(2011) 07 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. 5412 of 1011

Union of India (UOI) APPELLANT

Vs

V.E. Commercial Vehicles Ltd. RESPONDENT

Date of Decision : 13-07-2011

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

Citation : (2011) 270 ELT 145 : (2012) 26 STR 369

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Arijit Prasad, Madhurima Tatia and B. Krishna Prasad, for the Appellant; Alok Kumar, Krishan Mohan and M.P. Devanath, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal is directed against the judgment and order dated 28-2-2009 passed by the High Court of Madhya Pradesh dismissing the appeal preferred by the Appellant herein after making an observation that there was no intention to evade duty on the part of the Assessee-respondent. It was also held that since the duty was paid by the Assessee prior to the issuance of the show cause notice, no penalty is leviable on the said Assessee under Section- 11AC of the Central Excise Act.

3. We have heard the Learned Counsel appearing for the parties on the issues raised in this appeal. Counsel appearing for the Appellant has submitted before us that the conclusions of the High Court that there is no evidence adduced or brought on record by the Appellant against the Assessee to show their malice or clandestine approach to evade payment of duty is perverse and not borne out of the records. It is also submitted that only because the Assessee deposited the duty before issuance of show cause notice and because: there was some doubt about the payment of duty on the goods, therefore, in such cases, there cannot

be any imposition of penalty on Assessee, cannot be accepted as correct law as such findings are against the law laid down by this Court in Union of India (UOI) Vs Rajasthan Spinning and Weaving Mills Commissioner of Customs and Central Excise

4. Counsel appearing for the Respondent submits that in the aforesaid decision also, namely, Rajasthan Spinning & Weaving Mills (supra), this Court has remanded back the matter to the High Court for fresh consideration of the issue in the light of the said decision and also in the light of the evidence available on record.

5. Having gone through the records with the assistance of the counsel appearing for the parties, we are satisfied that findings recorded by the High Court in the impugned judgment and order and the conclusions arrived at thereto are contrary to the decision of this Court in Rajasthan Spinning & Weaving Mills (supra) as also the evidence that is available in the nature of the show cause notice, reply submitted and the findings arrived at by the adjudicating authority. Those findings and the evidence on record should have been considered and appreciated by the High Court. Despite the availability of such evidence on record, the High Court was not justified to hold that there was no evidence adduced or brought on record in support of the contention that there was no malice or clandestine approach to evade payment of duty. The findings are without reasons and without appreciation of the evidence available on record.

6. Accordingly, we allow the appeal and set aside the impugned judgment and order passed by the High Court and remit back the matter to decide the entire dispute afresh in accordance with law and in the light of the aforesaid decision of this Court and in the light of the evidence available on record.

7. The parries shall appear before the High Court on August 8, 2011 when a date would be fixed by the High Court for arguments.

8. We also make it clear that any observation made herein shall not be construed by the High Court as any final view expressed by this Court on the merits of the dispute between the parties.