**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CEA No. 13 of 2016 (O&M)

Date of decision: 11.9.2018

M/s Neelkanth Steel and Agro Industries .. Appellant

vs

The Commissioner of Central Excise and Service Tax, Chandigarh .. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Amit Rawal

Present: Mr. I. P. S. Mangat, Advocate for
Mr. Jatinder Jit Kaur, Advocate, for the petitioner.

Mr. Sourabh Goel, Advocate, for the respondent.

Rajesh Bindal, J.

The assessee has filed the present appeal challenging the order passed by the Customs, Excise and Service Tax Tribunal, New Delhi (for short, 'the Tribunal'), arising out of order dated 29.10.2014, passed in Excise Appeal No. 477 of 2012 (SM), raising the following substantial questions of law:-

> "(i) Whether the impugned orders are contrary to law and facts?
>
> (ii) Whether a penalty can be imposed upon the appellant without there being any specific investigations with respect to 7 invoices in question?
>
> (iii) Whether the reliance of the respondent authorities on the statement of Sh. Sachin Aggarvanshi is good in law specifically when he had appraoched the Hon'ble High Court alleging that the Central Excise

Officers had obtained his signatures on blank papers?

(iv) Whether the denial of the opportunity to cross-examine Sh. Sachin Aggarvanshi, on whose statement the whole case of the respondent authorities is based, is in violation of law as well as principles of natural justice?

(v) Whether it is necessary to impose hundred per cent penalty in the facts and circumstances of the present case?

(vi) Whether the benefit available to the appellant under Section 11AC of the Act can be denied in the present facts and circumstances of the case?”

Learned counsel for the appellant submitted that in the case in hand transactions took place in November, 2005, whereas notice was issued to the petitioner on 2.4.2009 alleging that the appellant had fraudulently taken CENVAT credit on account of goods purchased from M/s Sidh Balak Enterprises. As the notice itself had been issued much beyond the period prescribed in the Central Excise Act, 1944 (for short, 'the Act'), no demand could possibly be raised against the appellant. The appellant had, in fact, himself deposited the amount of duty much prior to the issuance of show cause notice, having come to know that there were certain issues pertaining to claim of CENVAT Credit on the goods purchased from M/s Sidh Balak Enterprises. Once the amount of duty had been paid by the appellant voluntarily, he should not have been burdened with interest and penalty.

He further submitted that the department had itself granted registration to M/s Sidh Balak Enterprises under the Act, hence, the appellant cannot be said to be at fault.

On the other hand, learned counsel for the revenue submitted that if transactions in the case in hand are seen, these were clearly bogus. The goods originated from M/s JAS Casting Private Limited, Rajpura, which were purchased by M/s Sidh Balak Enterprises and thereafter sold to the appellant. There were no godown facility available with M/s Sidh Balak Enterprises and considering the time gap of purchase and sale by him, the transaction was found to be bogus. In fact, the appellant himself realised this fact, hence, deposited the amount of duty. The transactions being fraudulent, interest and penalty has rightly been levied.

After hearing learned counsel for the parties and considering the fact that the transaction of purchase of goods from M/s Sidh Balak Enterprises was accepted to be bogus by the appellant himself, hence, he deposited the duty thereon himself. Under the circumstances, levy of interest and penalty on the appellant does not call for any interference by this Court.

No substantial question of law arises. The appeal is accordingly dismissed.

(Rajesh Bindal)
Judge

11.9.2018
vs

(Amit Rawal)
Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No