

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 39 of 2015 (O&M)

Date of Decision: 5.10.2015

Commissioner of Central Excise and Service Tax, Ludhiana

...Appellant

Versus

M/s Anand Founders & Engineers, Bhandari Gate, Batala

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Ms. Ranjana Shahi, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 239 days in refiling the appeal is condoned.
2. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 7.2.2014 (Annexure A-1) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial question of law:-

Whether the Hon'ble Tribunal is justified in rejecting the appeal of the department without discussing the arguments put forth and the relevant provisions of law

regarding maintenance of records?

3. A few facts relevant for disposal of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacture of CI Pipes and fittings. On 16.7.2008, the preventive staff of Commissionerate conducted search of the factory premises of the respondent on receipt of a specific information that the assessee is involved in the clandestine removal of excisable goods. At the time of search, Shri Kamal Kant, Proprietor of the respondent was present in the factory. No record was found in the said premises and on enquiry from Shri Kamal Kant, it was stated that the records have been temporarily shifted to the office of their adjoining family concern M/s Adhunik Industrial Corporation, Batala due to repair work. Thereafter, the physical verification of the stock of raw material and finished goods of the assessee was conducted. As a result thereof, 239.945 MT of inputs, i.e., pig iron and 133 MT of the finished products involving central excise duty of ₹ 16,00,306/- was found short. Accordingly, the stock verification report was prepared on the spot which was signed by the Panches and Shri Kamal Kant. As per the revenue, Shri Kamal Kant in his statement dated 16.7.2008 stated that they were engaged in the manufacture of goods under the brand name Anand only which was unregistered brand name and prior to 2007-08, they were also engaged in the trading of pig iron and pipes which had since been stopped last year. They were engaged in the manufacture of CI Castings, pipes and fittings, manhole covers etc. and sell the same to the contractors, builders and their family units, namely, M/s Adhunik Enterprises, Chandigarh, M/s Madan Steels, Batala and M/s Narindra Enterprises, Batala. They had not maintained any stock register of finished goods

and the production was recorded in the raw material register which was also not entered from 4.6.2008 to till the date of search. The production was recorded by weight whereas in the sale invoices, the goods were sold by numbers without indicating the weight of the finished goods. Shri Kamal Kant accepted the quantum of shortage and its value and debited an amount of ₹ 16,00,306/- voluntarily vide RG 23A Part-II entry dated 16.7.2008. Accordingly, a show cause notice dated 6.7.2009 was issued to the assessee. The adjudicating authority vide order dated 13.8.2010 confirmed the demand of ₹ 16,00,306/- under Section 11A of the Act and also imposed penalty of equal amount under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the CENVAT Credit Rules, 2004. Feeling aggrieved, the assessee filed an appeal before the Commissioner (Appeals) who vide order dated 26.12.2012 allowed the appeal and set aside the order of the adjudicating authority. Being dissatisfied, the department filed an appeal before the Tribunal. The Tribunal vide order dated 7.2.2014 (Annexure A-1) affirmed the order of the Commissioner (Appeals) and rejected the appeal. Hence, the present appeal.

4. Learned counsel for the appellant submitted that the Tribunal has dismissed the appeal of the department without discussing the arguments raised by the department and the provisions of law regarding maintenance of records.

5. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

6. The Commissioner (Appeals) set aside the findings of the clandestine removal of the goods recorded by the adjudicating authority by holding that the assessee's record which were admittedly lying in the

adjoining sister concern M/s Adhunik Industrial Corporation were not scrutinized. Further, it was held that the assessee had clarified the stock position vide letter dated 9.8.2008 which was rejected summarily as an after-thought without making the verifications. Shri Kamal Kant in his statement has admitted only shortages and not the fact of clandestine removal and there was no evidence to show the clandestine activities as no further investigation was conducted to establish the identity of the buyers or the suppliers of the raw-materials. The adjudicating authority had mentioned that the production was recorded by weight but in the sale invoices, the goods were sold by numbers without indicating the weight of the finished goods but nothing was proved that how the stock position was verified regarding sale invoices which only showed numbers without giving their weight. Accordingly, the Commissioner (Appeals) extending the benefit of doubt to the assessee had set aside the order passed by the adjudicating authority. The aforesaid findings of the Commissioner (Appeals) were affirmed by the Tribunal by observing that there was no other evidence on record to prove the clandestine activities of the assessee as the revenue has not conducted further investigations to establish the identity of the buyers or the suppliers of the raw-materials or the transporters. Further, it was held by the Tribunal that mere shortages detected at the time of visit of the officers cannot *ipso facto* lead to the allegations and findings of clandestine removal. The relevant findings recorded by the Tribunal read thus:-

“7. The Revenue has again reiterated the same stand that as shortages detected at the time of visit of the officers, which has to be held that the respondents had cleared their final product in a clandestine

manner. Admittedly, there is no other evidence on record so as to relate to the clandestine activities of the assessee. The Commissioner (Appeals) has rightly relied upon the various decisions of the Tribunal including the decision in the case of Jai Timber Company Vs. CCE&C, Bhopal [2009 (234) ELT 457 (Tib.-All)] and has rightly concluded that mere shortages detected at the time of visit of the officers cannot ipso facto lead to the allegations and findings of clandestine removal.”

7. No illegality or perversity could be pointed out in the aforesaid findings of fact recorded by the Commissioner (Appeals) as well as the Tribunal which may warrant interference by this Court. Accordingly, no substantial question of law arises in this appeal.

8. In view of the above, there is no merit in the instant appeal and the same is hereby dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

October 5, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**