(2015) 09 RAJ CK 0005

In the Rajasthan High Court

Case No : Central Excise Appeal No. 37 of 2015

Union of India APPELLANT

Vs

Shiv Deep Industries RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Citation : (2017) 346 ELT 536

Hon'ble Judges : Gopal Krishan Vyas and Jaishree Thakur, JJ.

Bench : Division Bench

Advocate : Shri Vijay Kumar Vyas, Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Jaishree Thakur, J.—The present appeal has been filed challenging the order dated 10-10-2014 passed by the Customs, Excise & Service Tax Appellate Tribunal [2015 (317) E.L.T. 728 (Tribunal)] allowing the appeal of the respondent.

2. Brief facts are that the respondent was engaged in manufacturing of edible products, namely, Namkeen, Bhujia, Mixture, Chabena, Papad and Sweetmeats. Vide a notification dated 2-6-1998 these products were liable to Excise duty for the first time. On hue and cry being raised, the Government on reconsidering the matter, rescinded the levy vide Notification No. 17/98-C.E., dated 18-7-1998. The appellant had asked for details of the production during the period the duty was imposed and these details were supplied by the respondent on 4-9-1998 itself. The respondent was served a show cause notice as to why penalty be not imposed for not paying duty on the products for the period of 46 days. Reply was filed to the show cause notice and a stand taken therein that it was on account of a mistaken belief that the levy had been withdrawn in to that the Excise duty was not paid. The Commissioner upheld the demand of Excise duty and penalty of Rs. 28,25,128/-. The respondent filed an appeal against the said judgment dated 27-11-2013 wherein, the Appellate Authority came to the conclusion that the impugned demand of levy raised by show cause notice dated 20-12-1999 was hit

by the period of limitation.

3. Aggrieved against the dismissal of the demand raised, the present appeal has been filed challenging the said order on the ground that the demand raised was within the period of limitation and that the Appellate Authority had erred in dismissing the appeal of the Department as being time-barred.

4. We have heard learned counsel for the parties and perused the record of the case.

5. Admittedly, a show cause notice was issued on 20-12-1999 to the respondent raising demand and penalty of Rs. 28,25,128/-. Section 11A of the Central Excise Act, 1944 reads as under :

"11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) When any duty of Excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words "six months", the words "five years" were substituted."

6. The notice is to be served upon the person evading duty within a period of six months from the relevant date, the relevant date being the date of knowledge. The appellant-Department had sought information from the respondent regarding sales made during the period from 2-6-1998 to 17-7-1998 and this information was promptly supplied by the respondent to the appellant on 4-9-1998. An argument has raised by the counsel for the appellant that if there has been a misrepresentation by the respondent and concealment, then proviso to Section 11A(1) permits the department to raise a demand within a period of five years. The question, whether there is any suppression or misstatement of fact, does not arise in a particular case because the levy was introduced for the first time on 2-6-1998 and was withdrawn after a period of 46 days on 18-7-1998. The respondent was under bona fide belief that levy itself had been withdrawn and thus the respondent would not be liable to pay any Excise duty for the period it was in currency.

7. The Appellate Tribunal has clearly gone into the question and has come to a conclusion that there was no deliberate attempt to evade payment of Excise duty

and there was no suppression or misrepresentation of any fact. The show cause notice for raising demand was clearly issued more than one year and four months after supply of the figures by the respondent.

8. This Court is of the opinion that no substantial question of fact arises in the present case and the matter has been decided on its peculiar facts and circumstances while keeping in mind that a show cause notice has been issued after a period of six months from the date of knowledge.

9. The above noted appeal being devoid of any merit, is hereby dismissed.

