
(2003) 09 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Case No. 124 of 2002

Commissioner of C. Ex.

APPELLANT

Vs

Raj and Sandeep Ltd.

RESPONDENT

Date of Decision : 01-09-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35H

Citation : (2004) 168 ELT 307

Hon'ble Judges : Viney Mittal, J; N.K. Sodhi, J

Bench : Division Bench

Advocate : Govind Goel, for the Appellant;

Judgement

N.K. Sodhi, J.—The dispute herein pertains to clandestine production and removal of M.S. Steel Ingots for which the Collector had imposed excise duty and penalty. These findings were reversed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as the Tribunal) in appeal holding that the material relied upon by the department may give rise to suspicion about the manufacturer's conduct but that material was not enough to establish sufficient nexus to establish the charge of clandestine removal against it. The department relied upon the octroi receipts and the note-book of the driver, but that by itself is not sufficient to establish the charge of clandestine removal against the appellants.

2. The question whether these documents are by themselves enough to establish the charge of clandestine production and removal came up for hearing in C.E.C. No. 40 of 2001, Commissioner of Central Excise, Commissionerate-II, Chandigarh v. Dashmesh Castings Private Ltd., Amargarh, Sangrur and Anr., decided on February 10, 2003, in which the Tribunal was directed to refer the following question of law to this Court for its opinion :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the octroi receipts without any other evidence could not

form the basis of clandestine removal of the excisable goods from the factory?"

3. After hearing learned counsel for the petitioner and having gone through the record, we are of the view that the same question of law arises in this case as well. We accordingly direct the Tribunal to prepare the statement of the case and refer the aforesaid question of law to this Court for its opinion.

4. The petition stands disposed of accordingly.