(2006) 07 BOM CK 0025

In the Bombay High Court

Case No : First Appeal No. 563 of 2006

Singh Scrap Processors Pvt. Ltd. APPELLANT

Vs

Collector of C. Ex. RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Citation : (2010) 251 ELT 376

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : V.P. Sawant, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the appellant. Perused record. No substantial question of law is involved. Appeal is liable to be dismissed for the reasons recorded herein.

2. The question sought to be raised by the appellant revolves around the method of payment, erroneous estimation of shortfall in weight arrived at by the department and that the conclusion that clandestine removal of duty paid inputs.

3. We were taken through the entire material available on record including the orders of the authorities below.

4. The statement of one Shri Arun Kumar Biswas, said to be a person in know of the details and incharge of the factory, was recorded, which is at page 88; wherein he has stated as under:

...I fully agree with the manner of stock taking/obtaining of the raw materials/ inputs and the final products. I again confirm that there is difference in the stock in the raw material of 1638 MT. The exact value of the scrap be ascertain as the scrap is in mixed form, but as an average the scarp value to Rs. 5,000/- to Rs. 6,000/- per MT....

This statement of Mr. Biswas would show that he had approved the method adopted by the department while taking stock and obtaining quantity of the raw material inputs and the final products. If that be so, at this stage appellant cannot be allowed to dispute the same.

5. So far as estimation of shortfall is concerned, one of the directors of the Company, viz., Shri Tapendra Singh stated in his statement as under:

...On being asked about the shortage of 1638 M/T of inputs/raw materials found in our factory, I have to state that since the day to day work of the factory is being looked after by Sir. A.K. Biswas, the reason given by him regarding the shortage in his statement are true and correct and I agree with the same. On seeing the gravity of the problem, today morning I once again went to our factory premises and estimated and get the raw material stock quantified. Once again with my own people and with the help of qualified personnels in their field and it is found that the figures by your goodself are true and correct and the storage of 1638 MT, it appears to have accumulated since the start of production....

He has staled that the burning loss of 4-5% has accounted during the storage/ receipt of the raw material and after accounting the burning loss the shortage recorded by the department was reiterated.

6. On the basis of the aforesaid material, all the authorities below including the Tribunal has appreciated evidence and reached to the conclusion recorded in the impugned orders.

7. The view taken by the Tribunal is based on the appreciation of evidence available on record. The findings reached by the Tribunal can very well be supported on the basis of evidence on record.

8. The finding of clandestine removal or short receipt of duty held by the Tribunal can also be supported on the basis of evidence available on record. Findings recorded in this behalf cannot be faulted with.

9. In this view of the matter, we do not see any substantial question of law involved in this matter. In the result, appeal is dismissed in limine with no order as to costs.

