(2000) 02 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 2940 of 1999 with Spl C.A. No. 2941

Chetan Y. Vora APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 209A, 9(2)
Central Excises and Salt Act, 1944 — Section 11A, 11A(1)

Citation : (2000) 70 ECC 173 : (2001) 95 ECR 419

Hon'ble Judges : D.H. Waghela, J;B.C. Patel, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; Akshay H. Mehta, for the Respondent

Judgement

1. These petitions are arising out of one common adjudication order and hence, both these petitions are disposed of by this common judgment.

2. Petitioners who were the directors of the Company known as M/s. V. P. Polycon Ltd., have preferred these applications, being aggrieved by an order made by respondent no. 2 on 15.2.1999, the copy of which is placed on record at pages 66 and 67. By the said order, the application submitted under Kar Vivad Samadhan Scheme (hereinafter referred to as ''the Scheme'') were rejected.

3. Short facts which emerges from records are as under :-

4. M/s. V. P. Polycon Ltd., a Manufacturing Unit was subjected to the proceedings under the Central Excise Act. The officers of the Central Excise in view of information to the effect that the Company was indulging in evasion of Central Excise, carried out the investigation and ultimately on the basis of said investigation, issued Show Cause Notices to (1) the Company (2) Shri Sohanlal, A. Agarwal (3) Shri Chetan Y. Vora and (4) Shri V. D. Shukla (Chartered Accountant). On considering the material the adjudicating authority by an order dtd. 31.3.1997 confirmed the demand of Rs. 32,67,454/- against M/s. V. P.

Polycon Ltd., under the provision of Rule 9(2) of the Central Excise Rule 1944 read with proviso to Section 11(A)(1) of the Central Excise Act 1944, Petitioner of Special Civil Application No. 2940/99 was directed to pay the penalty in the sum of Rs. 5 lacs under Rule 209(a) of the Central Excise Rules 1944, while Shri Sohanlal Agarwal the petitioner of Special Civil Application No. 2941/99 was ordered to pay the penalty of Rs. 10 lacs under the provision of Rule 209(a) of the Central Excise Rules. By the said order, Shri V. D. Shukla was also ordered to pay the penalty of Rs. 10,000/-. Petitioners and said Shri Shukla approached Central Excise & Gold Control Appellate Tribunal, Mumbai by preferring appeals No. E 2798, 2799 and 2800 all of 1998. Alongwith the stay applications, the appeals preferred by these petitioners are pending till this date. Learned advocate appearing for the petitioners submitted that the orders passed by respondent no. 2 are required to be quashed as respondent no. 2 has not applied his mind to the facts of the case and committed an error in rejecting the applications.

5. Respondent no. 2 has rejected the applications on the grounds that, (1) the Company did not file an application for Kar Vivad Samadhan Scheme for payment of Rs. 32,67,454/- and therefore, this scheme cannot be applied for penalty portion only, and (2) there was misdeclaration inasmuch as the amount of duty has been shown as nil in the declarations filed by the applicants.

6. The adjudicating authority after taking into consideration the material on record directed the Company to pay the amount under Rule 9(2) of Central Excise Rules 1944 read with Section 11(A) of the Central Excise Act, 1944. The Company was also ordered to pay the penalty. Petitioners of each petition were Directors and therefore, in that capacity penalty was imposed. It is required to be noted that, in the instant case, Mr. Shukla who was also held liable to pay penalty moved an application, under the Scheme on the same grounds which were accepted by respondent no. 2. The copy of the order made under the scheme accepting the application of Shri Shukla is placed on record at page 62 in form-2B. It is clear that the declaration of Mr. Shukla was accepted in respect of an order in original, by which the present petitioners were also required to pay the amount of penalty. Respondent no. 2, by accepting the declaration submitted by Mr. Shukla, determined the amount as payable u/s 88(1) of the Finance No. 2 Act 1998 and held that said Mr. Shukla is liable to pay the sum of Rs. 5,000/- within 30 days from the date of certificate against the penalty of Rs. 10,000/- imposed in order in original. Thus, we fail to understand how the respondent no. 2 has rejected the applications under the scheme submitted by petitioners when he has accepted the application submitted by Mr. Shukla. Nothing is pointed out to us to show that the application could have been rejected on the ground that the provision contained in the scheme are not attracted in case of a penalty. The word "tax arrear" for the present case as found in Section 87(m) reads as under :

"(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration u/s 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject matter of a demand notice or a show cause notice issued on or before the 31st day of March, 1998 under that enactment but remaining unpaid on the date of making a declaration u/s 88, but does not include any demand relating to erroneous refund and where a show cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrears shall not include the duties on such seized goods have not been quantified."

7. Thus, reading the aforesaid provision, it is clear that the amount of penalty is also included and in that view of matter, the respondent no. 2 was not right in rejecting the application. In our opinion, when the penalty is the subject matter, the provision would be attracted, and the case falls within the purview of the word "tax arrear". In the instant case from the facts narrated hereinabove, it is clear that so far as the petitioners are concerned, it can be definitely said that they were liable to pay the penalty and therefore covered by Clause (m) of Section 87 of the Scheme. It is required to be noted that declaration is required to be filed under this scheme. The declaration may be filed by an individual, a Hindu Undivided Family, Company, Firm and Association of Persons or Body or Individual whether incorporated or not, Local authority and others as mentioned in Clause [k]. For the purpose of settlement of tax, the declaration is required to be filed before the designated authority in accordance with the provision of Section 89 in respect of "tax arrear". So far as the declarant is concerned, there is also definition in Sub Clause (a) of Section 87 which states that declarant means a person making declaration u/s 88. Considering the provision contained in Section 88 and aforesaid definition it leaves no doubt that declarations were filed in respect of "tax arrear", as defined in Clause (m) and that was required to be considered by the respondent no. 2. The second ground for rejecting the application is that there is misdeclaration inasmuch as the amount of duty has been shown as nil in the declaration. The order passed by adjudicating authority makes it clear that so far as the amount of duty is concerned that was not required to be paid by the petitioners herein and liability was fastened on the Company by the adjudicating authority itself. The adjudicating authority held petitioners liable for their act and omission and therefore imposed only penalty on them. Therefore, merely because the petitioners did not disclose the amount of duty payable by them, the application could not have been rejected in the facts and circumstances of the case. If the order would have been (sic) perused, it would have been clear that petitioners are not held liable to pay any duty and only penalty was imposed on them and therefore, in our opinion, the applications are rejected under both the grounds, for no good reasons.

8. On behalf of Revenue Mr. Mehta, learned senior counsel was not in a position to support the order made by respondent no. 2. It is (sic) under these

circumstances, we quash the orders which are at pages 66 and 67 Annexure F collectively and we direct respondent no. 2 to decide the applications afresh and the time as mentioned in Section 90(1) of the Scheme shall be taken from the date of the order passed by this court. The petitions are allowed accordingly, with no order as to costs.

9. Rule made absolute.

