(2012) 11 UK CK 0016

In the Uttarakhand High Court

Case No : Central Excise Appeal No. 4 of 2012

Commissioner of Customs and Central Excise — APPELLANT

Vs

Packing India P. Ltd. — RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Citation : (2013) 19 GSTR 12

Hon'ble Judges : Barin Ghosh, C.J;Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : Vijay Laxmi, for the Appellant;

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—There were two notifications, namely, Notification No. 49 and Notification No. 50. None of the notifications provided that the claims thereunder must be made within any time specified. They only provided, what goods are to be manufactured, when to be manufactured and who could manufacture the same. The respondent-assessee held out that it is covered by Notification No. 49. It reaffirmed the same. Subsequently, it held out that it is covered by Notification No. 50. Benefits under both the notifications were absolutely same. When it had held out that it is covered by Notification No. 50, time to hold the same out had already expired. Inasmuch as the respondent-assessee was not covered by Notification No. 49, but it held out that it is covered by the said notification, benefit of Notification No. 49 was not accorded to it. The matter reached the Tribunal. The Tribunal has given the benefit of Notification No. 50 to the respondent-assessee. Aggrieved thereby, the present appeal has been preferred. In the body of the appeal, it has not been contended that in point of fact, the assessee was not covered by Notification No. 50. The only contention is that, since the assessee had held out that it is covered by Notification No. 49 and, inasmuch as, in fact, the assessee was not covered thereby and, ultimately, accepted the same by claiming that it is covered by Notification No. 50, the assessee was not entitled to the benefit of Notification No. 50. The fact remains, that the assessee was making a mistake from the day one. The mistake, thus made, was not a deliberate mistake. The assessee has furnished all relevant material while holding out that it is entitled to the benefit under Notification No. 49. Looking at the said claim of the assessee along with all other relevant papers, it could be deciphered at the threshold by the Department that the assessee is not covered by Notification No. 49, but is covered by Notification No. 50. Because a mistake has been committed by the assessee, it could not be penalised. The maker of the law has given a particular benefit to the assessee. The same cannot be denied to it merely on the ground that it had made a mistake.

2. The appeal fails and the same is dismissed.

