
(2015) 07 AP CK 0102
In the Andhra Pradesh High Court
Case No : C.E.A. No. 15 of 2006

Commissioner of Customs & Central Excise	APPELLANT
Vs	
Rayan Pharma Ltd.	RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11D, 35G

Citation : (2015) 52 GST 690

Hon'ble Judges : G. Chandraiah and Challa Kodanda Ram, JJ.

Bench : Division Bench

Advocate : V. Gopala Krishna Gokhale, SC, for the Appellant; C.V. Narasimham, for the Respondent

Judgement

G. Chandraiah, J.—This Central Excise Appeal under Section 35G of the Central Excise Act, 1944 as substituted by the Finance Act, 2003 (for brevity the Act) is filed at the instance of the Department against the Final Order No. 1015/2005, dated 22.06.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short CESTAT) by raising the following questions of law for adjudication.

(i) Whether Hon'ble CESTAT is right in setting aside the Order-in-Original passed by the Commissioner, after considering all the material facts, available to him which clearly show that Party had collected amounts representing the duty of Excise from their customers and not deposited the same to the Central Government, in contravention of the provisions of Section 11D of the Central Excise Act, 1944?

(ii) Whether the Hon'ble CESTAT is right in holding that the burden of proving collection of amounts representing the duty of Excise from their customers by the Party, is on the Revenue, when the party has intentionally not produced certain commercial invoices?

(iii) Whether the Hon'ble CESTAT is right in not considering clear-cut evidence

that party have definitely collected duty of Central Excise from M/s. APHMHIDC and the categorical statement/deduction of the Commissioner that in the instant case, whether the assessee was not bound to prove through counter evidence that other buyers were not billed similarly as was done in the case of M/s. Aphmhidc in view of withholding some commercial invoices?

(iv) Whether the Hon"ble CESTAT is justified in granting relief to the appellant who has withheld the Commercial invoices in respect of other customers intentionally?

(v) Whether the Hon"ble CESTAT is right in remanding the matter when facts mentioned in the Show Cause Notice are admitted by the appellant

The respondent-company is a manufacturer of pharmaceuticals falling under C.H.S.H. No. 3003.10 and 3003.20 of schedule to the Central Excise Tariff. They have availed SSI exemption based on value of clearances during the years 1998-99 to 2001-2002 under relevant notifications. In the investigation, it was found that the production of pharmaceuticals as recorded in the RG1 register was not tallying with the production recorded in the laboratory reports of the unit for the above period. Further, it is alleged that the assessee had retained the amounts collected as duty of central excise through their commercial invoices and did not credit it to the Central Government in terms of Section 11D of the Act. They had shown the amounts so collected as Packing & Forwarding charges in the central excise invoices while adding the same to the aggregate value of clearances. Hence, a show cause notice dated 22.03.2002 was issued to the respondent-assessee pointing out various discrepancies and proposing demand of the duty amount including other proposed recoveries. The appellant - Commissioner of Customs and Central Excise, who is the adjudicating authority, vide Order-in-Original dated 10.01.2003, confirmed the demand amounting to Rs. 39,74,576/- for the period 1998-99 to 2001-2002 (up to August 2001) under Section 11D of the Act which includes the demand of Rs. 10,37,391/- related to M/s. A.P.H.M.H.I.D.C. Being aggrieved by the order of the adjudicating authority, the respondent-assessee preferred a statutory appeal before the CESTAT, and the Tribunal, while setting aside the Order-in-Original, remanded the matter to the original authority to decide the case de novo after giving an opportunity to the respondent-assessee by observing principles of natural justice. Challenging the order of the Tribunal, the Revenue has instituted the present appeal.

2. Sri V. Gopala Krishna Gokhale, learned Standing Counsel for Customs and Central Excise appearing for the appellant has submitted that even though the Department placed sufficient material before the Tribunal, it erroneously passed the impugned Final Order without considering the material on record, as such, the same is liable to be set aside.

3. Sri C.V. Narasimham, learned counsel for the respondent-assessee has submitted that the Tribunal, after considering all the relevant material filed by both the Revenue and the assessee, passed the impugned order. He further

submits that during the pendency of the appeal, the respondent-assessee paid certain amounts by way of challans, as such, he prays to dismiss the appeal.

4. The learned counsel for the respondent-assessee has drawn our attention to paragraph No. 6 of the impugned order which is as follows:

We have gone through the records of the case carefully. The miscellaneous application of the appellant is allowed in view of the case-laws cited. Therefore, we are taking up the hearing of the case without insisting on pre-deposit. As regards the merits of the case, it appears that the Commissioner has assumed that in respect of all the clearances, the appellant has collected Excise Duty. If the department makes the allegation that the appellant had collected money representing Excise Duty, then the burden is on the Revenue to prove the same. In view of this position, the Order-in-Original has no merits. We set aside the same but remand the entire matter to the original authority to decide the case de novo after giving an opportunity to the appellant and after observing the principles of natural justice. The de novo order should be decided within four months from the date of this order.

5. The factual aspects of the matter are not in dispute. As could be seen from the order of the Tribunal, it is clear that the entire burden of proving that the respondent-assessee has collected money representing excise duty rests on the Revenue, but the order-in-original does not disclose that the Department has discharged the burden of proof, as such, the Tribunal was right in remanding the matter to the original authority to reconsider and decide the case on merits. Further, it is to be noticed that during the pendency of this appeal, the respondent-assessee is said to have paid certain amounts which fact is not denied by the Department. Further, in the Order-in-Original itself, the Commissioner had recorded that there is no direct evidence available on record except that certain sale invoices were raised against M/s. A.P.H.M.H.I.D.C. and certain amounts were shown as excise duty. That apart, so far as the invoices raised against M/s. A.P.H.M.H.I.D.C. are concerned, the respondent-assessee paid a sum of Rs. 3.00 lakhs and Rs. 4.50 lakhs vide their branch Challan Nos. 04/2003-04 and 05/2003-04, dated 11.02.2004 through State Bank of India and this fact has not been controverted by the Department. Also, the Department has not placed before us any other material to take a contra view. It is well-settled that the Tribunal is the last fact finding authority and the High Court is required to accept the findings recorded by the Tribunal except where there is a specific challenge to the findings raising any questions of perversity supported by relevant material.

6. On the above analysis, we see no ground to interfere with the well-reasoned order passed the Tribunal.

7. Hence, the appeal is devoid of merit and dismissed. No order as to costs. As a sequel to the dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.