(2014) 12 GUJ CK 0074

In the Gujarat High Court

Case No : Tax Appeal No. 921 of 2014

Chandan Steel Ltd. APPELLANT

Vs

Commr. of C. Ex. & S.T. RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC, 11AC(2)

Citation : (2015) 316 ELT 573

Hon'ble Judges : V.M. Pancholi, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Paresh M. Dave, Advocates for the Appellant; R.J. Oza, Advocates for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.

1. Appeal is Admitted for consideration of the following substantial question of law.

"Whether an option of paying 25% of penalty imposed on the appellant under Section 11AC of the Central Excise Act was required to be extended to the appellant and whether the orders of the Tribunal declining to extend such option are sustainable in the facts and circumstances of this case?"

As is apparent from the record, the issue pertains to penalty under Section 11AC of the Central Excise Act imposed on the appellant-assessee by the adjudicating authority. As is well known, the penal provision provides for reduction of the penalty to 1/4th if the assessee pays the duty, interest and reduced penalty within 30 days. This aspect even the revenue does not dispute. However, the case of the revenue is that the assessee must exercise such option at the earliest. In the present case, right upto the stage of the Tribunal the assessee did not seek such an option. He in fact litigated and only in application for rectification, when the Tribunal dismissed the appeal, such a prayer was made. On the other hand, the assessee contends that such option ought to have been offered. If not offered, even at a later stage, at the appellate proceedings, such an issue can be raised.

2. It is undoubtedly true that the provision of reduced penalty aims at reduction in the litigation and ensures that an assessee who accepts the duty demand and pays the same with interest within stipulated time would be granted such a benefit of reduced penalty. However, this Court has taken the view in the past, considering the departmental circulars issued from time to time, that such option should be offered. In this context, we notice that in a judgment dated 24-1-2013 passed in Misc. Civil Application No. 11 of 2013 in Tax Appeal No. 963 of 2011 in the case of Commr. of C. Ex. and Cus., Surat-I Vs. Krishnaram Dyeing and Finishing Works, , Division Bench of this Court referred to large number of decisions of this Court and Other High Courts on the issue and held and observed as under :

"14. As can be noted from the decisions mentioned herein above, this Court has followed a consistent view that the assessee is required to be given the option by the adjudicating authority where he is asked to pay a duty demand with interest and 25% of penalty within 30 days from the date of adjudication of the order and in such case, he would be liable to pay only 25% of the penalty. Whenever such option had not been given, the remand had been made to the concerned authorities. And period of 30 days is being considered, if in case option is not given earlier, from the date of availing such option.

15. In the present case also, the remand had been made to the Tribunal and in the order of remand, it was also directed to consider the provision of section 11AC and the Tribunal had had specifically noted that none of the two authorities below had availed any option to the assessee to pay duty demand with interest and penalty of 25% of the duty within 30 days from the date of adjudication, and therefore, the Tribunal in its order impugned maintained that the case of the assessee is squarely covered by the explanation to Section 11AC. The Tribunal also noted that the duty determined under Section 11AC(2) was subsequent to the year 2000 and, therefore, the case would be covered by the explanation to Section 11AC of the Central Excise Act.

When no option was given by any of the adjudicating authorities after determination for payment of duty, interest and penalty of 25% of the duly, what all Tribunal had done, pursuant to the direction in remand order, was to avail option to the respondent assessee and this was in consonance with the ratio laid down by the Court time and again.

Thus, no case is made out by the applicant for reviewing the order in Tax Appeal No. 963 of 2011. Review application, being devoid of merits stands dismissed."

3. We further notice that in large number of appeals where the High Court had taken similar view, the revenue had carried the issue further in appeal before the Supreme Court. Learned counsel, Shri Dave for the appellant placed on record an order dated 25-11-2014 passed by the Supreme Court dismissing all such

appeals. Under the circumstances, we are of the opinion that the assessee would have an option to pay up the entire duty with interest within 30 days, upon which he would avail the benefit of duty, interest and reduced 1/4th penalty. The question is answered accordingly. Judgment of the Tribunal is reversed to that extent. If the appellant deposits before the department unconditionally the entire amount of unpaid duty with interest and 1/4th penalty, the penalty under Section 11AC of the Central Excise Act shall be reduced to such extent. Appeal is allowed and disposed of.