

(2006) 07 P&H CK 0206
In the Punjab And Haryana At Chandigarh
Case No : CEA No. 39 of 2005

Commissioner of C. Ex.

APPELLANT

Vs

Punjab Alkalies and Chemicals Ltd.

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2006) 203 ELT 223

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

Bench : Division Bench

Advocate : Daya Chaudhary, Assistant Solicitor General of India, for the Appellant; Joy Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred for decision of substantial questions of law proposed in para 4 of the memo of appeal. The questions proposed are as under:

(i) Whether penalty u/s 11AC of the Central Excise Act, 1944 in cases where any duty of excise has not been levied or paid or has been short levied or short paid by reasons of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, is mandatory or discretionary in nature?

(ii) Whether mandatory equal penalty imposed u/s 11AC of the Central Excise Act, 1944 can be reduced?

2. Learned Counsel for the assessee points out that against the impugned order of the Tribunal, the assessee has filed Civil Appeal No. 1254 of 2005 in the Hon'ble Sup On appeal from 2005 (179) ELT 341 . reme Court on the issue of exigibility of duty itself. Order admitting the appeal is reported as Punjab Alkalies and Chemicals Ltd. v. Commissioner 2005 (184) E.L.T. 38 (S.C.).

3. Admission of appeal in the Hon''ble Supreme Court on exigibility of duty itself shows that the mens rea for levy of penalty cannot be presumed as envisaged u/s 11AC of the Act. Once ingredients of Section 11AC of the Act are not satisfied, we do not find any fault with the order of the Tribunal whereby penalty has been reduced to Rs. 20,000/-.

4. We do not find any substantial question of law arising in this appeal. The same is, accordingly, dismissed.