**(2009) 03 AHC CK 0074**

**In the Allahabad High Court**

**Case No :** Central Excise Appeal No. 15 of 2009

K.P.Pan Flavours Pvt.ltd. APPELLANT

Vs

Commissioner of Central Excise and Customs, Kanpur RESPONDENT

**Date of Decision :** 31-03-2009

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 35B

**Citation :** (2009) 03 AHC CK 0074

**Hon'ble Judges :** Amitava Lala, J and Rajes Kumar, J

**Final Decision :** Dismissed

## Judgement

1. The present appeal under Section 35G of the Central Excise Act, 1944 is directed against the order of the Tribunal dated 29th May, 2008 and raised several questions claim to be substantial question of law.

2. It appears that on 28.11.2002,30 bags of branded Pan Masala manufactured by the appellant were seized from his customer M/s Sushil Zarda Merchants. The statement of Shri Santosh Kumar Gupta was recorded by the Excise Official. In his statement he has admitted that he has received 30 bags in question from the appellant under the cover of invoice and also produced the relevant invoice. He also stated that on 27.11.2002 he also received 40 bags of branded Pan Masala manufactured by the appellant under two G/R Nos. 4713 & 4714 at 430 p.m. for which he could not produce any invoice. During the investigation, it was submitted by the appellant that from 23.11.2002 to 27.11.2002 total 100 bags of branded Pan Masala were cleared to M/s Sushil Zazda Merchants under the cover of invoices. A show cause notice was issued to the appellant demanding duty in respect of 40 bags which were received by M/s Sushil Zazda Merchants on 27.11:2002 at 430 p.m. under the cover of transport documents on the ground that the same were not cleared on payment of duty. The Adjudicating authority confirmed the demand and imposed the penalty. The Commissioner (Appeals) dismissed the appeal filed by the appellant. Being aggrieved by the order, the appellant filed the appeal before the Tribunal. Before the Tribunal it was

 

contended that he cleared 100 bags to Sushil Zazda Merchants under the cover of invoices. 40 bags are also cleared on payment of duty under cover of invoices. Therefore, demand is not sustainable. Revenue contended that 40 bags were received by the appellant on 27.11.2002 at 430 p.m. whereas invoice No. 1984 dated 27.11.2002 showing the clearance of 20 bags at 11 p.m. Therefore, goods received by the customer of the appellant at 430 p.m. on 27.11.2002 were not the same which were covered under invoice No. 1984.

3. On a consideration of rival submissions and facts and circumstances, the Tribunal recorded the following finding :

"I find that in this case dispute is in respect of 40 bags. Case of the appellants is that the same were cleared on payment of duty. I find that 40 bags were received by the customers of the appellants on 27.11.2002 at 430 p.m. under two transport documents. The appellants produced one invoice showing clearance of 20 bags on 27.11.2002 in which time of removal of goods were shown as 11 p.m. Therefore, this invoice is not in respect of goods in question. In these circumstances as the appellants failed to prove that 40 bags received by their customers on 27.11.2002 were cleared on payment of duty, I find no infirmity in the impugned order. Appeal is dismissed.

(Dictated and pronounced in the open Court)"

4. We are of the view that findings recorded by the Tribunal are finding of fact based on the material on record. These findings are neither perverse nor based on no material and, therefore, no substantial question of law arise from the order of the Tribunal.

5. In the result, appeal fails and is dismissed. There shall be no order as to costs.

 