(2014) 12 RAJ CK 0039

In the Rajasthan High Court

Case No : Central Excise Appeal No. 22 of 2014

Commr. of C. Ex., Jaipur-I APPELLANT

Vs

Welcure Drugs & Pharmaceutical Ltd. RESPONDENT

Date of Decision : 03-12-2014

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

Citation : (2015) 2 CDR 697 : (2015) 317 ELT 436

Hon'ble Judges : Sunil Ambwani, Acting C.J.;J.K. Ranka, J

Bench : Division Bench

Advocate : Ajay Shukla, Advocates for the Appellant

Judgement

1. We have heard learned Counsel appearing for the appellant. This D.B. Central Excise Appeal under Section 35G of the Central Excise Act, 1944, directed against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, ''the CESTAT''), dated 13-1-2014, has been pressed on the question of law as follows:-

"Whether observation of the CESTAT is correct or not that there is no other evidence to support the revenue allegation despite of the fact that evidence produced by the department regarding signatures of the persons who prepared and signed parallel invoices were found to be similar to that appearing on the genuine invoices and this evidence was supported with the report of State Forensic Science Laboratory, Rajasthan Police Academy."

2. It is submitted by learned Counsel appearing for the Department that the CESTAT has overlooked the fact that on perusal of some forwarding/covering papers, which were lying in the files of challans/bills, it was noticed that challan numbers, name of buyers, quantity of cartoons, mode of transport i.e. Railways/ Transport company, destination etc. written on these papers clearly indicate that the quantity of goods was dispatched to the buyers as per challans/bills. Further, on scrutiny of private ledgers maintained by the assessee (recovered from their

residence and office at New Delhi), it was found that the amount debited in the accounts of customers/buyers, namely M/s. J.K. Medico, Delhi; M/s. KGM, Vadodara; M/s. Shri Krishna Medicals, Jaipur; M/s. Surya Pharma, Delhi; M/s. Uma Sons, Jaipur, and M/s. Welcure Drugs and Pharmaceuticals Ltd., Delhi against the goods sold to them vide said Bill/Challans is the total amount of the goods (dutiable and exempted goods) and the customers made payments consequently as per credit entries in the said ledger and therefore, there was sufficient reason to conclude that the quantity of the goods were received by the customers as per details mentioned in the said Bills/Challans and payments were received by the assessee in cash or by other modes. It is submitted that there was sufficient evidence to prove that the Central Excise duty was charged and recovered from the customers (as the challan amount is cum duty price) but was not paid or short paid to the Government.

3. We have gone through the orders passed by the Appellate Authorities as well as the Tribunal, and find that the Tribunal has recorded a finding of fact in paragraph 8 of the order as follows:-

"8. It is seen from the above that the Revenue''s only reliance is on the order forms recovered from the residential premises. All the respondents have clarified in their statement that such order are only for Booking of the goods and do not relate to clearance of the goods mentioned therein. The clearance of the final product is only about percentage of such quantities shown in order Booking Forms which is dependent upon various factors. In the absence of any evidence to support Revenue allegation, I am of the view that the appellant authority has correctly set aside the demand. Accordingly, Revenue appeal is rejected on the above ground also."

4. In our view, the findings recorded by the Appellate Authority and the Tribunal, are essentially finding of fact recorded on appreciation of documents brought on record and the statements recorded in the proceedings, which do not raise question of law much less any substantial question of law, to be decided in this appeal. The Central Excise Appeal is accordingly dismissed.