(2014) 12 GUJ CK 0010

In the Gujarat High Court

Case No : Tax Appeal Nos. 1274-1279 of 2014

Commissioner APPELLANT

Vs

Fact Paper Mill Ltd. RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2015) 322 ELT 283

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

Bench : Division Bench

Advocate : Sejal K. Mandavia, Advocate for the Appellant;

Judgement

Akil Abdul Hamid Kureshi, J.

1. These tax appeals are filed by the Revenue calling in question a common judgment of the Customs, Excise and Service Tax Appellate Tribunal (''the Tribunal'' for short) dated 2-2-2012 [2014 (314) E.L.T. 449 (Tribunal)], by which the appeals of the respondents-assessees were allowed. Adjudication orders were reversed. Allegations against the respondents were of clandestine removal of goods without payment of Excise duty. The adjudicating authority relied on several materials including the confessional statement of respondent No. 2. He also placed reliance on the statements of buyers and suppliers of raw materials, etc. He discarded the assessee''s forceful contention that the installed capacity of the factory did not exceed 20 MT per day. The allegations in the show cause notice would require production capacity far in excess thereof. Accordingly, the adjudicating authority confirmed the duty demand with interest and penalties. The Tribunal, however, reversed such orders, inter alia, on the grounds that the confessional statements were duly retracted. The adjudicating authority did not advert to this important development. The installed capacity of the factory did not justify any production far in excess of declared production.

2. Having heard the learned advocate for the Revenue and having perused the record, we do not see any question of law arising. The Tribunal noted that the

confessional statements were retracted by the noticee. He had made statement before the notary and such affidavit was filed before the adjudicating authority at the time of personal hearing and also relied on the reply to the show cause notice. The adjudicating authority did not advert to this retraction but simply relied on such statements. The Tribunal also noted that as per the certificate of the Chartered Accountant, installed capacity of the manufacturing unit was 20 MT per day which would not justify production over and above the declared clearance leading to the belief of clandestine removal.

3. Upon perusal of the order of the adjudicating authority, we notice the fact that retraction of the confessional statement by noticee No. 2 was not even adverted to by the said authority. Whatever be his grievance about such retraction, he had to deal with this development. It has come on record that the affidavit of retraction of the statement was produced during the course of hearing. It can thus be seen that the entire issue is based on appreciation of evidence on record. The Tribunal having given its consideration and come to the factual findings, no question of law arises. Tax appeals are, therefore, dismissed.