(2010) 09 GUJ CK 0184

In the Gujarat High Court

Case No : Tax Appeal No. 284 of 2009

Commissioner APPELLANT

Vs

Polycab Wires Pvt. Ltd. RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A(2), 11AB, 11AC, 35G

Citation : (2010) 260 ELT 49

Hon'ble Judges : K.A. Puj, J;H.N. Devani, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

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

(a) Whether in the facts and circumstances of the case, Learned CESTAT is justified in the eye of law to re-calculate the demand of duty & Interest after applying of normal period of limitation, instead of confirmed demand u/s 11A(2) of the Central Excise Act, 1944 & chargeable Interest on the confirmed demand u/s 11AB of the Central Excise Act, 1944, as leviable on the goods supplied by the Respondent to MSEB & WBSEB during the period 2000-01/2001-02?

(b) Whether in the facts and circumstances of the case, Learned CESTAT is justified in the eye of law in set-a-side of the mandatory equal penalty which has been imposed on the Respondent u/s 11AC of the Central Excise Act, 1944?

2. Heard Ms. Amee Yajnik, learned Standing Counsel appearing for the Appellant and perused the orders passed by the authorities below.

3. The brief facts giving rise to the present Tax Appeal are that the Respondent

Assessee is engaged in the manufacture of electric wires and cables falling under Chapter 85 of the Central Excise Tariff Act, 1985. The dispute is in relation of supply of wires to M/s. Maharashtra State Electricity Board (MSEB) and M/s. West Bengal State Electricity Board (WBSEB) by availing the benefit of exemption Notification No. 108/95-C.E.. The said Notification exempts goods supplied to projects which are financed by the World Bank, the Asian Development Bank or any international organisation, subject to fulfillment of conditions enumerated therein. One of the conditions is that duty exemption certificate will be issued from the appropriate officers of the project and countersigned by the Principal Secretary. Such exemption certificate was issued by the Technical Director and empowered officers of MSEB and countersigned by the Principal Secretary to the Government of Maharashtra and the same was produced on record certifying that the said equipments/materials were intended for use by MSEB in the above projects. The said projects were financed by Japan Bank of International Co-operation. It is also mentioned in the said certificate that the same was being issued as per requirement under the Notification No. 108/95-C.E. dated 28th August, 1995. Similar certificates were issued by the West Bengal State Electricity Board signed by Chief Engineer and empowered officer and countersigned by the Principal Secretary from the Department of Power, Government of West Bengal. Based on the said certificates, the Respondent availed the benefit of the Notification, after duly filing classification list. RT-12 returns were also filed, which were assessed by the appropriate officers.

4. Despite these facts, proceedings were initiated against the Respondent by way of issuance of show-cause notice dated 29th April, 2002 alleging that Japan Bank for International Co-operation is not an international organisation in terms of the explanation attached to Notification No. 108/95-C.E. and as such, projects financed by the said Bank are not entitled to duty-free goods and as such, benefit of Notification No. 108/95-C.E. cannot be extended to the Respondent. Accordingly, demand was raised for the period 2000-01 and 2001-02. The said show-cause notice has culminated into the order passed by the Commissioner confirming demand of duty of Rs. 50,96,621/- alongwith interest and imposition of identical amount of personal penalty.

5. This order was challenged in appeal before the Tribunal. Initially, there was difference of opinion amongst the Technical Member as well as the Judicial Member. Therefore, the matter was referred to the third Member. The third Member, vide his order, held that the bona fides of the Respondent could not have been doubted once the certificate was signed by the specified authority who requested the jurisdictional Assistant Commissioner to allow the exemption. The third Member of the Tribunal has also taken note of the fact that the Respondent was supplying to other Government authorities where no such fault was found. It was also noticed that the fact that the Japan Bank of International Co-operation was not an international organisation approved duly in terms of the explanation attached to Notification No. 108/95-C.E. was not readily forthcoming by any

records to which the Respondent had access and, therefore, he was dependent upon the project implementing authority and the Secretary to the State Governments who were in the better know of the facts. It is also observed that the existence of the certificate is not being denied in the show-cause notice and the Order-in-Original. Considering all these facts, the third Member had come to the conclusion that the finding recorded by the Member (Judicial) in respect of issues forming difference of opinion is just and proper and accordingly the directions issued to the effect that the demand of Rs. 50,96,621/- plus interest is to be recalculated applying normal period of limitation and equivalent penalty u/s 11AC on the Respondent Assessee was liable to be set aside 2009 (161) ECR 1 75

6. We have considered the submissions made by Ms. Yajnik and also gone through the orders passed by the authorities below. The Tribunal as a matter of fact found that the there was no suppression of facts and hence, the conditions precedent u/s 11AC for the purpose of levy of penalty are not satisfied and hence, the Tribunal is justified in setting aside the penalty levied u/s 11AC of the Act as well as issuing the direction to recalculate the demand alongwith duty and interest by applying normal period of limitation. We do not find any infirmity in the order passed by the Tribunal nor is there any substantial question of law and hence, we dismiss this appeal.