(2018) 04 CHH CK 0063

In the Chhattisgarh High Court

Case No : Tax Case No.07 of 2018

M/S Steel Authority Of India Bhilai Steel Plant Vs

Date of Decision : 06-04-2018

Acts Referred:
Central Excise Act, 1944 — Section 11AC

Citation : (2018) 04 CHH CK 0063

Hon'ble Judges : PRASHANT KUMAR MISHRA, J;RAM PRASANNA SHARMA, J

Bench : Division Bench

Advocate : Ravi Raghavan, Sandeep Dubey, Maneesh Sharma

Final Decision : Disposed of

Judgement

1. After hearing learned counsel for the parties, delay of four days in filing the appeal deserves to be and is hereby condoned.

2. Consequently, IA No.01/18 stands allowed.

3. In view of the order which we propose to pass, we do not deem it proper to discuss the entire facts of the case in detail. It would be suffice to

mention that the appellant has suffered demand of Excise Duty amounting to Rs.25,64,10,147/- with penalty under Section 11AC of the Central Excise

Act, 1944 and under Rule 25 of the Central Excise Rules, 2002. However, the Commissioner, Central Excise has set aside the penalty under Rule 25

of Central Excise Rules, while maintaining the rest of the demand.

4. By the impugned order the Tribunal has remitted the matter to the adjudicating authority for de novo decision.

5. It is argued by Shri Ravi Raghavan, learned counsel for the appellant that while remitting the matter back to the adjudicating authority, the Tribunal

has rejected the issue of limitation raised by the appellant by a non-speaking order. It is also argued that even the Commissioner has not specifically dealt with the issue of limitation.

6. Per contra, Shri Maneesh Sharma, learned Standing Counsel for the respondent would submit that in para 10 of the Order passed by the

Commissioner, issue of limitation has been impliedly dealt with as the Commissioner has affirmed the penalty under Section 11AC of the Central

Excise Act,1944 deemingly extending the period of limitation as the appellant was found to be guilty of committing conscious and willful suppression of

facts with intent to evade the duty.

7. Having heard learned counsel for the parties, it appears that in its objection raised before the Commissioner as well as in the memo of appeal

preferred before the Tribunal, the appellant has specifically raised the issue of limitation, however, the contention of the appellant on this issue has not

been discussed by the Commissioner in para 10 of the Order. Similarly, the Tribunal has also affirmed the issue of limitation as if the Commissioner

has addressed the issue after referring to the appellant's contention and has passed a reasoned order in this regard. Thus, we are of the considered

opinion that neither the Commissioner nor the Tribunal has expressly dealt with the submission made by the appellant on the issue of limitation and

thus, the decision on this issue suffers from jurisdictional error.

8. Since the entire matter has been remitted to the adjudicating authority for de novo decision, we direct the adjudicating authority that while deciding

the proceedings the adjudicating authority shall also decide the issue of limitation on its merits.

9. The appeal stands disposed off.