(2010) 08 P&H CK 0481

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 48 of 2010

Commissioner of Central Excise		APPELLANT
	Vs	
Gowardhan Knitting Works		RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC, 35G

Citation : (2010) 260 ELT 77

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 (in short "the Act") against order dated 17-9-2008 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") proposing to raise the following substantial questions of law:

(i) Whether the Ld. CESTAT which is a for a lower than the Hon''ble Supreme Court is correct in reducing the penalty imposed by the adjudicating authority to 25% in contravention to the statutory provisions laid down u/s 11AC of the Central Excise Act, 1944?

(ii) Whether such reduced penalty of 25% can be ordered by the Ld. CESTAT in contradiction to judgment of higher for a of Supreme Court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others,

2. The Assessee is engaged in manufacture of shawls etc. On visit by the preventive staff of the Department to the factory of the Assessee, clandestine removal of goods was noticed. A show cause notice dated 9-1-2004 was issued to the Assessee and after adjudication, payment of duty was confirmed and penalty was imposed. Demand of duty was upheld but penalty was reduced by the appellate authority. On further appeal, the Tribunal held that penalty payable

was 25% under proviso to Section 11AC of the Act as the duty was paid even before the show cause notice itself and if the duty was paid within 30 days of the order raising demand, penalty to be imposed would be 25%.

3. We have heard learned Counsel for the parties.

4. It has not been disputed that in terms of proviso to Section 11AC, the duty was duly paid. In such a situation, mandatory penalty of 100% u/s 11AC of the Act was not applicable and the proviso was applicable as held by the Tribunal.

5. No substantial questions of law arises.

6. The appeal is dismissed.

