

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

212

CEA-166-2010(O&M)

Date of decision: 09.01.2023

COMMISSIONER OF CENTRAL EXCISE

.... Appellant

Versus

M/S PEE JAY INTERNATIONAL LTD.

.... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present : Mr. Anshuman Chopra, Sr. Standing counsel and
Mr. Deepak Kakkar, Advocate for the appellant.

Mr. Amar Pratap Singh and Mr. Ankit Awal, Advocates
for the respondent.

RITU BAHRI, J. (oral)

This appeal has been filed against the order dated 26.11.2009 passed by the Customs Excise and Service Tax Appellate Tribunal (for short-the Tribunal), New Delhi (Annexure A-3) whereby, the appeal filed by the appellant has been dismissed. The Revenue had gone into appeal against the order dated 01.12.2003 passed by the Commissioner Central Excise, Ludhiana (Annexure A-2) whereby, they had disallowed the credit of Rs.44,09,228/- for recovery from the assessee under Rule 57I(1)(ii) of the Rules and rest of the claim of Rs.3,64,62,568/- was dropped. Feeling aggrieved by the same, they had gone into appeal before the Tribunal and the Tribunal had dismissed the appeal of the Customs Excise department.

Counsel for the parties have stated that with respect to appeal filed by the assessee against the order dated 01.12.2003 (Annexure A-2) whereby,

Rs.44,09,228/- penalty was upheld against the assessee, they filed an appeal before the Customs Excise and Service Tax Tribunal which was allowed on 01.03.2005 and this order was challenged by the Excise by filing a CEA No.187 of 2005 before this Court and the appeal was dismissed by the Division Bench of this Court on 21.04.2010 and even the SLP filed against the said order had also been dismissed on 04.03.2011.

So, as far as the assessee is concerned, there is no claim pending against him and even the order of Rs.44,09,228/- has been set aside and upheld till Supreme Court. Now only question for consideration is *“whether the order dated 01.12.2003 (Annexure A-2) whereby, amount of Rs. 3,64,62,568/- was dropped and appeal of the department was also dismissed vide order dated 26.11.2009 (Annexure A-3) requires interference by this Court”*.

Heard learned counsel for the parties at length.

A perusal of the order passed in CEA No.187 of 2005 shows that the appeal of the Excise Department was dismissed by observing as under:-

“We do not find that any question much less substantial question of law is involved in the present appeal. The dispute raised by Revenue is purely of fact and no substantial question of law is involved. As per Revenue, the assessee has availed credit without actually receiving and utilizing the inputs for final product whereas as per assessee, they had actually received the material and utilized the same in the manufacture of their finished goods. The Revenue is relying upon various statements and samples drawn during the course of search. On analysis of

evidence on record, the Tribunal has categorically found that samples and statements of buyers do not prove beyond doubt that material has not been received, rather observations of the learned Commissioner and documentary evidence prove that material was actually utilized by the assessee for manufacturing of final product."

The ground for dismissal of the appeal filed by the Excise was that there was no substantial question of law which was involved in examining the entire order and this fact has been upheld by the Supreme Court. The question of fact cannot be looked into by this Court now as the disputed question has already been dealt with by the Division Bench of this Court in case bearing No.CEA-187-2005 decided on 21.04.2010 by passing a detailed order, against which the SLP No. CC-3604/2011 titled as *Commr. Of Cen. Exc. Ludhiana vs. M/s Pee Jay International and Ors*, decided on 04.03.2011, was also dismissed.

In view of the above, the present appeal is also dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

09.01.2023

Jyoti-IV

Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No