(2009) 12 GUJ CK 0063

In the Gujarat High Court

Case No : Tax Appeal No. 39 of 2009

C.C.E. and C. APPELLANT

Vs

Eupec-Welspun Pipe Coatings India Ltd. RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
CENVAT (Credit) Rules, 2004 — Rule 9, 9(2)

Citation : (2010) 260 ELT 381

Hon'ble Judges : Rajesh H Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : Amee Yajnik, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Commissioner of Central Excise and Customs, Vadodara has filed this lax Appeal u/s 35G of the Central Excise Act, 1944 proposing to formulate following substantial question of law for determination and consideration of this Court:

Whether the CENVAT Credit is allowable to the Assessee, especially when the Bills of Entry (B/Es) are not in the name of the Assessee and when the importer is not registered with the Central Excise Authority and the importer has neither issued any invoice containing his own central excise registration number nor the name and central excise registration number of the Assessee in terms of Rule 9 of the Cenvat Credit Rules, 2004?

2. Heard, Ms. Amee Yajnik, learned Standing Counsel, appearing for the Revenue and perused the order of the CESTAT (2009 (235) E.L.T. 347 (Tri.-Ahmd.).). The CESTAT, in its order, has clearly observed after referring to Rule 9(2) of the Central Excise Rules (sic) that, credit shall not be denied on the ground that the document does not contain all the particulars required to be contained under these Rules if the document gives details of payment of duty or Service Tax,

Description of the Goods, Assessable Value, Name and Address of the factory of the receiver.

2.1 The Tribunal has further observed that according to proviso to Rule 9(2), the jurisdictional Assistant Commissioner can allow CENVAT Credit, if he is satisfied that the duty has been paid and goods have been actually used. The Tribunal found, as a matter of fact, that all these details are available except the name and the address of the factory on the bill of entry. The only omission was that instead of endorsing the bill of entry itself in name of the Assessee, the importer has issued separate certificate/declaration. The Tribunal, therefore, took the view that the same has to be considered as part of the bill of entry and both of them cannot be segregated and seen in isolation as done by the Department. The Tribunal, on the basis of these materials on record, took the view that the credit has to be allowed in view of the provisions of Rule 9(2) of the Central Excise Rules (sic).

3. Since, the Tribunal has recorded finding of facts and it is also in consonance with Rule 9(2) of the Central Excise Rules (sic), we are of the view that no substantial question of law arises out of the order of the CESTAT. We, therefore, summarily dismiss this Tax Appeal.

