
(2002) 04 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Central Excise Case No. 49 of 2001

Union of India (UOI)

APPELLANT

Vs

Bhasin and Company

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q
Central Excises and Salt Act, 1944 — Section 11AC, 35H(1)

Citation : (2002) 82 ECC 52 : (2002) 143 ELT 42

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Ranjana Shahi, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Revenue has filed this petition u/s 35H(1) of the Central Excise Act, 1944, praying that the Tribunal be directed to refer the following question for the opinion of this Court :-

"Whether the Tribunal was correct in vacating the demand for penalty equal to duty u/s 11AC of the Central Excise Act, 1944 (the Act in short) holding that Section 11AC of the Act came into Statute Book with effect from 22-8-1996 only while the duty in instant case was sought to be determined under Sub-section (2) of Section 11A of the Act by issuing show cause notice dated 1-1-99 and which became payable with issue of Order-in-Original No. 102-CE./ADC (P&V) CHG-I/98, dated 31-3-99 quite subsequent to receiving of Presidential assent for Finance Bill, 1996, dated 28-9-96?"

2. The assessee is engaged in the manufacture of woollen worsted yarn. On May 8, 1998, the Customs-Excise Preventive Officers visited the factory premises and checked the records. They found that during the year, 1994 - 95, the respondent had manufactured and cleared yarn valued at Rs. 43,03,024/- without complying with the provisions of law. Thus, an order for payment of Rs. 74,924/- by way of

duty as also "penalty of 100% u/s 11AC of the Act, was passed on March 31, 1999. Aggrieved by the order, the respondent filed an appeal. It was accepted by the Commissioner vide order dated February 13, 2000. The Revenue challenged the order before the Tribunal. The appeal having been dismissed vide order dated September 13, 2000, the Revenue has filed the present petition.

3. The solitary contention raised by Ms. Shahi, learned Counsel for the Revenue is that even if the provisions of Section 11AC of the Act were not retrospective, the Department should have been permitted to proceed under Rule 173Q of the Central Excise Rules, 1944.

4. It is the admitted position that the provision of Section 11AC of the Act was introduced w.e.f. September 28, 1996. It is also not disputed that the provision is not retrospective. Thus, the Commissioner as well as the Tribunal had taken the view that the order of penalty was not sustainable. In support of the view, the Commissioner had placed reliance on an earlier decision of the Tribunal in *Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. v. CCE, Cal. II, 1998 (102) E.L.T. 705 CAL*. The Authorities committed no error in taking this view.

5. Ms. Shahi contends that the Tribunal should have permitted the Authority to proceed under Rule 173Q of the Rules.

6. No such contention is shown to have been raised before the Tribunal. Even the question as framed by the Revenue does not refer to the provision of Rule 173Q. Thus, it cannot be said that Rule 173Q can now be invoked by the Revenue. The question as framed by the Revenue is admittedly concluded by the decision of the Apex Court in Civil Appeal No. D18869 of 1998 filed by the Commissioner of Central Excise, Calcutta against the Tribunal's order in *Marcandy Prasad's* case (*supra*). The appeal was dismissed by their Lordships vide order dated January 25, 1999.

7. In view of the above, we do not find that any referable question arises for the opinion of this Court. The petition is, therefore, dismissed in limine.