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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-21-2022 (O&M)
Date of Decision: 22.02.2024

Commissioner of Central Excise and Service Tax, Ludhiana
. . . . Appellant

Vs.

M/s Aarti Steels Ltd., Ludhiana
. . . . Respondent

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE VIKAS SURI

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Present: Mr. Sourabh Goel, Sr. Standing Counsel with
Ms. Geetika Sharma, Advocate
Mr. Tej Bahadur, Advocate
for the appellant.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The appellant has preferred this appeal raising following questions as substantial questions of law:

> *"A) Whether CESTAT has erred in not appreciating the suppression of production arisen on calculating annual electricity consumption which shows that there was excess production of excisable goods as compared to the productions reflected in their statutory records.*
>
> *B) Whether electricity consumption can be considered as valid evidence to ascertain the clandestine manufacture of the taxable goods?*
>
> *C) Whether it is correct in ignore facts decoded by the authorised signatory persons of the Respondent when their Director and the Managing Director themselves had mentioned that they are not well versed that day to day working of the factory and accordingly they authorized two other functionaries to depose on their behalf?*

D) Whether positive evidence in the form of voluntary admitted statements supported by corroborative evidences in the form of private records has substantiated the facts that the party have been engaged in less recording of their production?

E) Whether the impugned order passed by the Ld. CESTAT in dismissing the appeal filed by the appellant-department is perverse, illegal and unjust?"

2. This Court finds that the Commissioner had examined all the aforesaid issues and found on facts the claim and demand raised by the Revenue to be without basis. The discretion for reaching to those conclusions have been quoted in the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), and the CESTAT has confirmed the findings of fact arrived at by the Commissioner in the following terms:

"4.4.2 We do not find any reason to differ with the findings and conclusions drawn by the commissioner especially after noting the fact that show cause notice itself acknowledges that there is huge variation in consumption of power per MT of Ingots produced on day to day basis. Revenue has in its appeal not controverted the above finding of facts with any concrete evidence. Hence the issue at two also needs to be decided upholding the findings recorded by the Commissioner in impugned order.

4.5.2 Commissioner is correct in his conclusion that the goods were entered in the production records maintained by the respondents only after quality inspection and clearance. During the period of demand it was for the respondent assessee to determine at which stage the he enters the finished goods in his production records unlike the earlier period when an RG-1 stage was prescribed by the department. There seem to be no error in the approach adopted by the respondent in entering the goods in the production records only after the completion of quality control checks. Undisputedly though production was happening on the national/ public holidays, the goods could not have been entered in the production records awaiting the quality *inspection which would happen on subsequent days. Thus the issue of non recording of production on national/ public holidays is reasonably explained by the respondents and Commissioner found himself in agreement with such explanation. We also do not find anything wrong in it. Hence this issue is also answered in favour of respondents.*

4.6.2 Commissioner has in above quoted para carefully analyzed and compared the production data in the statutory returns/ records and the private records of the respondents. After comparing all the records and returns he finds that production declared by the respondents in the ER- 1 returns is higher than the production recorded in the private records. Nothing has been put forth in the appeal by the revenue that above findings an discussions are incorrect in any way. ER-return is the statutory return prescribed under Central Excise Law. If the total production declared in ER-1 return is higher than that computed production on the basis of private records we do not find any merits in submission made by the revenue, that production in RG-1 register do not tally with private records. Hence the issue on this account is answered in favour of the respondents.

4.7.2 We do not find any reason to differ with the findings recorded by the Commissioner. It may also be pointed out that admissibility of CENVAT Credit is linked to the fact of receipt of duty paid inputs within the manufactory under the cover of duty paying document (viz invoice). In the present case the demand for denial of Cenvat Credit is sought to be made on the basis of consumption, which is contrary to the scheme of Cenvat Credit Rules. Once there is no dispute about the actual receipt of duty paid inputs under the cover of duty paying documents, the Cenvat Credit cannot be denied subsequently by referring to consumption of the same. Hence we do not find any merits in the submissions made in revenue appeal on this account."

3. Thus, all the questions which the appellant has raised in the present appeal, are essentially questions of fact and there is no question of law as such which is required to be adjudicated by this Court.

4. Taking into consideration the concurrent findings of fact, we need not entertain this appeal.
5. Accordingly, the appeal stands ***dismissed***.
6. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(VIKAS SURI)
JUDGE

February 22, 2024
Mohit goyal

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***