(2012) 04 AHC CK 0008

In the Allahabad High Court

Case No : Central Excise Appeal No. 505 of 2008

Commissioner of Customs and Central Excise APPELLANT

Vs

Saru Smelting Pvt. Ltd. RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2013) 292 ELT 330 : (2013) 21 GSTR 549

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Shambhu Chopra and S.P. Kesarwani, s, for the Appellant; Rakesh Ranjan Agrawal and Suyash Agrawal, Counsels, for the Respondent

Judgement

1. Heard Shri S.P. Kesarwani, learned standing counsel for the department and Shri Rakesh Ranjan Agrawal and Shri Suyash Agrawal as counsel for the respondent. This appeal filed u/s 35G of the Central Excise Act, 1944 is against the order of the Tribunal dated 14-3-2008. The three questions have been framed in the memo of appeal, they are as follows:

1. Whether on the facts and circumstances of the case, was the CESTAT, Legally justified on facts and in law in deleting the penalty which was admittedly paid belatedly under Rule 8(i) of Central Excise Rules by merely relying upon another ruling of the Tribunal whereas the Hon''ble Supreme Court has held that mens rea was not essential for imposing penalty in economic crimes.

2. Whether on the facts and circumstances of the case, and in the light of the consistent view of the Apex Court that in economic offences relating to revenue matters including excise and taxation mens rea or criminal intent is not an essential ingredient for imposition of penalty, was the CESTAT legally correct in setting aside the penalty imposed upon the Assessee.

3. Whether the CESTAT order dated 19-5-2008 allowing the Assessees Appeal by setting aside the penalty imposed for late depositing of penalty legally

sustainable on merits of the case.

2. Penalty was imposed on the respondent under Rule 21 of the Central Excise Rules, 2002 on the allegation that respondent failed to discharge duty liability under Rule 8 of the Central Excise Rules, 2002. The respondent however before the issuance of show cause notice on 27th February, 2004, has deposited the duty along with interest. A show cause notice was issued and the Assistant Commissioner, Central Excise by his order dated 22nd March, 2005 has confirmed the demand of Rs. 85,817/- as short-paid by the party. However, since the amount of duty and interest was deposited, the demand was confirmed and penalty of Rs. 50,000/- under Rule 8 of the Central Excise Rules was imposed.

3. The appeal was filed against the said order before the Commissioner (Appeals), Customs & Central Excise. The appellate authority observed that clause (a) of Rule 25(1) does not specify the requirement of any intent to evade payment of duty, hence the penalty is leviable. In the present case appeal was taken to the Tribunal by the respondent which has been allowed by order dated 14th March, 2008. The Tribunal in paragraph 3 of the order stated as follows:

3. I find that the Tribunal in the case of Condor Power Products Pt. Ltd. v. CCE, Faridabad reported in 2007 (210) E.L.T. 137 held that penalty under Rule 25 of the Central Excise Rules, 2002 cannot be imposed for delay of payment of duty under Rule 8 of the Central Excise Rules, 2002. The appellants disclosed their duty liability in their return. Respectfully following the decision of the Tribunal I set aside the penalty. The appeal is allowed with consequential relief.

4. Shri S.P. Kesarwani learned counsel for the appellant submitted that since duty was short-paid, the respondent was liable for penalty which has rightly been imposed. He submitted that Tribunal was not legally justified in deleting the penalty which was admittedly paid belatedly under Rule 8(1) of the Rules.

5. We have considered the submissions and perused the record.

6. It is not disputed between the parries that due penalty along with interest was paid by the respondent before issuance of the show cause notice. The duty short-paid, was paid along with the interest and it was not a case of intend to evade the payment of duty. The Tribunal has further noticed that respondent disclosed its duty liability in the return. The disclosure of duty liability in the return and payment of duty along with interest before the issuance of show cause notices cannot invite penalty under Rule 25 of the Rules in the facts of the present case. Cogent reasons have been given by the Tribunal for deleting the penalty.

7. We are of the view that the order of the Tribunal is legally justified in deleting the penalty and no error has been committed in deleting penalty by the Tribunal. Appeal being concluded by findings of facts, no substantial question of law arises for consideration. The appeal is dismissed.