(2006) 11 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. APPELLANT

Vs

Indian Oil Corporation Ltd. RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC, 35G

Citation : (2007) 207 ELT 493 : (2007) 5 STR 84

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred u/s 35(G) of the Central Excise Act, 1944 against the order dated 24-2-2006 passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi proposing following substantial question of law:

Whether the penalty u/s 11AC of Central Excise Act, 1944 is mandatory and equal to the duty demanded or the authority has discretion to impose lessor (sic) penalty?

2. Facts noticed by the Tribunal are that the assessee was consuming captively heavy petroleum stock/low sulphur heavy stock/residual fuel oil manufactured by them without payment of duty for the purpose of generating the electricity to be used and consumed by their manufacturing unit for manufacturing their final excisable products under notification No. 67/95-C.E.

3. The Department issued a show cause notice to the assessee proposing to deny the benefit of above notification on the ground that fuel were being used in generation of electricity, which was being consumed in the residential colony of the assessee as well in addition to being used in the manufacturing of final product, which was a condition for grant of exemption from duty. After adjudication demand of duty was confirmed and penalty was also imposed against which the appeal of the appellant was dismissed by the first Appellate Authority. The Tribunal upheld the imposition of duty following the judgment in

case of the assessee i.e. 2004 (91) ECC 46 . The Tribunal, however, reduced the penalty after recording a finding that in the facts and circumstances of the case maximum penalty was not called far. No finding had been recorded by the Tribunal on the question raised on behalf of the appellant that there was intention to evade the payment of duty.

4. learned Counsel for the Revenue submitted that penalty u/s 11AC of the Central Excise Act, 1944 is mandatory and penalty equal to the amount of duty is required to be imposed and authority has no discretion to impose less penalty. Even though the above contention had been upheld in a judgment of this Court in Commr. of C. Ex. Vs. Illpea Paramount Pvt. Ltd., and held that in case where finding had been recorded that the assessee had not paid the duty with intention to evade the payment of duty but in the present case, the Tribunal has not recorded such a finding.

5. The assessee is a public sector undertaking and in view of the judgments of Hon''ble Supreme Court in Oil and Natural Gas Commission v. Collector of Central Excise 1992 (2) SCC 432 (ONGC-I), 1992 (61) ELT 3 (SC) and Oil and Natural Gas Commission Vs. Collector of Central Excise, , we would have referred the appellant to a Committee of Secretaries or would have remanded the matter to the Tribunal but having regard to the fact that no finding had been recorded by the Tribunal that assessee had intention to evade the payment of duty; the Tribunal has merely reduced the amount of penalty; and substantial question of law has already been decided in Illpea Paramount Pvt. Ltd.''s case supra, we do not find any substance in the appeal and the same is dismissed.

