IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 104 of 2014 (O&M)

Date of Decision: 27.8.2015

M/s Steel Mongers (I) Pvt. Ltd., Faridabad

....Appellant.

Versus

Commissioner of Central Excise, Chandigarh

...Respondent.

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

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?

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

Mr. Sukhdev Sharma, Advocate and
Mr. Sunish Bindlish, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing CEA Nos. 104 and 105 of 2014 as according to the learned counsel for the parties, identical questions of law are involved therein. For brevity, the facts are being taken from CEA No. 104 of 2014.

2. This appeal has been filed by the assessee under Section 35G of the Central Excise Act, 1944 (in short “the Act”) against the order dated 6.8.2014 (Annexure A-1) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”) in Excise Appeal No. E-1655/2011 claiming the following

substantial questions of law:-

a) Whether penalty is sustainable upon a dealer when demand of duty stands dropped?

b) Whether penalty can be imposed for abetment when main party is held not guilty?

c) Whether 100% penalty upon a dealer is justified in view of decision of this Hon'ble Court?

3. Briefly stated, the facts of the case as narrated in the appeal are that the assessee is engaged in the business of trading of iron and steel products. It issued cenvatable invoices to M/s Swastik Steel Corporation during the month of March, 2004 who was registered as a second stage dealer issued invoices to M/s JCBL Ltd. The Assistant Commissioner of Central Excise, Derabassi issued a notice dated 2.4.2008 to the appellant to show case as to why penalty under Sections 25 and 26 of the Central Excise Rules, 2002 (for brevity "the Rules") be not imposed. The appellant filed reply to the said show cause notice pleading that the penalty could not be issued on the basis of one statement. The buyer had accepted receipt of goods and the payment was received through cheque. The adjudicating authority vide order dated 18.12.2009 (Annexure A-2) confirmed demand of ₹ 3,35,904/- against M/s JCBL Ltd. as well as the appellant, M/s Swastik Steel Corporation and M/s Khemka Ispat Ltd. Feeling aggrieved, they filed an appeal before the Commissioner (Appeals). M/s JCBL Ltd. challenged the demand as well as penalty whereas the appellant challenged the levy of penalty. The Commissioner (Appeals) vide order dated 23.5.2011 (Annexure A-3) upheld the order of the adjudicating authority and rejected the appeal. Being dissatisfied, the appellant filed an appeal on

28.6.2011 (Annexure A-4) before the Tribunal. M/s JCBL Ltd. also filed an appeal against the order, Annexure A-3. The Tribunal vide order dated 25.4.2014 (Annexure A-5) allowed the appeals filed by M/s JCBL Ltd. and M/s Swastik Steel Corporation. On coming to know about the said order, Annexure A-5, the appellant filed written submissions dated 30.6.2014 (Annexure A-6) on 2.7.2014. The Tribunal vide order dated 6.8.2014 upheld the levy of penalty upon the appellant and dismissed the appeal. Hence, the present appeal.

4. We have heard the learned counsel for the parties.

5. Learned counsel for the appellant submitted that the duty demand and penalty in the case of main assessee has already been dropped and, therefore, in view of the judgment in **Commissioner of Central Excise, Chandigarh-I v. Mini Steel Traders, 2014 (309) ELT 404 (P&H),** the matter requires to be sent back. It was urged that the decision of the main assessee was brought to the notice of the Tribunal by filing an application dated 30.6.2014 (Annexure A-6) as the arguments were heard on 28.10.2013 and the judgment was reserved. However, the Tribunal without referring to the same vide order dated 6.8.2014 (Annexure A-1) dismissed the appeal.

6. On the other hand, learned counsel for the revenue referred to the judgment in **Vee Kay Enterprises v. Commissioner of Central Excise 2011 (266) ELT 436 (P&H)**.

7. In view of the fact that the order demanding duty and penalty in the case of the main assessee has been set aside and this fact was brought to the notice of the Tribunal and the same has not been dealt with, it would be appropriate to remand the matter back to the Tribunal. Accordingly, the order dated 6.8.2014 (Annexure A-1) is set

aside and the matter is remitted to the Tribunal to decide afresh after hearing arguments of the respective parties. The appeals stand disposed of.

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2015
gbs

(RAMENDRA JAIN)
JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 105 of 2014 (O&M)

Date of Decision: 27.8.2015

M/s Steel Mongers (I) Pvt. Ltd., Faridabad

....Appellant.

Versus

Commissioner of Central Excise, Chandigarh

...Respondent.

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

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

Mr. Sukhdev Sharma, Advocate and
Mr. Sunish Bindlish, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

For orders, see **CEA No. 104 of 2014 (M/s Steel Mongers (I) Pvt. Ltd., Faridabad v. Commissioner of Central Excise, Chandigarh)**.

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**