

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CEA No. 79 of 2013
Date of Decision : 29.11.2014.

M/s Barodia Plastics Private Limited ...Appellant

Versus

Commissioner of Central Excise and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate for the respondents.

Rajive Bhalla, J.(Oral)

By way of this order, we shall decide CEA Nos. 78 and 79 of 2013 (M/s Barodia Plastics Private Limited Vs. Commissioner of Central Excise and Another). For the sake of convenience, facts are being taken from CEA No. 79 of 2013.

Counsel for the appellant submits that as admittedly there was a fire in the appellant's factory leading to destruction of plant, machinery, raw material, material in process of manufacturing and finished goods, the appellant lodged an FIR as well as filed a claim before the insurance company. The appellant also filed an application for remission from payment of excise duty but the application was rejected. The appellant thereafter filed an appeal which was dismissed vide order dated 27.12.2009 (Annexure P-1) by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') by refusing to consider letter received from the insurance company verifying the accidental fire and affirming that the appellant's

claim had been accepted. The Tribunal has held that as the letter does not disclose whether the Insurance Claim includes the element of duty, the appellant's prayer for remission cannot be accepted. Counsel for the appellant submits that consideration by the Tribunal is perverse and arbitrary as insurance companies do not insure against liability to pay excise duty. It is prayed that as the appellant has placed relevant material to prove an accidental fire and the insurance claim has been accepted by the insurance company, the Tribunal may be directed to re-examine the letter and other material that proves loss on account of an accidental fire.

Counsel for the respondent is not in a position to deny that the insurance claim was accepted by the insurance company but states that it was for the appellant to prove that the insurance claim did not include the element of duty. The Tribunal was, therefore, justified in dismissing the appeal.

We have heard counsel for the parties and perused the impugned order.

The appellant approached the Commissioner, Central Excise for remission of duty on the ground that his plant, machinery, stock, goods in process of manufacturing and manufactured goods have been destroyed in an accidental fire. In support of plea, the appellant placed reliance upon the FIR, a letter received from the insurance company accepting its claim or other relevant materials. The Commissioner, however, for reasons, which are not germane for deciding the issue, rejected the claim. Aggrieved by the said order, the appellant filed an appeal. The Tribunal has dismissed the appeal by holding as follows :-

"5. I have considered the rival submissions and have perused the records. One of the basic requirement for permitting remission of duty on the finished goods lost in

some accident is that the insurance claim amount received from the insurance company for the goods lost does not include the element of duty. I find that in this regard, the insurance company's letter does not give any clarification. The copy of the insurance claim submitted by the appellant to the insurance company is also not available on record, since the appellant have claimed remission of duty on the goods lost in the fire accident, it is for them to prove that the insurance claim amount received by them from the insurance company for the goods lost does not include the element of duty, but they have not placed on record any evidence on this point. In view of this, there is no infirmity in the impugned order. The appeal is therefore dismissed."

A perusal of the above extract reveals a consideration which is neither logical nor founded in law as insurance companies do not provide insurance against payment of taxes much less payment of excise duty. The finding recorded by the Tribunal that the appellant has not proved that the insurance claim does not include excise duty, is in our considered opinion perverse and, therefore, could not form the basis for dismissing the appeal. The appellant having placed the letter issued by the insurance company before the Tribunal and having filed relevant documents before this Court, it would be appropriate and in the interest of justice to allow the appeal, set-aside the order passed by the Tribunal and remit the matter to the Tribunal for adjudication afresh and in accordance with law.

Parties are directed to appear before the Tribunal on 12.01.2015.

(RAJIVE BHALLA)
JUDGE

(B.S. WALIA)
JUDGE

November 29, 2014.
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