(2014) 03 BOM CK 0002

In the Bombay High Court

Case No : Central Excise Appeal No. 45 of 2014

Markas Engineering Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : (2014) 310 ELT 431

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : M.M. Vashi, Sr. Counsel, Abhishek Bharti i/b M.P. Vashi and Associates, Advocate for the Appellant

Judgement

1. The Appellants are questioning the order passed by the Central Excise and Service Tax Appellate Tribunal dated 5-9-2013 (2014 (311) E.L.T. 781 (Tri.-Mum.)) dismissing their Appeal. The Appeal was directed against an order dated 29-3-2004 of the Commissioner of Central Excise, Pune-II. That order was passed in pursuance of an earlier order of the Tribunal dated 3-9-2002 wherein the adjudicating authority was directed to supply copies of the documents relied upon.

2. The adjudicating authority upon remand passed the adverse order which has been confirmed by the impugned order.

3. Mr. Vashi learned senior counsel appearing on behalf of the Appellants would submit that the adjudicating authority examined the issue at length and divided it into three categories as enumerated at page 95 of the Appeal paper book. Mr. Vashi would submit that where categorization shown in the private records is more than the quantity shown in statutory records then fault has been found. This approach is erroneous in law because while categorizing and in category (ii) the authorities have taken into account the quantity in RG-1 which is more than the quantity shown in the private records. Therefore, a case of mismatch between statutory and the private records which is the basis of categorization

(iii) vitiates the order under challenge and to such an extent that would enable this Court to interfere with it in its Appellate jurisdiction. Thereafter referring to the allegations in the show cause notice and the Assessee''s response thereto, Mr. Vashi would submit that there has been no admission which could be raised. All the allegations in the show cause notice have been denied. Therefore, where-from the admission is called out has not been clarified. Thus, the entire order is vitiated by an error of law apparent on the face of record and perversity warranting interference in Appellate jurisdiction. We are unable to accept these contentions for more than one reason. Firstly, the jurisdiction Section 35G can be exercised only if the ingredients thereof are satisfied. That jurisdiction is not to be exercised to re-appreciate or reappraise a finding of fact unless it is demonstrated to be perverse or vitiated by an error of law apparent on the face of record. In this case, what has happened is that the adjudicating authority as well as the Tribunal while dealing with the contentions raised and particularly that the private records cannot be relied upon for suppression of production and clandestine removal of goods held that the adjudicating authority had examined the issue at great length. The categorization was done. The Statement of Mr. Vijay Makhija, Managing Director of the Appellant and which was recorded on several dates has been referred to. Thus, while referring to that statement the Tribunal held that there is suppression of production of plastic pipes which have been manufactured by the Appellants. The suppression is found in their statutory accounts. These goods were cleared without payment of Excise duty and issuance of invoice. Therefore, the admission is culled out or derived from suppression and which is apparent from the statement of the Managing Director. Therefore, the Tribunal opines that as error in the private records were detected but, were not accounted in the RG Register. The statements have been referred to as is evident from a reading of the Para under reference namely Para 5.2 of the Tribunal''s order. We are of the opinion that it is not something as Mr. Vashi would complain and namely a finding without reference to any record or not based on record. That is a finding based on record and which includes the statement of the Managing Director and one other officer. The authorities did not commit any error in examining and relying upon the record maintained by the department. Moreover, the suppression has been concluded from a comparative analysis and which also does not suffer from any serious infirmity. Thus, this is not a case where the order can be said to be perverse or based on no material nor it can be termed as vitiated by an error of law. There are concurrent findings on record. They do not require any interference in Appellate jurisdiction. The Appeal is dismissed. No costs.

