IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 41 of 2019

Commissioner of Central Tax .. Appellant
Pune

v/s.

Amforge Industries Ltd. .. Respondents

Mr. Vijay Kantharia a/w Mr. D.B. Deshmukh for the appellant
Mr. Bharat Raichandani I/b UBR Legal for the respondents

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 26th APRIL, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act, 1944 (the Act) challenges the order dated 8th March, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2. The Revenue urges the following question of law for our consideration :-

> *"Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that in absence of any positive evidence of clandestine removal of goods, merely on the strength of the alleged shortages, demand of duty on the charge of*

clandestine removal of goods cannot be sustained ?"

3. The respondent is engaged in Forgings and MV Parts falling under Chapter 73 and 87 of the Central Excise Tariff Act, 1985. The officers of the Revenue visited the respondent's factory and found that the stock declared was much higher than book balance of the Stock. The statement of the respondent's officers also accepted the same. However, the Internal Auditor of the respondent did point out the following facts :-

> *"During the course of production, sometimes some of the items were scraped by the production department without referring to Q.C., these items which were scrapped were shown as good production by production department, and not shown as scrap and reduced from the book stock. This has resulted in inflation of book stock. The reasons for doing this were, (a) production department wanted to show higher production to achieve their target, (b) even where cases for items, which were not approved by Q.C. and which were scrapped, these items were also not reduced from the book stock, thereby resulting in higher book stock. All the above reasons have resulted in the difference between the physical stock and the book stock."*

4. Inspite of the above, show-cause notice was issued alleging

clandestine removal of goods and depositing duty of Rs.1.06 crores along with interest thereon and penalty. The above notice was confirmed by the order dated 3rd August, 2006 of the Commissioner of Central Excise thereby depositing the duty of Rs.1.06 crores and imposing equivalent penalty under Section 11AC of the Act.

5. Being aggrieved, the respondent filed an appeal to the Tribunal. The Tribunal by its impugned order dated 8th March, 2018 referred to the fact that neither there was any physical stock taking done by the Revenue nor any panchanama drawn to record the shortages alleged. Moreover, the Tribunal records that there was no evidence of clandestine removal of goods. Further, the Tribunal also records the fact that the statement made by the Internal Auditor of the respondent did explain the reasons for the shortage. In the above view, the impugned order of the Tribunal places a reliance on the decision of the Punjab and Haryana High Court in ***Nexo Products (India) 2015 – 326 ELT 106*** to take a view that in the absence of any positive evidence, it cannot be said that there is clandestine removal of the goods. Thus, the Tribunal allowed the appeal.

6. Mr. Kantharia, learned Counsel appearing for the appellant –

Revenue states that the impugned order of the Tribunal completely ignored the admission by the executives of the respondent. Thus, this appeal requires admission.

7. We find that the shortage has been explained by the Internal Auditor. No actual stock taking was done and in view thereof, there is no reason to disbelieve the statement of the Internal Auditor. The charge of clandestine removal is a serious charge and must be supported by evidence. This is completely lacking on the present facts. Therefore, the view taken by the Tribunal on the facts before it, is a possible view. Thus, it does not give rise to any substantial question of law. Thus, not entertained.

8. The appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**