
(2011) 01 P&H CK 0049

High Court Of Punjab And Haryana At Chandigarh

Case No: Central Excise Appeal No. 189 of 2010

Commissioner of C.
Ex., Chandigarh-I

APPELLANT

Vs

J.K. Khalsa Steel Pvt.
Ltd.

RESPONDENT

Date of Decision: Jan. 5, 2011

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35G

Citation: (2012) 26 STR 599

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Adarsh Kumar Goel, J.

This appeal has been preferred by the assessee u/s 35G of the Central Excise Act, 1944 against order dated 9-2-2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal") seeking to raise the following substantial question of law :-

"(i) Whether the Tribunal is legally correct in restoring the appeal of the respondent to its original number beyond six months?

(ii) Whether the Tribunal is empowered to recall its own order under the provisions of Central Excise law?"

Against the order-in-original passed by the Commissioner of Central Excise, the respondent-assessee filed an appeal before the Tribunal against levy of penalty which is more than ` 96 lacs. The appeal was dismissed for non-prosecution on 19-5-2009 against

which the assessee filed an application for restoration pointing out the misunderstanding on account of which the assessee could not appear earlier. Satisfied with the explanation, the Tribunal restored the appeal for hearing.

2. We have heard learned counsel for the appellant.

3. Only contention raised on behalf of the appellant is that the Tribunal could not have restored the appeal after expiry of six month from the date of dismissal of the appeal for non-prosecution. In the impugned order no such objection appears to have been raised on behalf of the appellant before the Tribunal in absence of which the plea cannot be raised for the first time before this Court. Moreover, the appellant is unable to give the date on which the application was filed and the date on which the fact of dismissal of appeal for non-prosecution came to the notice of the assessee. Since huge amount was involved, the Tribunal having been satisfied about the bona fides for the non-appearance of the assessee, there is no ground to interfere. No substantial question of law arises. Accordingly, the appeal is dismissed.