(2006) 09 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Commr. of C. Ex. — APPELLANT

Vs

Electrolus Kelvinator Ltd. — RESPONDENT

Date of Decision : 11-09-2006

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

Citation : (2006) 09 P&H CK 0042

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the revenue proposing following question of law:

Whether penalty u/s 11AC is liable to be imposed on the assessee and interest u/s 11AB can be levied in those cases 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?

2. Case of the revenue is that the assessee was clearing parts of washing machines to its own branches/service centres and such parts were being sold on actual cost of spares. Under Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, assessable value should be taken at 115% of the cost of goods if the goods are not sold in open market. There was short levy of excise duty. The assessee voluntarily debited the amount of short levy with interest. The assessee was receiving inputs from small scale manufacturers by paying concessional rate of Central Excise duty i.e. 9.6% though the rate applicable was 12.8%. There was, thus, short levy. The assessee debited the said duty with interest voluntarily. The adjudicating authority confirmed the demand of duty with interest and imposed penalty of Rs. 1,30,301/-. The Commissioner (Appeals) upheld the view of the adjudicating authority. The Tribunal set aside the penalty holding that duty having been paid prior to issuance of show cause

notice, imposition of penalty was not justified.

3. We have heard learned Counsel for the revenue.

4. It is well-settled that penalty u/s 11AC of the Central Excise Act, 1944 (for short, ''the Act'') is leviable if the assessee has requisite mens rea. Though, mere deposit of duty short levied before show cause notice may not be conclusive but if there was no intention to evade, penalty is not attracted. Reference may be made to judgment of this Court in CEA No. 13 of 2005 Commissioner of Central Excise Vs. Machino Montell (I) Ltd., .

5. From the finding recorded by the adjudicating authority, appellate authority and the Tribunal, learned Counsel for the revenue is unable to show that there was any element of mens rea on the part of the assessee. Reference may be made to judgments of the Hon''ble Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, , wherein, it was held that element of mens rea is normally required to be shown for imposition of penalty. Same view was taken in the Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . View taken by the Tribunal, in the circumstances, cannot be held to be illegal or perverse.

6. No substantial question of law arises.

The appeal is dismissed.