(2008) 09 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. APPELLANT

Vs

B.H.P. Engineers Ltd. RESPONDENT

Date of Decision : 09-09-2008

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

Citation : (2010) 18 STR 697

Hon'ble Judges : Ajay Tewari, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Revenue has preferred this appeal u/s 35G of the Central Excises and Salt Act 1944 (for short, "the Act") proposing to raise following substantial questions of law:

(i) Whether the Department was justified in adding the notional interest on the advances to the sale price of the goods for the purpose of arriving at the assessable value?

(ii) Whether the Excise duty is liable to be charged on the interest accrued on advance payments received by the assessee, from the date of receipt up to the date of clearance of excisable goods?

2. The assessee was given a notice making demand on the basis of notional interest accrued on advances received from customers, not included in the assessable value. The said demand was confirmed. The assessee debited the amount under protest. In appeal, the amount in question was treated as pre-deposit u/s 35F of the Act for entertaining the appeal. In the profit and loss account for the year 1996-97, under the head ''Excise Duty'', entry of profit was made by the assessee on which basis refund was declined.

3. The Appellate Commissioner held that amount deposited u/s 35F of the Act could not have been passed on and thus, there was no question of unjust

enrichment and the assessee was entitled to refund.

4. On appeal of the Revenue, the Tribunal affirmed the said view with the following observation:

5. Admittedly, the notional interest on the advance amount taken from the customers was not includible in the assessable value. It appears from the record that the invoice covering the sale of disputed goods indicated the duty chargeable, which was paid by the customers to the assessee. The invoice value did not include any such amount of notional interest, which was not payable and which could never be added in the value of the goods. Therefore, when the transaction took place, excise duty was paid by the customers on the invoice value, there was no other amount payable by the customers, in respect of the goods sold to them by the assessee, towards excise duty. Pursuant to the order-in-original made, much after the transactions, taking into account the notional interest on the advances, the amount as ordered was paid, but it was treated as pre-deposit u/s 35F of the Act for the purpose of the appeal to the Commissioner (Appeals). Such subsequent payment of the pre-deposit could not have been taken as passing on the burden of erroneously fixed additional amount of excise duty retrospectively from the date of transactions, which were on the basis of invoice value on which the excise duty was already recovered without reference to any notional interest on advances. There is, therefore, no warrant for interference with the impugned order of the Commissioner (Appeals).

5. We have heard learned Counsel for the parties.

6. Learned Counsel for the Revenue referring to provision of Section 12B of the Central Excise Act, 1944 submitted that a presumption arises that the amount was passed on to the assessee and in absence of any evidence to rebut the same, the refund could not be allowed to the assessee.

7. We do not find any merit in the contention raised.

8. Rebuttal of the presumption u/s 12B of the Central Excise Act, 1944 does not require any positive evidence and even on the material already on record, in the circumstances of a given case, presumption can be held to have been rebutted.

9. The appellate Commissioner as well as the Tribunal, having regard to circumstances of the case, have recorded a finding that presumption stood rebutted.

10. In view of above, we are unable to hold that any substantial question of law arises.

11. The appeal is dismissed.

