(2006) 11 JH CK 0042

In the Jharkhand High Court

Commissioner of Central Excise APPELLANT

Vs

Krishna Industries RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11AC

Citation : (2007) 1 JCR 513

Hon'ble Judges : M. Karpagavinayagam, C.J;Permod Kohli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard the parties. It has been vehemently contended by Dr. J.P.Gupta, counsel appearing for the Central Government, that the order of the appellate authority reducing the penalty is without jurisdiction as Section 11-AC of Central Excise Act (1 of 1944) provides for imposition of penalty equal to the duty, so determined.

2. We have heard on this aspect. Both the counsel have cited number of authorities for the purposes of disposing of this appeal. It is suffice to refer two judgments. In the case of Sony India Ltd. Vs. Commissioner of Central Excise, Delhi, , the relevant paragraph is as follows:

7. Now the other aspect that has to be considered is whether penalty imposed u/s 11-AC and interest u/s 11-AB was justified in the circumstances that arise in the case. The Commissioner had imposed penalty to an extent of Rs. 2,07,64,870.16 equivalent to the duty that was payable by the appellant. u/s 11-AC of the Central Excise Act, the manner in which the whole transaction went on makes it very clear that the appellant became liable to pay duty under the circumstances which warrant application of the provisions of Section 11A(i) and, therefore, we think If the authorities chose to impose penalty equivalent to duty payable by the appellant, we do not think, there is any justification for us to interfere with the same. The decisions adverted to by the learned Counsel have

different complexions and bearing. These cited cases arose in the circumstances where certain actions had been taken In bonafide belief or the parties were under bonafide doubt as to under what tariff item they had to pay tax in question or where the. assessee was under bonafide belief that his company was not required to be registered as dealer under the Sales Tax Act. In the present case, earlier the appellant was paying duty at the rate of 18% ad valorem on the maximum retail price. It is only after 2-6-1998 change was sought by the appellant by not printing the price on the packed goods by removing the same to their depots from their factory in order to claim that the packed goods had not been priced at the time of their removal from the factory and gifts were offered by the appellant to indicate that the consideration in the sale transaction was not solely the price. These factors, we think, were rightly taken note of by the authorities and the penalty imposed need not be considered in the present proceedings.

3. The other judgment is AIR 2005 SCW 1829 (Commissioner of Central Excise, Chadigarh v. Dabur (India) Ltd. and Anr.). The only question raised for consideration is whether the Tribunal has power to reduce penalty u/s 11-AC.

4. The Supreme Court in the aforesaid cases did not make any observation with regard to the ratio that the Tribunal has no jurisdiction to reduce penalty. It all depends upon the circumstances of the particular case. As a matter of fact, the appellate authority has considered the very circumstance with regard to the bonafide nature of claim and reduced the penalty. In our view, in the light of the observations, made by the Supreme Court in the aforesaid cases, the impugned order does not suffer with any infirmity. The appeal is, thus, dismissed.