(2010) 04 GUJ CK 0017

In the Gujarat High Court

Case No : Tax Appeal No. 984 of 2010

Commissioner APPELLANT

Vs

Ishan Technologies Pvt. Ltd. RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:
Central Excise Rules, 2002 — Rule 26

Citation : (2011) 269 ELT 157

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Sejal K. Mandavia, for the Appellant; P.V. Sheth, for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—After condoning the delay caused in filing the Tax Appeal, as the papers of the Tax Appeal are available with the Court, with the consent of the learned advocates for the parties, the appeal is taken up for hearing today.

2. Appellant-revenue has challenged order dated 24-6-2008 [2008 (232) E.L.T. 497 (Tribunal)] made by the Customs, Excise and Service-tax Appellate Tribunal (the Tribunal), proposing the following question:

Whether the Hon''ble Tribunal was justified in holding that credit can be allowed merely on the ground of the invoices of manufacturer if the goods are not manufactured by him?

3. At the outset the learned Standing Counsel for the appellant-revenue submits that the question as proposed does not arise from the impugned order in relation to the present respondent and seeks permission to re-frame the question proposed. Permission is granted.

4. Heard the learned advocates for the parties.

5. Admit. The following substantial question of law arises for consideration :

Whether the Customs, Excise and Service Tax Appellate Tribunal was justified in setting aside the penalty imposed on the respondent under Rule 26 of the Central Excise Rules, 2002 without recording any findings?

6. The learned Standing Counsel has assailed the impugned order made by the Tribunal submitting that the order is absolutely silent as regards what weighed with the Tribunal while setting aside the penalty imposed on the respondent.

7. Learned advocate for the respondent has submitted that insofar as the question of imposing penalty on the present respondent is concerned, the same is only consequential to the order passed in case of the main respondent i.e. M/s. Manaksia Limited. In the circumstances, it was not necessary for the Tribunal to record independent findings in relation to each of the parties, the Tribunal having passed a consolidated order.

8. As can be seen from the impugned order of the Tribunal, the Tribunal has discussed the facts of the case only in light of the main issue, namely, as to whether M/s. Manaksia Limited was entitled to avail of CENVAT Credit in relation to the Slow Speed Alternator purchased by it from the respondent. In the entire order there is no reference to the penalty imposed upon the present respondent and as to why the adjudicating authority was not justified in imposing the said penalty. While deciding the issue as regards the entitlement of M/s. Manaksia Limited to avail of CENVAT Credit the Tribunal has also set aside the penalty imposed on the present respondent.

9. Thus, insofar as the case of the present respondent is concerned, the impugned order of the Tribunal is totally silent and no reasons are forthcoming as to why the penalty imposed upon the respondent is not justified. It is settled legal position as held by the Apex Court in a catena of decisions that the Tribunal being the final authority on facts, it is incumbent upon it to appreciate the evidence; consider the reasoning of the adjudicating authority and assign its own reasons as to why it disagrees with the reasons and findings given by the adjudicating authority. Unless adequate reasons are given, merely because it is an appellate authority, the Tribunal cannot brush aside the reasoning and findings recorded by the adjudicating authority.

10. In the facts of the present case, in absence of any finding having been recorded by the Tribunal nor any reasons having been assigned as to why the penalty imposed upon the respondent is required to be set aside, it is not possible for this Court to state one way or the other as to whether the Tribunal was justified in setting aside the said penalty. The impugned order of the Tribunal, being a non-speaking order insofar as the case of the present respondent is concerned, cannot be sustained to that extent.

11. In the light of the aforesaid, it is held that in the Tribunal was not justified in setting aside penalty imposed upon the respondent under Rule 26 of the Central Excise Rules, 2002 without assigning any reasons.

12. The appeal is accordingly allowed. The impugned order of the Tribunal is set aside to the extent it sets aside the penalty imposed upon the respondent under Rule 26 of the Rules. Tax Appeal No. E 726 of 2007 filed by (he respondent M/s. Ishan Technologies Private Limited is restored to the file of the Tribunal. The Tribunal shall decide the matter afresh in accordance with law, after giving the parties an opportunity of hearing.

