(2009) 10 SHI CK 0005

In the High Court Of Himachal Pradesh

Commissioner of Central Excise — APPELLANT

Vs

Arsh Casting Pvt. Ltd. — RESPONDENT

Date of Decision : 19-10-2009

Acts Referred:

Citation : (2010) 252 ELT 191

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal has been admitted on the following question of law:

Whether on the basis of private records, the Central Excise duty can be demanded or not when these private records show higher production than that reflected in the statutory records resulting into removal of the excess stock clandestinely i.e. without issue of invoice and without making entries of production and clearance in the statutory records?

2. Briefly stated the facts of the case are that the assessee is engaged in the manufacture of M.S. ingots. The staff of the Central Excise Department checked the records of the assessee and during this checking some records being maintained by the Chemist of the Company Shri Om Prakash was recovered. According to the Revenue, the Chemist was not only preparing the analysis reports but also maintaining a record regarding dispatch of ingots. In case the record seized from Shri Om Prakash is taken into consideration then admittedly production of ingots is much higher than that reflected by the assessee. The Revenue relied upon the statement of the Chemist Shri Om Praksh and one Shri B.L. Sihag, Manager and it was contended that the number of ingots prepared and dispatched from the factory was much more than the number reflected in the books of the assessee.

3. The Commissioner as well as the Tribunal took into consideration the record

produced by Shri Om Prakash and also took into consideration his oral statement that even though he had made certain entries where the number of ingots were mentioned but according to him these ingots were never actually dispatched. A finding of fact was given that there was no discrepancy in the recorded balance and the actual balance found in the factory.

4. In our considered opinion no question of law arises in this appeal. All the authorities have considered the record maintained by Shri Om Prakash as well as the oral statements made by him and Shri B.L. Sihag, Manager and Tribunal after considering the entire evidence have come to the conclusion that the revenue has failed to prove that there was excess quantity of finished goods than recorded by the assessee. The Tribunal rightly held that the burden lay upon the Revenue to adduce evidence to prove that excess goods had been manufactured. The record maintained by the Chemist was only a piece of evidence but could not be solely used to hold that the production was more than that which was recorded. This is a pure finding of fact and no question of law much less a substantial question of law is involved in the appeal. Therefore, the appeal is rejected.

