(2016) 08 P&H CK 0313

In the Punjab And Haryana At Chandigarh

Case No : CEA No. 32 of 2016 (O&M)

Commissioner of Central Excise	APPELLANT
Vs	
Microtek Forgings	RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Citation : (2016) 341 ELT 218

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : S/Shri Sharan Sethi for Amit Goyal, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Rajesh Bindal, J. - The Revenue has filed the present appeal raising the following substantial questions of law arising out of the order dated 19-8-2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short the Tribunal) :-

"(i) Whether the CESTAT was right in dropping the demand towards duty pertaining to the extended period of limitation?

(ii) Whether the Hon''ble Tribunal was correct in holding that the extended period of limitation was not invocable in the present case when the respondent had suppressed the fact of non-inclusion of the Sales tax/VAT amounts retained by them from the Central Excise Department?

(iii) Whether the Hon''ble Tribunal was correct in holding that the extended period of limitation was not invocable in the present case without dealing with the specific finding of the adjudicating authority that the respondent had resorted to suppression of facts from the Department during the pertinent period and the same was done with the intention to evade payment of duty?

(iv) Whether the Hon''ble Tribunal was justified in dropping the demand towards duty pertaining to the extended period of limitation despite the finding of the adjudicating authority that the Sales tax/VAT amounts collected by the assessee from their customers were retained by them and not paid to the Haryana Government?

(v) Whether the Hon''ble Tribunal was correct in dropping the demand towards duty pertaining to the extended period of limitation when it had itself relied upon the judgment of Hon''ble Apex Court in the case of ''Maruti Suzuki India Ltd. v. CCE Delhi, 2014 (307) E.L.T. 625 (S.C.) and Super Synotex (India) Ltd. v. CCE Jaipur, 2014 (301) E.L.T. 273", wherein it was held that amount of sales tax concession retained by the respondent is required to be added in the assessable?

(vi) Whether the Hon''ble Tribunal was justified in setting aside the consequential penalty imposed upon the respondent when the adjudicating authority had held that the respondent had resorted to suppression of facts from the Department during the pertinent period and the same was done with the intention to evade payment of duty and the said finding of the adjudicating authority was not dealt with by the Hon''ble Tribunal?

(vii) Whether the Hon''ble Tribunal was justified in setting aside the consequential penalty imposed upon the respondent when the Tribunal had itself held that the amount of sales tax concession retained by the respondent is required to be added in the assessable value and the respondents had intentionally not done so?

(viii) Whether the Hon''ble Tribunal was justified in setting aside the consequential penalty imposed upon the respondent in respect of the period that was admittedly within limitation and the demand for which was confirmed by the Tribunal itself?

2. Learned counsel for the appellant submitted that though the issue has been decided on merits in favour of the revenue referring the judgment of Hon''ble the Supreme Court in case of Maruti Suzuki India Ltd. v. CCE, Delhi, 2014 (307) E.L.T. 625 (S.C.) and Super Synotex (India) Ltd. v. CCE, Jaipur, 2014 (301) E.L.T. 273, however, on the ground of limitation, the issue was decided in favour of the assessee. Once the assessee was found to be at fault in view of the law laid down by Hon''ble the Supreme Court, the extended period of limitation should have been permitted.

3. After hearing learned counsel for the appellant, we do not find any merit in the present appeal. The Tribunal has dealt with the issue of limitation in Para No. 5 of the order, which is extracted below :-

"The respondents also contested the issue on limitation. We find that during the relevant period there was CBEC Circular dated 30-6-2000 which provides that any amount of concession on sales tax retained by the respondent is not required to be added in the assessable value and there are certain judicial pronouncements of this Tribunal holding the same view in the case of Kinetic Engineering Ltd. (supra) and Life Long India Pvt. Ltd. v. CCE, Delhi, 2013 (292)

E.L.T. 88 (Tri.-Del.). As there were view taken by the CBEC Circular and this Tribunal in favour of the respondent which has been negated by the Hon''ble Apex Court in the decision cited before us today. In these circumstances, we hold that extended period of limitation is not invocable. Consequently demand pertaining to the extended period of limitation which is sought to be demanded from the respondent are set aside. Consequently, the penalties on the respondents are not imposable."

4. In the aforesaid para, Circular dated 30-6-2000 issued by Central Board of Excise and Customs (to be called as ''the Board'') providing that any amount of concession on sales tax retained by the assessee is not required to be added in the assessable value and an earlier order passed by the Tribunal in favour of the assessee has also been referred to.

5. Keeping in view the aforesaid facts, the assessee cannot be said to be at fault. Hence, extended period of limitation was not available. No substantial question of law arises.

6. The appeal is accordingly dismissed.