(2011) 11 RAJ CK 0064

In the Rajasthan High Court

Case No : Excise Appeal No. 24 of 2011

Commissioner of Central Excise, Jaipur-1 — APPELLANT

Vs

Nirmal Bhandari — RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2013) 289 ELT 418

Hon'ble Judges : Prashant Kumar Agarwal, J;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Ajay Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant. The appeal is directed against impugned order dated 8th April, 2008 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi, Principal Bench, New Delhi in Excise Appeal Nos. 1580-81 of 2006-SM(BR) [2008 (230) E.L.T. 81 (Tri.-Del.)], whereby appeal filed by appellant has been dismissed.

2. From the impugned order, other documents and submissions of learned counsel for appellant. It appears that on 7th January, 2005, the Central Excise Officers intercepted a truck loaded with the excise goods accompanied with Invoice No. 63 dated 7th January, 2005 of the respondent-company. On verification of the loaded truck, it was found excess quantity of 11,500 Kgs. over and above the quantity shown in the invoice. On 11th January, 2005, the respondent No. 2, Director of the respondent No. 1 appeared before the Central Excise Officers and produced Invoice No. 64 dated 7th January, 2005 in respect of the excess quantity of goods and his statement was recorded, however, a show cause notice was issued for confiscation of the seized goods found in the truck and imposition of penalties on both the respondents. The Adjudicating Authority confiscated the seized goods and the truck and imposed duty as well as penalty u/s 11AC of the Central Excise Act. Being aggrieved with the same, an

appeal was preferred, which was allowed by the Appellate Authority. The Department again preferred an appeal, but the same was dismissed by Tribunal vide order impugned in this appeal.

3. We have considered the submissions of learned counsel for appellant and examined the reasons assigned by Appellate Authority as well as Tribunal for setting aside the order passed by the Adjudicating Authority.

4. During the course of arguments, learned counsel for appellant admitted that the Invoice No. 64 dated 7th January, 2005 was produced before the Adjudicating Authority even before issuing notice to show case in the matter. The Appellate Authority as well as Tribunal, both have recorded a concurrent finding of fact that demand of duty on the basis of Notebook is not sustainable in absence of sufficient corroborative evidence. It has been further held by both the authorities that Invoice No. 64 dated 7th January, 2005 cannot be rejected for three days delay to produce before the Central Excise Officers. The question involved in the present appeal relates to question of facts and there is concurrent finding of facts recorded by Appellate Authority as well as Tribunal both. We do not find any illegality or perversity in the impugned order so as to interfere with the same. In these circumstances, we do not find any question of law involved in this appeal and the same is, accordingly, dismissed. The stay application also stands dismissed.

