(2011) 03 P&H CK 0555

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 3 of 2010 (O and M)

Commissioner of Central Excise APPELLANT

Vs

Jai Udyog Trading Corpn. and Another RESPONDENT

Date of Decision : 25-03-2011

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

Citation : (2011) 03 P&H CK 0555

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The present appeal arises out of the orders passed by the Customs, Excise & Service Tax Appellate Tribunal (for short ''the Tribunal'') on 20.07.2007 and 04.03.2008 rectified on 21.10.2008.

2. The Respondents are engaged in the manufacture of Valves & Cocks classified under Chapter 84 of the Ist schedule of the Central Excise Tariff Act, 1985 (for short ''the Act''). Such Valves & Cocks were affixed with the brand name ''KIRTI'', registered with the Registrar of Trade Marks in the name of ''M/s Jupiter Metal Industries, Focal Point, Jalandhar''. On physical verification of the stocks of finished goods, 399 pieces of Valves & Cocks of ''KIRTI'' brand valued at Rs. 37,982/- involving central excise duty of Rs. 6077/-were found and seized by the staff on the reasonable belief that the same were liable to confiscation and that the exemption was not available to the specified goods bearing the Brand Name or Trade Name of another person. A show cause notice was issued proposing confiscation of the said seized branded goods valued at Rs. 37,982/- besides imposition of penalty.

3. Subsequently, another show cause notice was issued proposing recovery of central excise duty of Rs. 1,37,560/- and imposition of penalty. The Adjudicating Authority passed an order on 22.0.2004 and imposed penalty of Rs. 10,000/- on

the Respondent and another Rs. 10,000/- on Vijainder Mehta, whereas the demand of central excise duty of Rs. 1,37,560/- was confirmed and penalty of the equivalent amount was imposed u/s 11AC of the Act. Three appeals were filed before the Commissioner (Appeals). The learned Commissioner reduced the penalty amount from Rs. 1,37,560/- to Rs. 25,000/-.

4. Thereafter, the Revenue filed three appeals before the Tribunal. One appeal was decided on 20.07.2007, whereby the order of reduction of penalty as ordered by the Commissioner (Appeals) was not warranted. In another appeal, the Revenue challenged the order of reduction of penalty to Rs. 25,000- and raised the following substantial questions of law:

(i) Whether the Tribunal had the jurisdiction to pass orders upholding the orders of the Commissioner (Appeals) when the Tribunal had already set aside the findings of reduction of penalty by the Commissioner (Appeals).

(ii) Whether the Tribunal should have correct the error in ROM filed by the Department.

(iii) Whether the Tribunal is justified in passing two self contradictory Final Orders on the same set of appeals filed by the Department.

(iv) Whether penalty u/s 11AC of the Central Excise Act, 1944 can be imposed lesser than the amount of duty evaded, especially when the Respondents had been indulging in clandestine removal of goods bearing brand name of another person, without payment of duty and law settled by the Hon''ble Supreme Court of India in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others,

5. It is contended by the learned Counsel for the applicant-Appellant that in terms of Section 11AC of the Central Excise Act, 1944 and the judgment of Hon''ble Supreme Court in Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, , the penalty has to be to the extent of duty evaded. Therefore, the penalty could not be reduced to Rs. 25,000/-.

6. There was dispute regarding liability of payment of duty. Therefore, imposition of penalty was found to be not justified. The learned Commissioner (Appeals) has reduced the amount of penalty, which order has been affirmed in appeal.

7. In view of the said finding, we do not find that any substantial question of law arises for consideration by this Court. Consequently, the present appeal is dismissed.

