IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Central Excise Appeal No. 34 of 2005 (O&M)
Date of decision: 4.8.2016

Commissioner, Central Excise Commissionerate
.. Appellant

v.

M/s Euro Cotspin Ltd.
.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Amit Goyal, Advocate for the appellant.
Mr. Jagmohan Bansal, Advocate for the respondent.

...

Rajesh Bindal J.

The present appeal has been filed by the revenue raising the following substantial question of law arising out of the order dated 9.10.2003, passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal'):

> "Whether the Tribunal is justified in holding that "Para 9.9 (a) of the policy provides that unless specifically prohibited in the LOP/LOI, rejects may be sold in the Domestic Tariff Area on the basis of records maintained by the unit and on prior intimation to the Customs Authority" and that "only sale of rejects above 5% of the FOB value of exports shall be counted against DTA sales", when the facts and law is otherwise?"

At the very out-set, learned counsel for the respondent submitted that assets of the respondent-company were taken by the financial institution. The same have been sold. Presently, the company may be existing only on papers. While referring to an order passed by Hon'ble the Supreme Court in Civil Appeal Nos. 4479-4488 of 2008—Commissioner of Central Excise, Nagpur v. M/s Vidarbha Veneer Industries Ltd. and others, decided on 18.7.2016, he submitted that when nothing is available with the respondent-company now, even if the appeal filed by the revenue is decided in its favour, recovery will not be possible, hence, there is no need to go into the merits of the case.

After hearing learned counsel for the parties and considering the submissions made by learned counsel for the respondent, we do not find it appropriate to go into the issue raised by the revenue in the present appeal, as the assets of the respondent-company have already been taken over by the financial institution and sold out.

Accordingly, the appeal is dismissed, leaving the question of law open. However, in case the stand taken by the counsel for the respondent is found to be incorrect, the revenue shall be entitled to get the present appeal restored within 3 months.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

4.8.2016
mk

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