

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CEA 37/2019 (O&M)
Date of decision:19.09.2019**

Commissioner of CGST,Gurugram

.....Appellant

v.

Rico Auto Industries Limited

.....Respondent

**Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra**

Present:- Mr.Anshuman Chopra,Sr.Standing Counsel for the
appellant.

Jaswant Singh,J.

Respondent-Company is engaged in manufacturing of motor vehicle parts, accessories,moulds and dies. Out of the dies so manufactured it was found that they cleared 11 dies valued Rs.78,63,225/- under Rule 4(5) (a) of Cenvat Credit Rules 2002/2004 under challans to the job workers without payment of duty during 1.4.2006 to 30.11.2006 and the details of said dies were submitted on 7.2.2007. From the details of dies so removed during said period, it appeared that while 5 dies had been sent to M/s MRA Metal Pvt.Ltd.,Sonapat and one die to M/s Shri Laxmi Metal Castings Pvt.Ltd.Gurgaon. On further investigations,it was found that M/s MRA Metal Pvt.Ltd.,Sonapat had sent back the dies to the assessee. During visit to the premises of M/s MRA Metal Pvt.Ltd., 10 dies/tools valued at Rs.41,50,000/- found to have been received from the

assessee without payment of duty were seized by the officers of the Central Excise, Kundli Division. On 23.3.2007 the seized goods were released to the assessee after their furnishing a Bond for Rs.41.50 lacs and a Bank Guarantee of Rs.40,000/-. The assessee vide their letter dated 7.2.2007 submitted details of 34 dies valued at Rs.2,48,55,355/- which were sent without payment of duty under Rule 57F(2) during the period from 2002-03 to December 2006 and 32 dies valued at Rs.2,11,63,572/- also sent without payment of duty on returnable Gate Passes during the period from 2002 to 31.3.2007. The total value of 66 dies so sent without payment of duty comes to Rs.4,60,18,927/-. Accordingly, a show cause notice dated 17.9.2007 was issued to the party for confiscating seized goods valued at Rs.41,50,000/- under Rule 25 of the Central Excise Rules, 2002 and demanding the duty amounting to Rs.75,10,289/- under provision to Section 11-A of the Central Excise Act, 1944 alongwith interest and penalty.

The Adjudicating Authority vide Order-in-Original dated 29.8.2008 ordered confiscation of seized goods valued at Rs.41.50 lacs for aforesaid contraventions. However, since seized goods had been released provisionally against Bond/Bank Guarantee, therefore fine of Rs.10 lacs was imposed. Further demand of duty amounting to Rs.75,10,289/- was confirmed by invoking extended period under the proviso thereof alongwith penalty equal to the duty amount of Rs.75,10,289/-. Interest at applicable rate was also imposed.

Aggrieved against the said Order-in-Original respondent-company filed an appeal before CESTAT. The said appeal was

allowed by CESTAT vide order dated 26.3.2018. Hence the present appeal wherein following substantial questions of law have been raised:-

(A) Whether the observations and findings contained in the impugned judgment are perverse contrary to law and to record and thus are liable to be set aside?

(B) Whether the findings contained in the impugned judgments are based on conjectures and surmises and the Tribunal has failed to take into consideration the evidence and the law in this case?

(C) Whether the observations and findings to the effect that it is a case of revenue neutrality are perverse contrary to law and to record and are liable to be set aside?

(D) Whether the Tribunal has failed to take into consideration that the respondents were availing the benefit of notification deliberately and are guilty of suppressing the material facts?

(E) Whether the order passed by the Tribunal is non-speaking?

At the time of hearing, learned counsel for the appellant admits that in view of the instructions dated 22.8.2019 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell) the instant appeal would not be maintainable before this Court as the demand amount i.e. Rs.75,10,289/- is to be recovered, which is below the monetary limit of Rs.1 crore.

In view of the said instructions dated 22.8.2019, learned counsel for the appellant prays for withdrawal of the instant appeal, however the question of law raised would remain open.

Dismissed as withdrawn with liberty aforesaid.

Since the appeal stands dismissed as withdrawn, no orders are required to be passed in the application seeking condonation of delay.

**(Jaswant Singh)
Judge**

19.09.2019.
joshi

**(Lalit Batra)
Judge**

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| Whether Speaking/reasoned | Yes/No |
| Whether Reportable | Yes/No |