(2004) 03 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Case No. 7 of 2004 (O and M) and C.M. No. 1213-C-II of 2004

Commissioner of C. Ex. APPELLANT

Vs

Haryana Textiles Corporation Ltd. RESPONDENT

Date of Decision : 11-03-2004

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

Citation : (2004) 168 ELT 11

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

Bench : Division Bench

Advocate : M.S. Guglani, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—CM 1213-CII/2004 : This application has been filed u/s 151, Code of Civil Procedure, for condonation of delay of 395 days in filing the petition.

2. C.M. is allowed. Delay in refiling the petition is condoned. CEC 7 of 2004:

3. Revenue has filed this petition u/s 35H(1) of the Central Excise Act, 1944 (for short ''the Act''), seeking a direction to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short ''the Tribunal'') to refer the following questions of law said to be arising out of its order dated 9-4-2002:

"(i) Whether the subject order of the Hon''ble Tribunal is a right and legal order ?

(ii) Whether the penalty is not mandatorily imposable under Rule 173Q of Central Excise Rules, 1944 on a habitual offender who removed their excisable goods not less than 206 times without having sufficient balance in their PLA ?

(iii) Whether taking their case to the BIFR by the party restricts the department for imposing penalty under Rule 173Q of Central Excise Rules, for contravention of Central Excise Rules where party habitually indulges in clearances of excisable goods without payment of duty ?

(iv) Whether the penalty is not imposable on the part under Rule 173Q(1)(a) because for imposing under this legal provision, there is no need of existence of mens rea in terms of Hon''ble High Court decision in case of Nizam Sugar Factory Ltd. Vs. Collector of Central Excise and Others, wherein it has been upheld that difference in language between the parts of the same Rule 173Q must be taken to be deliberate along with Hon''ble Bombay High Court''s decision in the case of Kirloskar Brothers Ltd. Vs. Union of India (UOI) and Others, wherein it has been upheld that the liability in the terms of Rule 173Q(1) Sub-clause (a), (b) and (c) does not depend upon mens rea."

4. Assistant Commissioner vide order dated 9-4-2002 had imposed a penalty of Rs. 3 lacs under Rule 173Q of the Central Excise Rules, 1944. Aggrieved by the said order, assessee filed an appeal before the Commissioner of Central Excise (Appeals), New Delhi, who cancelled the penalty on the ground that the appellant was facing acute financial difficulty because of which some delay in deposit of duty had occurred.

5. Revenue preferred an appeal before the Tribunal against the order of the Commissioner which has been dismissed vide the impugned order. Before the Tribunal, Revenue justified the levy of penalty on the ground that assessee was a habitual defaulter. Tribunal, however, has observed that the assessee had gone before the BIFR in June, 1997 and the period of delay involved in the present case is from May, 1997 to November, 1997. It has further been noticed that the proceedings before the BIFR are still in progress. In view of this factual position, the findings of the Commissioner have been affirmed.

6. Counsel for the petitioner has reiterated its stand taken before the Tribunal that the assessee is a habitual defaulter.

7. We are not impressed with this contention. From the factual background, as noticed by the Tribunal, it is apparent that during the period involved in this case, the case of the assessee was pending before the BIFR and the proceedings were in progress. Counsel has not been able to point out any factual infirmity in these findings.

8. In view of the above, we are satisfied that no substantial question of law arises out of the order of the Tribunal for consideration by this Court. Accordingly, the petition being devoid of any merit, is dismissed in limine.

