(2004) 03 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Case No. 67 of 2003

Commissioner of Central Excise APPELLANT

Vs

Guide Valve Industries RESPONDENT

Date of Decision : 05-03-2004

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

Citation : (2004) 94 ECC 390 : (2004) 114 ECR 410 : (2004) 167 ELT 134

Hon'ble Judges : N.K. Sud, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Govind Goel, ACGSC, for the Appellant;

Final Decision : Allowed

Judgement

1. Revenue has filed this petition u/s 35H(1) of the Central Excise Act, 1944 (for short the ''Act'') seeking a direction to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short the Tribunal'') to refer the following questions of law arising out of its order dated 21-3-2003 for the opinion of this Court :-

"(i) Whether in the facts and circumstances of the present case the Tribunal could nullify the penalty imposed under Rule 209A on the plea that the same was issued for the second time on the same facts?

(ii) Whether the penalty imposed by the adjudicating authority vide order Annexures P-2 and P-4 involving separate and independent transactions could be said to be second time penalty on the same facts?

(iii) Whether the adoption of same modus operandi in respect of separate and independent transactions of clearing the goods by evading the central excise duty is sufficient to conclude that the penalty was levied for the second time on the same facts?

(iv) Whether the penalty imposed vide Annexures P-2 and P-4 by the adjudicating officers suffered from any legal infirmity?"

2. Notice of motion was issued to respondent No. 1. However, no one is present on its behalf despite service.

3. After perusing the order of the Tribunal and after hearing the Counsel for the petitioner, we are satisfied that the following question of law arises out of the order of the Tribunal :-

"Whether the penalty imposed by the adjudicating authority vide Annexures P-2 and P-4 involving separate and independent transactions could be said to be second time penalty on the same facts?"

4. Accordingly, we direct the Tribunal to draw up a statement of the case and refer the above question of law for the opinion of this Court.

5. The petition stands allowed to the above extent.

