(2011) 04 KAR CK 0031

In the Karnataka High Court

Case No : C.E.A. No. 2 of 2011

Commissioner of C. Ex., Bangalore-II — APPELLANT

Vs

Vetril Electronics Pvt. Ltd. — RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2012) 281 ELT 222

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : M.V. Chandra Shakara Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal, which upheld the order of the Appellate Authority who had set aside the penalty imposed by the Original Authority. The penalty that was imposed is Rs. 87,106/- equal to that of duty payable. The case of the assessee is that he had a benefit of doubt about the duty payable and also availing of the Cenvat credit. Therefore, he wrote letters to the authorities. In return, the assessee did not receive any information. On the understanding that the authorities have confirmed his understanding, he did not pay the duty. However, it was pointed out that the duty is payable. Promptly, he paid the duty and interest. Still, the Assessing Authority levied the penalty. In an appeal, the Commissioner has set aside the penalty on the ground that the assessee was in a benefit of doubt about the liability to pay duty, he was corresponding with the department and in those circumstances, it cannot be said that there is a willful intention to avoid payment of tax and therefore, he set aside the penalty. It is against this order, the revenue preferred an appeal to the Tribunal. The Tribunal in turn upheld the order passed by the Appellate Authority.

2. Firstly, according to the Circular issued by the Central Government, no appeal lies to the High Court against a claim of less than Rs. 2 lakhs much less a claim

of penalty when no substantial question of law is involved. Even otherwise, from the material on record, we are satisfied that there was no intention on the part of the assessee to evade payment of tax. He was under a bona fide doubt, whether duty was payable to take Cenvat credit, he corresponded with the department and the department did not reply to his letter on which he understood as no duty was payable and hence, he did not paid the same. In that view of the matter, we do not see any merit in this appeal. Accordingly, no substantial question of law arises for consideration in this appeal and it is dismissed.

