(2016) 11 AHC CK 0008

In the Allahabad High Court

Kisan Sahkari Chini Mills Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:
Central Excise Appeal No. 281 of 2009

Citation : (2017) 345 ELT 615

Hon'ble Judges : Bharati Sapru and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : Shri Shakeel Ahmad, Advocate, for the Appellant; Shri Amit Mahajan, CSC and S.P. Kesharwani, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal filed under Section 35G of the Central Excise Act against the order dated 25-3-2009 of the Tribunal [2010 (249) E.L.T. 246 (Tribunal)].

2. This appeal was admitted on 22-3-2012 on the following substantial questions of law :

"(i) Whether upon the facts and circumstances of the case the Tribunal was justified in rejecting the claim of the appellant for remission of duty of molasses which were stolen and fail to appreciate that stolen goods are to be treated as lost and the claim have been allowed on this ground?

(ii) Whether upon the facts and circumstances of the case the Tribunal was justified in rejecting the claim of the appellant that loss of molasses stolen is condonable under Rule 49 of Central Excise Rules, 1944?

(iii) Whether upon the facts and circumstances of the case, the Tribunal ignored to appreciate that theft of goods is an unavoidable accident and as such remission of duty should have been allowed by the authorities below?"

3. The facts of the case are that the appellant is manufacturer of sugar and has a factory at Shekhupur, District - Budaun and has held registration under the

Central Excise Rules. It is also on record that the process of manufacture of sugar molasses is also manufactured as ''by Product''.

4. For the relevant period the assessee was liable to pay duty @ Rs. 50/- per quintal. During April, 2001 appellant''s molasses clerk, Chief Chemist and U.P. Excise Inspector colluded with each other and issued 10,020.40 qtls of molasses by issuing F4 gate pass and Central Excise invoices without making entries in the excise records.

5. According to the assessee on account of this theft a loss was occurred to the business of the assessee and therefore an F.I.R. was lodged after six months on 14-10-2001. Subsequently, an application for remission was filed by the assessee after a period of four years in the year 2005 on 24-6-2005.

6. The application for the remission was filed under Rule 49(1)(A) of the Central Excise Rules, 1944, which reads hereunder :

"The manufacturer shall, on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such storage room or other approved premises :

Provided that the proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or for marketing subject to such conditions as may be imposed by the Commissioner by order in writing."

7. The Commissioner has rejected the said remission application. He noted in his order :

"In this case as per the units own statement, the clandestine removal or theft as they call it took place in April, 2001 and they filed an FIR only in October, 2001, i.e., after 6 months. What took them so long to inform the police is not forthcoming. Moreover, they never informed the department about the said "theft" and the department on its own, based on the news item in the local newspaper, took further action which culminated in the issue of a demand notice. This is a clear violation of the provision of Board Circular No. F. No. 40/73-CX-1 & F. No. 21/29/65-CX-IV, which stipulates that the first information regarding such loss or destruction, etc., to be sent within 24 hours of the occurrence. That they have failed to inform the department at all is not disputed. Moreover, what took them 4 years to file the remission of duty application with the department also remains unexplained. Hence, even without going into the issue whether ''thefts'' would fall within the ambit of cases to which remission duty can be claimed, for which they have cited some case laws, I find that the remission application is liable to be rejected on this ground alone."

8. Against order of the Commissioner the assessee filed an appeal, which had also been dismissed vide order dated 25-3-2009.

9. We have heard Sri Shakeel Ahmad, learned counsel for the assessee and Sri Krishna Agarwal, learned counsel for the department.

10. Learned counsel at the Bar has submitted that the provision of the Rule 49(1)(A) of the Central Excise Rules, 1944 clearly provides for remission in the case where the loss is due to natural causes and does not include in cases of theft. The Commissioner in his order indicated that not only false ground taken for remission but the appellant took six months for making an F.I.R. and thereafter it took four years for filing application of remission also. Thus, it appears to be an afterthought.

11. In view of the aforesaid facts and circumstances, the view taken by the Commissioner is correct and it has also been confirmed by the Tribunal, which has also taken a view that ambit of Rule 49(1)(A) of the Central Excise Rules, 1944 includes cases of loss and it would be confined to the natural causes and unavoidable accident.

12. In view of above, we answer the substantial questions of law referred to above in favour of department and against the assessee.

13. The appeal is, accordingly, dismissed.