
(2015) 03 MAD CK 0045

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2660 of 2010

Goyal Ispat Ltd.

APPELLANT

Vs

CESTAT

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC, 14, 35G

Citation : (2015) 324 ELT 392

Hon'ble Judges : R. Sudhakar and S. Vimala, JJ.

Bench : Division Bench

Advocate : K. Jayachandran, for the Appellant; A.P. Srinivas, for the Respondent

Judgement

R. Sudhakar, J.—This Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944 challenging the order dated 9-7-2010 made in Final Order No. 758 of 2010 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Regional Bench, Chennai was admitted by this Court on the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal is right in passing the final order without considering the question of law raised by the Department that non-production of mahazer witness does not constitute a fatal flaw?

2. Whether the Tribunal committed an error in not considering the fact that stock taking conducted by the eye estimation as pointed out by the first appellate authority is not a proper method?"

The brief facts of the case are as follows:

The appellant/assessee is engaged in the manufacture of CTD Bars falling under chapter sub-heading 7214/7204 of the first schedule to the Central Excise Tariff Act, 1985 and cleared the same on payment of appropriate duty. On 30-1-2006, a team of officers, Villupuram Division visited the unit of the assessee and

challenged the physical stock of CTD Bars and waste and scrap of CTD Bars lying in open space in the presence of Shri J. Balaji, Manager, Authorised Signatory and two independent witnesses, namely, Shri P. Rajalingam and Shri P. Selvam. During inspection, it was found that there was shortage of 103.655 MT's of CTD Bars and 51.965 MT's of waste and scrap of CTD bars as against the stock declared in the stock register of finished goods (RG.1) maintained by them. A mahazar was drawn and a statement was recorded under Section 14 of the Central Excise Act, 1944 and a show cause notice dated 8-11-2006 was issued demanding duty at Rs. 4,40,097/-. The said demand was confirmed in the order-in-original dated 11-7-2007 and penalty was imposed under Section 11AC of the Central Excise Act, 1944.

2. On an appeal filed at the instance of the assessee as against the order of the Adjudicating Authority, the Commissioner (Appeals) doubted the manner in which the Department had taken the physical stock and held that the mahazar witnesses were not cross examined. He further held that the mere shortage in stock could not be a ground for alleging clandestine removal and accordingly, he allowed the appeal filed by the assessee.

3. Aggrieved by the said order of the Commissioner (Appeals), the Department went before the Tribunal. The Tribunal came to hold that the case of the Department was on the basis of the unretracted statement of Shri J. Balaji, Manager of the assessee-company and the mahazar clearly showing shortage. The Tribunal did not accept the findings of the Commissioner (Appeals) that the shortage could not be ascertained in the manner done by the Department and allowed the appeal filed by the Department. However, the Tribunal following the case of Gaurang Alloys & Iron Ltd. v. CCE, Ranchi [2010 (252) E.L.T. 67] deleted the penalty imposed under Section 11AC of the Central Excise Act.

4. As against the said order of the Tribunal, the assessee is before this Court.

5. Heard learned counsel appearing for the assessee and the learned standing counsel appearing for the Department and perused the materials placed before this Court.

6. It is seen from the order of the Tribunal that the Tribunal did not accept the findings of the Commissioner (Appeals) that the shortage could not be ascertained in the manner done by the Department, on the contrary, it is the specific finding of the Tribunal that the mahazar recording the shortage has been signed by Mr. Balaji and during cross examination, the assessee had not been able to establish that the recording of shortage was erroneous. On facts, the Tribunal came to hold that the Superintendent of Central Excise, Mr. Madhanagopal has recorded the statement of Balaji, who stated that the same lorry that was available in the factory was used for weighment of the goods and that the mahazar did not say anything about the lorry being put to use for weighment. This issue, on fact, according to the Tribunal that mere non-recording of the lorry being put to use for weighment did not make any

difference so long as the Mahazar recorded shortage of goods. It is also on record that this shortage has been not accounted in the RG.1 register maintained by the assessee, which itself justifies the demand for duty.

7. This is a finding of fact by the Tribunal on the statement drawn in the mahazar and other records on which we did not want to dwell further to come to a different conclusion. Nevertheless, before this Court, the appellant while seeking to consider the first question of law, has failed to bring to our attention the plea of the Department in the appeal filed before the Tribunal that non-production of the mahazar witness was not fatal to the case, by producing the memorandum of appeal filed by the Department before the Tribunal.

8. In the absence of any such material, there is no possibility for this Court to consider this issue at all. The next question is whether stock taking conducted on eye estimation is fatal to the case of the Department. We find that the order of the Tribunal is not on the basis of visual inspection, but based on mahazar records recording the shortage of goods, which has been done in the presence of the independent witnesses and such shortage was supported by the unretracted statement of Mr. Balaji, Manager of the assessee company. In this view of the matter, the non-recording of the correct quantity of goods in the statutory record, viz., RG.1 register maintained by the assessee establishes the case for demand of duty, more so in a case of statement accepting Central Excise violation. In such view of the matter, the issues raised in this appeal are being pure questions of fact, we find that the Tribunal is correct in confirming the order of the Adjudicating Authority. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.