(2015) 03 SC CK 0153

In the Supreme Court Of India

Case No : Civil Appeal No. 7145 of 2003

Commissioner of Central Excise APPELLANT

Vs

Blue Star Ltd. RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11(A)(1)

Citation : (2015) 318 ELT 11

Hon'ble Judges : A.K. Sikri, J;Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Senior Advocate, B. Sunita Rao, Sushma Manchanda, Anurag and B. Krishna Prasad, for the Appellant; Ajay Aggarwal, Mallika Joshi, Ruchika, Neha Malik and Rajan Narain, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The Respondent herein is engaged in the manufacturing of air-conditioning machinery and parts thereof. Some of the air-conditioning units are manufactured by utilising the parts manufactured in the same factory were sent by it to 100 percent Export Oriented Units without payment of duty, in terms of various notifications. The show cause notice dated 3rd September, 1992 was issued to the Respondent to show cause why the duty for the period from 24-8-1987 to 9-7-1991 be not charged along with interest.

2. The Respondent replied to the said show cause notice and was heard in the matter. However the Respondent suffered Order-in-Original dated 11-7-1997 passed by the Adjudicating Authority holding that the duty was payable.

3. It may be mentioned at this stage that the Respondent had also taken the plea that the show cause notice was time-barred as it was not issued within six months, covering the period of demand. This contention of the Respondent was rejected by the Adjudicating Authority on the ground that the Respondent did not disclose to the Department that the final product was supplied to 100 percent

Export Oriented Units. According to him, therefore, it amounted to suppression of material facts and therefore, the limitation period got extended to five years under the proviso to Section 11(A)(1) of the Central Excise Act, 1944 (hereinafter referred to as ''Act'').

4. The Respondent took the matter in appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as ''CEGAT''). The CEGAT affirmed the order on merit but has accepted the contention of the Respondent insofar as issue of limitation is concerned and allowed the appeal of the Respondent thereby quashing the show cause notice and demand as time-barred. The Tribunal has noted that there was in fact a disclosure of the aforesaid fact in CT(3) certificate which was submitted by the Respondent to the Department. It is noted that no clearance could have taken place without the knowledge of the officer as to the ultimate destination of the goods and the fact that they were cleared without payment of duty in terms of the exemption notification which was specified in the application. On that basis, the Tribunal has held that proviso to Section 11(A)(1) of the Act will not get attracted and thus, the show cause notice was beyond the period limitation as specified Under Section 11(A)(1) of the Act. Going through the material on record, we find that the Tribunal is justified in taking the aforesaid view. Thus, there is no merit in this appeal and the same, accordingly, stands dismissed.

