

(2009) 02 P&H CK 0153
In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise Commissionerate	APPELLANT
Vs	
Fas Kusum Ispat (P.) Ltd.	RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC, 35G
Civil Procedure Code, 1908 (CPC) — Section 149
Limitation Act, 1963 — Section 5

Citation : (2009) 167 ECR 95 : (2009) 20 STT 189

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The revenue has approached this Court by filing the instant appeal u/s 35G of the Central Excise Act, 1944 (for brevity, "the Act") by challenging order dated 27-2-2008, passed by the Custom, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (for brevity, "the Tribunal").

2. The basic requirement for attracting the provisions of Section 11AC of the Act is that there has to be intention to evade the payment of Excise duty. In the present case, a categorical finding has been recorded by the Tribunal that such an intention cannot be presumed because the shortage which was detected during stock verification stood explained. As per the statement of the Director, the day-to-day affairs of the company were not being looked after by him and, therefore, he was not able to explain the shortage. The Tribunal has further recorded a finding that there is no material to support the clandestine removal of inputs. Once the aforementioned findings of fact are there then it is not possible to apply the provisions of Section 11AC of the Act so as to impose penalty.

3. Mr. Hemen Aggarwal, learned Counsel for the appellant has, however, pointed out that the judgment on which reliance has been placed by the Tribunal in the case of CCE v. S.K. Sacks (P.) Ltd. CEA No. 154 of 2006, dated 22-1-2008 and the judgment in the case of CCE v. Machino Montel (P.) Ltd. 2004 (62) RLT 709

rendered by this Court have been overruled. In the aforesaid judgments the question which has been decided was whether deposit of duty before issuance of show-cause notice would blunt the finding that there was intention to evade the duty. However, in the present case, the Tribunal has given categorical finding that there was no clandestine removal of inputs and the shortage could not be explained by the Director for the reason that he was not dealing with the affairs of the company on day-to-day basis. Therefore, the judgments in the aforesaid cases would not affect the merit of the controversy once the substantive findings are against the appellant. No question of law warranting admission of the appeal would arise. Accordingly, the appeal fails and the same is dismissed.

C.E.A No. 40 of 2009

4. For the reason that the appeal itself has been dismissed on merit, we do not feel any necessity to pass any order on the application filed u/s 149 CPC for making good the deficiency of Court fee as well as application u/s 5 of the Limitation Act for condonation of delay of 127 days in filing of the appeal.