(2011) 07 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 35 of 2006 (O and M)

Commissioner of Central Excise — APPELLANT

Vs

Growell Agri Products Pvt. Ltd. — RESPONDENT

Date of Decision : 06-07-2011

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

Citation : (2013) 289 ELT 31

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : H.P.S. Ghuman, for the Appellant; Jagmohan Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, A.C.J.—This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 (for short, ""the Act"")

against the order of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi dated 27-7-2005, Annexure A-3, proposing to raise

following substantial question of law:-

Whether the penalty limit u/s 11AC of the Central Excise Act, 1944 is maximum and ld. Tribunal has discretion to set aside/reduce the penalty?

The Department initiated proceedings for levy of duty and vide Order-in-original dated 30-1-2008, demand of duty was raised to the extent of Rs.

1,29,242/-. Apart from duty, penalty was also levied. On appeal, the same was upheld by the Commissioner (Appeals). However, on further

appeal, the Tribunal reduced the penalty with following observations:-

5. In this case, the appellants are not challenging the demand of duty in respect of the inputs on which credit has been taken were found short. On

verification, the appellant paid duty at the spot when the shortage was pointed out by the Revenue authorities. The explanation given by the

appellant that due to pilferage and some inputs become sub-standard which were disposed of without reversing duty as the appellants were well

aware of the provisions of Modvat Scheme that the credit is available only in respect of the inputs which are used in the manufacture of final

product. The appellant cleared some of the inputs without reversing the credit which is admitted by the Chairman cum Managing Director. In these

circumstances, I find no infirmity in the impugned order whereby the penalty is imposed. However, taking into the facts and circumstances of the

case the penalty is reduced to Rs. 25,000/- otherwise impugned order is upheld. The appeal is disposed of as indicated above.

2. We have heard learned counsel for the parties.

3. Learned counsel for the revenue submits that u/s 11AC of the Act, the penalty could not be less than the amount of duty.

4. Learned counsel for the respondent, however, submits that the levy of penalty, in the present case, is not justified u/s 11AC of the Act but could

be levied under Rule 173Q of the Central Excise Rules, 1944 under which the penalty is not minimum.

5. It is patent that the present case does not fall u/s 11AC of the Act which provides for minimum penalty. The penalty has been reduced by the

Tribunal after recording a finding that on account of pilferage, some goods became sub-standard which does not show any deliberate mis-

statement or concealment by the assessee. In the circumstances, no ground is made out for interference.

The appeal is dismissed.

