(2010) 09 BOM CK 0197

In the Bombay High Court

Case No : Central Excise Appeal No. 92 of 2005

Commissioner of Central Excise APPELLANT

Vs

NRC Ltd. RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Citation : (2010) 260 ELT 42

Hon'ble Judges : V.C. Daga, J;R.M. Savant, J

Bench : Division Bench

Advocate : R.V. Desai, assisted with ., J.B. Mishra, for the Appellant; M.H. Patil, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned senior counsel for the Revenue and the learned Counsel for the Respondent. Perused Appeal.

2. At the out set, the learned Counsel for the Respondent Mr. Patil raised a preliminary objection to the maintainability of the Appeal contending that the Commissioner of Central Excise (Appeals), Mumbai had recorded a clear cut finding holding that the show cause notice was beyond the period of limitation. The said finding reads as under:

(vii) The total quantity of used/spent mercury cleared by the Appellants prior to the consignment cleared by the Central Excise Inspector comes to 8925.300 Kgs and the third consignments quantity was 23477.860 Kgs, which was signed and cleared by the Central Excise Inspector. By the third consignment the total quantity of used/spent mercury clearances reached to 32403.160 Kgs. They had brought this third consignments to the notice of the Range authority. This itself proves beyond any doubt that they were not having any intention to evade duty payment, suppression of any vital in formation regarding the clearance of used/ spent mercury of this could not be treated as clandestine clearance, rather their intention was to bring the clearances of pre-MODVAT stock of mercury to the notice of the Central Excise authority.

Thus, from the above, the O-I-O No. 23/LPS/2002, dated 20-5-2002 passed by the Addl. Commissioner of Central Excise, Mumbai-III confirming the demand of Rs. 17,01,965.52 along with interest and imposing equal amount of penalty under proviso to Section 11A(1), Section 11AB and 11AC of CEA, 1944 on the sold premise that the MODVA Ted mercury remained unutilized is to be taken as legality nor proper and correct.

3. It is no doubt true that the aforesaid finding was sought to be challenged before the Tribunal in the Appeal memo. However, the Tribunal did not deal with the said contention and dismissed the appeal on merits. The Revenue against the aforesaid order of the Tribunal dated 21-10-2004 2005 (192) ELT 187 has invoked the Appellate Jurisdiction of this Court. However, adverse finding recorded by the First Appellate Authority, not dealt with by the Tribunal has not been made a ground for challenge in appeal filed before this Court. The question of limitation is not a subject matter of challenge in this present Appeal.

4. In that view of the matter, the finding recorded by the First Appellate Authority viz. Commissioner (Appeals) has become final and conclusive. In that view of the matter it is not necessary to answer all substantial questions of law raised since the show cause notice itself is to be treated as barred by limitation. The Appeal is thus dismissed holding that the show cause notice was barred by limitation. No order as to costs.