(2010) 03 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 45 of 2010

National Conduit Pipes APPELLANT

Vs

Commissioner of Central Excise, Chandigarh RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2012) 281 ELT 230

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Jagmohan Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The Assessee has filed the present Appeal assailing the Order passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to ''the Tribunal''), dated 4-9-2009 (Annexure A-3) [2010 (261) E.L.T. 680 (Tri. - Del.)] whereby the Tribunal has dismissed the Appeal of the Assessee. The Assessee-Appellant has raised following questions of law:

(a) WHETHER penalty u/s 11ACis sustainable when there is no specific finding of fraud, suppression of facts or misstatement of facts with intent to evade payment of duty?

(b) WHETHER demand of duty can be confirmed only on the basis of documents recovered from third party (here, the ICCs of the Punjab Govt.) in the absence of any corroborative evidence?

(c) WHETHER demand of duty can be confirmed only on the basis of assumptions and presumptions without leading any evidence to rebut the appellant''s claim that their unit was working in a single shift and could not have produced the quantity of goods alleged to have been produced?

Briefly the facts of the case are that the Appellant is engaged in the manufacture of ERW Pipes. Respondent initiated an investigation against the Appellant and after completing investigation issued a Show Cause Notice alleging clearance of goods without payment of duty. The Respondent confirmed the demand of Rs. 17,79,094/- and further imposed equal amount of penalty u/s 11ACof the Act.

2. The Appellant filed an Appeal before the Tribunal impugning the Order-in-Original passed by Adjudicating Authority. The Tribunal has dismissed Appeal of the Appellant holding, inter alia, that invoices recovered from ICC and invoices generated in the computer belonging to Appellant are identical, Serial Number and even the time of preparation of both the invoices is same but the quantity recorded in statutory record is small in comparison to quantity recorded at ICC, the invoices were admittedly pre-authenticated by Sham Lal, the claim that invoices were filled by their drivers is not acceptable, the Appellant followed unusual circuitous and suspicious procedure of receiving money.

3. A perusal of the impugned order passed by the Commissioner (Appeals) as well as the Tribunal shows that the clearances covered by the 62 invoices relate to clandestine removal by the Appellant firm. The Commissioner has passed a very detailed order upholding the allegation of clandestine removal of ERW pipes during the period from 31-8-2000 to 18-10-2000 and the demand of Rs. 17,79,094.00 along with interest and equal amount of penalty u/s 11AC of the Central Excise Act has been confirmed.

4. In view of the findings of fact recorded by the authorities under the Central Excise Act, the penalty u/s 11AC has rightly been imposed. There was ample evidence on record before imposing the penalty. The above findings of the Tribunal are purely findings of fact and no substantial question of law warranting the interference by this Court arises. Resultantly, all the questions posed in this Appeal are answered against the Assessee and in favour of the Revenue. The Appeal is dismissed and the orders passed by the Tribunal are upheld.