(2010) 09 P&H CK 0355

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No''s. 121 and 822 of 2007 (O and M)

Commissioner of Central Excise, Delhi-III	APPELLANT
Vs	
Machino Basell India Ltd.	RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Central Excise Rules, 2004 — Rule 25
Central Excises and Salt Act, 1944 — Section 11A, 11A(2B), 11AC

Citation : (2011) 273 ELT 53

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of CEA Nos. 12 and 82 of 2007 as both the appeals involve common question i.e. whether the assessee having already paid the short paid duty and there being no mens rea attracting levy f of penalty, whether penalty would be justified.

2. In CEA No. 12 of 2007, following substantial question of law has been claimed :-

Whether penalty under Rule 25 of the Central Excise Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 is liable to be imposed on the assessee in cases where duty has been deposited by the assessee before issue of show cause notice?

3. It is not disputed that duty in question was duly paid before issuance of show cause notice and there is no finding of wilfull evasion of the duty. In such a situation, the Tribunal was justified in setting aside the levy of penalty. Section 11A(2B) of the Act clearly stipulates that if the duty is paid before show cause notice, no notice can be served and obviously in absence of any notice, no penalty can be imposed.

4. In CEA No. 82 of 2007, the question claimed is as under :-

Whether penalty u/s 11AC is liable to be imposed on the assessee, equal to the amount of duty confirmed u/s 11A on merit, which fall under the purview of explanation to sub-section (2B) of Section 11A of the Central Excise Act, 1944, where duty has been deposited before issue of show cause notice?

5. The question itself stipulates that the duty was paid before issuance of show cause notice in which case the matter is identical to CEA No. 12 of 2007 and the Tribunal was justified in dismissing the appeal of the revenue against setting aside of penalty.

6. Accordingly, both the appeals are dismissed.

