(2002) 07 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : CEC 49 of 2002 (O and M)

Commissioner of Central Excise — APPELLANT

Vs

Gian Castings Ltd. and Others — RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35H(1)

Citation : (2003) 85 ECC 752 : (2003) 111 ECR 583 : (2003) 158 ELT 153

Hon'ble Judges : Virender Singh, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : M.S. Guglani, Addl. Central Govt, for the Appellant;

Final Decision : Dismissed

Judgement

Sodhi, J.—The assessee herein is engaged in the manufacture of M.S. Ingots, On 10.5,1995 the Officers of the Department visited the factory premises and physically verified the stocks of finished goods and found shortage of 31.190 Metric tons of steel Ingots. During the search some slips were recovered from the gate of the factory premises. During investigation the assessee produced the record and out of 108 entries regarding weighment it was able to reconcile all the entries except three. The adjudicating authority confirmed the demand on the assessee holding that entries made in the private slips recovered from the premises could not be correlated with the company''s statutory record. A penalty was imposed on the assessee and also on the Managing Director. The order was upheld by the Commissioner (Appeals), Chandigarh, Feeling aggrieved by these orders, the assessee and the Managing Director both filed appeals before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. On a consideration of the material placed on record, the Tribunal came to the conclusion that the remaining three slips recovered from the gate of the factory premises also correlated with the records of the company and the explanation furnished by the assessee was accepted. Consequently, the appeal was allowed and the impugned orders imposing penalty set aside. It was then that the present petition was filed u/s 35-H(1) of the Central Excise Act, 1944 with a prayer that the respondents be directed in state the case and refer the question of law which, according to the Department, arises from the order of the Tribunal.

2. We have heard counsel for the petitioner and perused the impugned order of the Tribunal. The sole question which arises is whether the view of the Tribunal that the three slips recovered from the gate of the factory premises correlated with the statutory record is correct. The Tribunal accepted the explanation furnished by the assessee and recorded a finding in its favour holding that the slips correlated with the record. Consequently the orders imposing penalty were set aside. In our opinion, no question of law arises from the order of the Tribunal and, therefore, the petition is dismissed.

