(2010) 08 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No''s. 121 and 122 of 2010 (O and M)

Vipin Metal Works APPELLANT

Vs

Commissioner of Central Excise, Delhi-III RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC, 35G, 38A

Citation : (2011) 269 ELT 339

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This order will dispose of CEA Nos. 121 and 122 of 2010, as both arise from common order of the Tribunal. CEA No. 121 of 2010 has been filed by M/s. Vipin Metal Works u/s 35G of the Central Excise Act, 1944 (the 1944 Act) against order dated 4-9-2009 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi in appeal No. E-2330/2007/SMBR, proposing to raise following substantial questions of law :-

(a) Whether the learned CESTAT did commit an error of law in overlooking the faulty Review Order Authorization filed by the department along with the appeal?

(b) Whether the learned CESTAT did commit an error of law in not considering that show cause was issued on 5-8-2004 to recover the duty for the period July 2000 to October 2000 under erstwhile Central excise Rules, 1944 which were not on the statute at the time of issuance of the Show Cause Notice and the erstwhile Central Excise Rules, 1944 not saved by Section 38A of the Central Excise Act, 1944?

(c) Whether the learned CESTAT did commit an error of law in not considering the time barred demand?

(d) Whether the learned CESTAT did commit an error of law in not considering that the Central Excise Officer duly authenticated the invoice before dispatch of the goods from the premises of M/s. Capital Sales, Rewari?

(e) Whether the learned CESTAT did commit an error of law in not considering that the proper officer has duly defaced the invoices of M/s. R.K. Enterprises, Faridabad, and M/s. Capital Sales, Rewari issued to the appellants?

2. CEA No. 122 of 2010 has been filed by M/s. Vijai Metal Works against common order of the Tribunal. In its case, the matter was remanded to re-determine the demand of duty on the basis of documents relating to credit on quantity of 6 MT.

3. In CEA No. 121 of 2010, the appellant is engaged in manufacture of brass/ copper/zinc sheets and circles and avails MODVAT/CENVAT facility under the rules. Investigation was initiated against certain concerns on the allegation that they issued fraudulent invoices. As a result of the report of the said investigation, it was found that credit availed by the appellant was based on bogus invoices. Show Cause Notice dated 5-8-2004 was issued to the appellant requiring it to show cause why benefit of CENVAT credit be not withdrawn and penalty imposed. After due consideration, benefit of CENVAT was ordered to be withdrawn and the amount was held to be recoverable with interest and penalty. On appeal, order of the adjudicating authority was set aside. It was held that the dealers who issued invoices were registered with the department and statement made by R.K.Gupta which was the basis for holding that invoices were bogus, was retracted. It was held that material brought on record by the department was not conclusive and sufficient to prove fraudulent availment of CENVAT credit. On further appeal by the revenue, view taken by the adjudicating authority was partly restored with regard to one assignment of 6 MT involving MODVAT credit of Rs. 57,659/-. Penalty was reduced to 25% in terms of first proviso to section 11AC of the Act.

4. We have heard learned counsel for the appellant and perused the record.

5. Learned counsel for the appellant submitted that the review filed before the Commissioner was not competent as the petition was not signed and authorized by the competent officer. It was further submitted that the show cause notice issued on 5-8-2004 was barred by limitation as the period of duty was from July 2000 to October 2000. The Tribunal erred in ignoring the authenticated invoice from M/s. Capital Sales, Rewari and also erred in not considering that invoice of M/s. R.K. Enterprises, Faridabad was defaced by the proper officer himself.

6. We are unable to hold that the questions proposed are substantial questions of law. As regards review, it is not the case of the appellant that on review, original order has been changed. Thus, filing of review has not resulted in any prejudice to the appellant. Question (a) is not a substantial question of law. Plea of limitation is not shown to have been raised before the Tribunal. Thus, Questions (b) and (c) cannot be held to arise from the order of Tribunal. Questions (d) and (e) relate to a question of fact about the invoice being genuine or otherwise and are not substantial questions of law.

7. In view of above, no substantial question of law arises.

8. In case of M/s. Vijay Metal Works, CEA No. 122 of 2010, the matter has been

merely remanded and thus, the appellant will have opportunity to put forward its view point on the issue remanded before the adjudicating authority. The question raised in this regard cannot be held to be substantial question of law.

9. As a result, both the appeals are dismissed.