(2008) 11 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise — APPELLANT

Vs

Guru Nanak Dev Electricals — RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 83

Citation : (2009) 16 STR 18

Hon'ble Judges : L.N. Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—Delay condoned.

2. The Revenue has preferred this appeal u/s 35 G of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Order dated 30-8-2007, 2008 (9) S.T.R. 100 passed by the Customs, Excise & Service Tax Appellate Tribunal, proposing to raise following substantial questions of law:

(a) Whether in view of the habitual conduct of the respondent in deliberately not appearing before the statutory authorities on the dates of hearing, the learned Tribunal is justified in remanding the matter?

(b) Whether the opportunities already granted to the respondent amount to sufficient opportunity?

(c) Whether when the minimum penalty provided u/s 76 of the Act, as held/ interpreted by Larger Bench decision of the Tribunal cited as 2005 (98) ECC 771 , has been imposed, the Tribunal is justified in remanding the matter?

(d) Whether the Tribunal is justified in setting aside the well reasoned order passed by the learned Commissioner, especially when the minimum penalty provided under the statute has been imposed?

(e) Whether the Commissioner can exercise the power of revision after the expiry of the period of limitation of two years provided u/s 84(5) of the Act?

3. There was delay in filing tax by the assessee beyond 96 days. Show cause notice was given to the assessee and thereafter penalty of Rs. 8592/- was imposed. In revision, the Tribunal has set aside the said order on the ground that the assessee was not given the opportunity.

4. We have heard learned Counsel for the appellant.

5. In view of the fact that the Tribunal has merely remanded the matter for giving opportunity, we are unable to hold that any substantial question of law arises.

6. The appeal is dismissed.