NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 81 of 2017

- M/s. Steel Abrasives Industries Ltd. 740-D, Sector-B, Urla Industrial Area, Raipur, District Raipur, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- The Commissioner, Central Excise And Customs, Raipur Commissionerate, Central Excise Building, Dhamtari Road, Tikerapara, Raipur 492001 Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant : Shri Kartik Kurmi, Shri S.B.Sharma and Shri Dharmesh Shrivastava,Advocates.

For Respondent : Shri Vinay Pandey, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board by Manindra Mohan Shrivastava,J.

04/07/2018

In the connected case, TAXC No. 54?2017, following substantial questions of law were framed :

> “(i) On the facts and in the circumstances of the case, did the Tribunal act contrary to the law relying on the statement of the Director of Appellant to decide the appeal against the Appellant herein?
>
> (ii) Is the procedure adopted by the Appellate Tribunal contrary to Section 9D of the Central Excise Act, 1944?
>
> (iii) Did the Tribunal act in accordance with law in upholding the penalty equal to duty under Section

> 11AC of the Central Excise Act, 1944 and the penalty under Rule 25 of the Central Excise Rules 2002?
>
> (iv) Was the demand barred by limitation period of one year under Section 11AC(1) of the Central Excise Act, 1944?
>
> (v) On the facts and in the circumstances of the case, can the finding rendered by the Tribunal be treated as perverse warranting interference under Section 35 G of th Central Excise Act, 1944 on any ground referable as substantial question of law?"

Vide order dated 20.11.2017 passed in the present case, this appeal was also admitted on those very questions of law which have been framed in TAXC No. 54/2017, referred to above.

2. In the connected TAXC No. 54/2017, as well as in the present appeal, the material basis to record the admission of clandestine removal had been the statement of the Director and certain entries made in the private note books. While the Director's statement in both the cases is of the same person, in the present case note book No.2 to 6 has been taken into consideration to record a finding of clandestine removal. In the connected matter, note book No.1 was taken into consideration tor recording a finding of clandestine removal.

In connected appeal, all the substantial questions of law have been answered in favour of assessee and against the Revenue. For those very reasons, they are also equally applicable in the present appeal, all the substantial questions of law are answered in favour of the assessee and against the Revenue, as the statement of the Director has been held to be inadmissible on account of it being in contravention of mandatory provisions contained in Section 9 D of the Central Excise Act, 1944 and the entries made in the private note books have also been held to be inadmissible on the ground that the author of the said document was not examined, which is the position, obtaining records of the present case also. This appeal is also allowed in the same manner as the connected appeal i.e. TAXC No. 54/2017. The order passed by the Customs, Excise and Service Tax Appellate Tribunal in the present case is also set aside and the order of the Commissioner (Appeals) is restored.

Sd/- Sd/-

(Manindra Mohan Shrivastava) (Rajani Dubey)
Judge Judge

suguna