

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

CEA 76/2019 (O&M)
Date of decision:22.10.2019.

Principal Commissioner of Central Goods and Service Tax, Ludhiana

.....Appellant

v.

M/s Dharam Steels Tubes Pvt.Ltd.

.....Respondent

**Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra**

Present:- Mr.Tajender K.Joshi,Advocate for the appellant.

Mr.Anurag Sharma,Advocate for
Mr.Jagmohan Bansal,Advocate for the respondent.

Jaswant Singh,J.

Revenue has filed the instant appeal under Section 35G of the Central Excise Act,1944 (for short the Act) assailing the order dated 24.10.2018 (A-3) passed by CESTAT whereby appeal filed by respondent-Company was allowed and Order-in-Original dated 22.3.2017 passed by the Adjudicating Authority was set aside.

In the instant appeal, following substantial questions of law have been raised:-

- i) Whether the impugned final order is sustainable in the eyes of law?
- ii) Whether the impugned order is liable to be set aside on account of perversity?
- iii)Whether the Tribunal is correct in holding, that KCKL is not a dummy firm based on cross examination of a person who had

supplied just one bill to KCKL in a three year period, worth 0.49% of total sale of KCKL amounting to Rs.4,85,18,330/-,when there is no documentary evidence of purchase from a legitimate source,of remaining pipes sold worth Rs.4,60,64,200 by KCKL?

iv)Whether the statement of a person, Late Sh.Ashok Kumar, Assistant Manager of Truck Union of Samana, who is dead, and therefore could not be cross examined, be relied upon by the Revenue especially when the statement corroborates the documentary evidence in the form of GR/Bilties recovered from Punjab ICC barrier that no vehicle had ever been booked by Truck Union of Samana in the name of KCKL and that owners of DST had got printed bilty books in the name of Truck Union of Samana and were using the same for transportation of goods in their own vehicles?

v)Whether the Tribunal is correct in holding that the criteria / parameters laid down in its own decision in case of *Arya Fibres Pvt.Ltd.* for substantiating charge of clandestine clearance by DST is not met when it failed to return any findings on several such parameters produced by the Revenue including (a) seizure of excess stock in factory of DST, (b) recovery of loose slips evidencing clandestine clearances from factory of DST and admission of same by the Director of DST in his statement dated 26.7.2001, (c) manipulation of sale of goods worth Rs.3,78,55,379/- out of total Rs.3,94,89,896/- which were exported out of Punjab (96% of total export) by KCKL and (d) no receipt of any payments in bank account of KCKL for such sale?

vi)Whether the Tribunal is correct in holding that even if the charge of clandestine removal has to be found correct and the clearances on invoices of KCKL are considered to be that of DST, then also clearances of DST remains below the threshold limit of SSI exemption when the fact is that if the clearances made by DST under bills of KCKL are added to the recorded sale of DST then (a) the gross sale of DST shall cross the overall threshold exemption limit of Rs.3.00 Crore during year 2000-01, making them ineligible

to avail SSI exemption for the year 2001-02 and (b) the DST will be required to pay duty during 1998-99 to 200-01 at full rate to the extent clearances done in the name of KCKL are added to its gross sale?

Facts emerging out of averments made in the appeal are that respondent Company is engaged in the manufacture of ERW pipes and had been allegedly indulging in clandestine clearances of manufactured goods under the cover of bills of M/s Kapoor Chand Krishan Lal (for short KCKL), a trading firm and thereby suppressing the value of clearance of excisable goods in order to remain below the exemption limit specified in the small scale exemption notification. On the basis of intelligence premises of the respondent Company were searched on 26.7.2001. On the basis of checking and investigation, besides duty demand, penalty of Rs.80,23,000/- was imposed by the Adjudicating Authority. Aggrieved against the same, respondent Company filed appeal before CESTAT. The CESTAT vide order dated 19.2.2015 set aside the order passed by the Adjudicating Authority and remanded the matter back to the Adjudicating Authority, which again confirmed the demand and penalties vide Order dated 22.3.2017. Respondent Company in second round of litigation challenged the said order dated 22.3.2017 of the Adjudicating Authority before CESTAT. The CESTAT vide Final order dated 24.10.2018 set aside the Order-in-Original dated 22.3.2017 and allowed the appeal with consequential relief. Hence the present appeal.

The appeal is pending hearing.

In the meanwhile CM 21232-CII/2019 has been filed seeking permission to withdraw the appeal. It is averred in the application that Central Board of Indirect Taxes and Customs has issued instruction dated 22.8.2019 and revised the monetary limits for filing appeal before this Court to Rs.1.00 Crore and the said instructions are applicable to pending appeal. It is further averred that office of Commissioner of Central Goods and Service Tax, Mohali has sent instruction to the effect that personal penalty involved in the appeal being Rs.80,23,000/- is below prescribed threshold limit and as such prayer for withdrawal of the appeal.

The application is supported by an affidavit of counsel for the appellant-Revenue.

In view of the averments made in the application, the same is allowed and appeal bearing CEA No.76/2019 is dismissed as withdrawn.

(Jaswant Singh)
Judge

22.10.2019.
joshi

(Lalit Batra)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No