appeal is, therefore, dismissed.