

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 6 of 2015 (O&M)

Date of Decision: 1.9.2015

Commissioner of Central Excise, Ludhiana

....Appellant.

Versus

Ghansham Bassi

...Respondent.

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

PRESENT: Mr. Sunish Bindlish, Advocate for the appellant.

Mr. Sudeep Singh, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 80 days in filing the appeal is condoned.
2. This order shall dispose of two appeals bearing CEA Nos. 6 and 7 of 2015 as according to the learned counsel for the parties, the issue involved in these cases is identical. For brevity, the facts are being extracted from CEA No. 6 of 2015.
3. 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 5.3.2014 (Annexure A-4) 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?"

4. The facts, in short, necessary for adjudication of the instant appeal as narrated therein are that M/s Moonlight Auto (P) Ltd. manufacturer of auto components was visited by the Central Excise Headquarters, Preventive Staff on 8.12.2005. During physical verification, it was found that the party was suppressing its actual production and was secretly removing the finished goods. The preventive staff detected shortage of raw materials, i.e. C.R. Sheets/H.R. Sheets and scrap of 108.817 MT and 12.185 MT respectively. Further, a parallel record of production was detected while scrutinizing data of one of the computers. On comparison of the said record with RG.1 register maintained by the assessee, it was revealed that from the raw material found short, excess production of various finished goods, viz. (i) Jack Assembly Scorpio 10700 Pcs, (ii) Jack Assembly Panther 7900 Pcs (iii) Paddle Assembly 9650 Pcs and (iv) Scrap 12.185 MT was done which were removed from the factory without payment of central excise duty. Accordingly, a show cause notice dated 13.11.2006 (Annexure A-1) was issued to the company for the payment of duty to the tune of ₹ 20,65,497/- (₹ 20,24,997/- as BED plus ₹ 40,500/- as Education Cess) and for imposition of penalty under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (for brevity "the Rules"). In addition, the respondent-director was required to show cause as to why penal action under Rule 26 of the 2002 Rules be not taken against him. The adjudicating authority vide order dated 20.2.2007 (Annexure A-2) confirmed the demand of ₹ 20,65,497/- and also imposed the penalty of equal amount under Section 11AC of the Act read with Rule 25 of the Rules on the company. Besides penalty of ₹ 20,65,497/- was imposed under Rule 26 of the 2002 Rules on Shri Ghansham Bassi-respondent

director of the company. Feeling aggrieved, the company and the respondent-director filed appeals before the Commissioner (Appeals) who vide order dated 12.9.2007 (Annexure A-3) allowed the appeals and set aside the order of the adjudicating authority. Being dissatisfied, the revenue filed appeals before the Tribunal. The Tribunal vide order dated 5.3.2014 (Annexure A-4) dismissed the appeals filed by the revenue. Hence, the present appeals.

5. We have heard learned counsel for the parties.

6. Learned counsel for the revenue submitted that the Tribunal has wrongly rejected the appeals of the revenue without considering the arguments raised by the department and relevant provisions of law regarding maintenance of record.

7. On the other hand, learned counsel for the assessee supported the order passed by the Tribunal and prayed for dismissal of the appeals.

8. As noticed earlier, the revenue issued a show notice dated 13.11.2006 (Annexure A-1) to the company for the payment of duty to the tune of ₹ 20,65,497/- (₹ 20,24,997/- as BED plus ₹ 40,500/- as Education Cess) and for imposition of penalty under Section 11AC of the Act read with Rule 25 of the Rules. In addition, the respondent-director was required to show cause as to why penal action under Rule 26 of the 2002 Rules be not taken against him. The adjudicating authority vide order dated 20.2.2007 (Annexure A-2) confirmed the demand of ₹ 20,65,497/- and also imposed the penalty of equal amount under Section 11AC of the Act read with Rule 25 of the Rules on the company. Besides penalty of ₹ 20,65,497/- was imposed under Rule 26 of the 2002 Rules on Shri Ghansham Bassi-respondent director of the company.

Feeling aggrieved, the company and the respondent-director filed appeals before the Commissioner (Appeals) who vide order dated 12.9.2007 (Annexure A-3) allowed the appeals and set aside the order of the adjudicating authority. Being dissatisfied, the revenue filed appeals before the Tribunal. The Tribunal vide order dated 5.3.2014 (Annexure A-4) dismissed the appeals filed by the revenue. The Tribunal had only recorded that the Commissioner (Appeals) had passed a detailed order by taking into consideration various precedent decisions of the Tribunal as also the provisions of Section 36B of the Act and also found that there was no evidence of clandestine removal. The charges of clandestine activities and removal of goods thereof are required to be adjudicated on the basis of appreciating factual matrix by giving sufficient and cogent reasons. A perusal of the order of the Tribunal more particularly para 8 thereof shows that no legally justified reasons have been recorded for rejecting the appeals of the revenue. The Tribunal being final fact finding authority was required to deal with all aspects of facts and law before recording its conclusions based thereon.

9. In view of the above, the matter requires to be remanded. Accordingly, the appeals are allowed and the order dated 5.3.2014 (Annexure A-4) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to decide the same afresh after affording an opportunity of hearing to the parties in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

September 1, 2015
gbs

(RAMENDRA JAIN)
JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 7 of 2015 (O&M)

Date of Decision: 1.9.2015

Commissioner of Central Excise, Ludhiana

....Appellant.

Versus

M/s Moonlight Auto (P) Ltd., Ludhiana

...Respondent.

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

PRESENT: Mr. Sunish Bindlish, Advocate for the appellant.

Mr. Sudeep Singh, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 77 days in re-filing the appeal is condoned.
2. For orders, see **CEA No. 6 of 2015 (Commissioner of Central Excise, Ludhiana v. Ghansham Bassi)**.

**(AJAY KUMAR MITTAL)
JUDGE**

September 1, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**