IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No.26 of 2015 (O&M)
Date of decision: 16.8.2016

M/s Asian Elevators Pvt. Ltd.

.....Appellant

vs.

Commissioner of Central Excise

....Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

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

Mr. Saurabh Goel, Advocate and
Mr. Amit Goyal, Advocate, for the respondent(s).

Rajesh Bindal, J.

This order will dispose of two Central Excise Appeals bearing C.E.A. No.26 and 27 of 2015, as common question of law and facts are involved therein. However, the facts have been taken from C.E.A. No.26 of 2015.

The assessee has filed the present appeal raising the following substantial question of law:-

> "A) Whether penalty can be imposed on Co-Noticee when main Noticee has availed option of Section 11A (1A) of the Act?
> B) Whether impugned order is sustainable in view of the subsequent decisions?"

The only contention raised by learned counsel for the appellant is that though the Tribunal had set aside the order passed by the Commissioner (Appeals) and remanded back the matter for decision afresh on merits, however, reference has been made to one earlier order passed by the Tribunal deciding the issue in favour of the revenue, whereas there are number of other orders passed by the Tribunal taking the view in favour of the assessee. Once, the matter has been remanded back, the Appellate Authority is required to consider the matter in terms of the correct position in law. The matter was remanded back for consideration in terms of the one order passed by the Tribunal.

On the other hand, learned counsel for the respondent(s) very fairly stated that reference to earlier order passed by the Tribunal was only for the purpose of setting aside the order passed by the Commissioner (Appeals), as he had not considered the issue on merits. While remanding the case, the Tribunal has not restricted the Commissioner (Appeals) to consider only one order referred to in the order. The appeal has been directed to be decided on merits. Stand taken is in conformity with settled principles of law.

After hearing learned counsel for the parties and considering the submission noticed above, in our opinion, the present appeals can be disposed of with the observation that the Commissioner (Appeals) shall consider all the judgments/orders passed by Hon'ble the Supreme Court, High Court or the Tribunal on the issue, which is to be re-decided on merits. It may be clarified that this Court has not expressed any opinion on merits of the controversy.

The appeals are disposed of, accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

16.8.2016
sharmila

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No