
(2012) 09 GUJ CK 0155
In the Gujarat High Court
Case No : Tax Appeal No. 1583 of 2011

Commissioner of C. Ex. and Cus., Surat-II	APPELLANT
Vs	
Gujarat Glass Pvt. Ltd.	RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11AC, 35G

Citation : (2013) 290 ELT 538

Hon'ble Judges : V.M. Sahai, J;N.V. Anjaria, J

Bench : Division Bench

Advocate : Gaurang H. Bhatt, for the Appellant; A.P. Nainavati, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Anjaria, J.—The present appeal u/s 35G of the Central Excise Act, 1944 was preferred by the Department against the order dated 15-6-2011 of the Customs, Excise and Service Tax Tribunal, West Zonal Branch, Ahmedabad in Appeal No. E-3485 of 2004.

1.1 The appeal was admitted on the following two questions framed as substantial questions of law.

1. Whether the Tribunal below committed substantial error of law by overlooking the fact that by subsequently bringing the fact of suppression and evasion of duty to the knowledge of the department, the assessee cannot get the benefit of the 1st proviso to section 11A of the Central Excise Act, 1944.

2. Whether the Tribunal committed substantial error of law interpreting the provisions contained in the proviso of section 11A of Central Excise Act, 1949.

We heard learned advocate Mr. Gaurang Bhatt for the Revenue and Mr. A.P. Nainavati, learned advocate for the respondent.

2. The facts lie in a narrow compass. The respondent was engaged in

manufacture of glass bottles and glass vials at their factory situated at Kosamba. It was also manufacturing casting moulds which is a classified item under the Central Excise Tariff Act, 1985. The casting moulds were being utilized for manufacturing of the final product. The Excise authorities found when they visited the factory premises of the respondent on 22-3-2000 that during the period from 14-1-1997 to 26-6-2000, the respondent had clandestinely cleared the excisable goods namely the casting moulds to its sister unit at Jambusar. The respondent assessee admitted its liability and deposited an amount of Rs. 11,54,700/-. In the subsequent investigations the cost of the casting moulds cleared without duty was assessed and on that basis the duty liability to the tune of Rs. 13,17,720/- came to be determined.

2.1 A show cause notice dated 8-10-2002 was received proposing confirmation of demand of duty with interest and also for levy of penalty. The said show cause notice culminated into order dated 26-12-2003 by the adjudicating authority. Therein the excise duty amounting to Rs. 2,23,990/- was confirmed over and above what was already paid by the assessee. Penalty of Rs. 13,78,720/- being the equivalent amount of the total duty assessed was imposed u/s 11AC and the interest was also charged u/s 11AB of the Act.

2.2 It appears that the assessee's previous appeal was allowed by the Tribunal by order dated 1-10-2008 on the point of revenue neutrality and also on the point of limitation. In the appeal preferred by the Department, this court by order dated 23-3-2011 remanded the matter for fresh decision. It is in that background that the Tribunal has rendered the impugned order acting on the remand order.

3. The Tribunal in the impugned order held that there was no positive mis-declaration or suppression on part of the assessee with an intent to evade the payment of duty. The invocation of longer period of limitation u/s 11A was therefore not justified. The Tribunal took into account letter dated 16-3-2000 addressed by the respondent assessee on its own to the competent Central Excise authority.

3.1 That letter read as under:

To The SUPERINTENDENT OF CENTRAL EXCISE DATE: 16-3-2000 3rd FLOOR
SAMMRUDDM BUILDING, NANPURA MAKAIPOOL SURAT RANGE-V, DIV-V

Dear Sir,

Sub; EXCISE DUTY ON PAYMENT ON MOULD CLEARED TO OUR JAMBUSAR PLANT
ON VERIFICATION OF OUR STORES RECORDS, IT WAS NOTICED THAT CERTAIN
MOULDS MANUFACTURED AT OUR WORKSHOP HAVE BEEN CLEARED TO OUR
JAMBUSAR UNIT UNDER OUR CHALLAN WITHOUT PAYMENT OF DUTY. THESE
MOULDS ARE REQUIRED FOR THE PURPOSE OF MANUFACTURE OF GLASS
BOTTLES CLASSIFIABLE UNDER CHAPTER 70 OF THE CENTRAL EXCISE TARIFF
ACT AT OUR JAMBUSAR PLANT.

THESE MOULDS HAVE BEEN USED BY OUR JAMBUSAR UNIT IN THE MANUFACTURE OF GLASS BOTTLES HOWEVER THE DUTY ON THESE MOULDS HAVE NOT BEEN PAID AT THE TIME OF CLEARANCE OF MOULDS FROM THE FACTORY.

WE REQUEST FOR YOUR GUIDANCE IN THIS MATTER

THANK YOU

YOURS FAITHFULLY FOR GUJARAT CLASS LIMITED Sd/- xxx authorized SIGNATORY

4. Having regard to these facts, the Tribunal held:

It is not the case, where such clearances were noticed by the Revenue on their visit of the appellant's factory on 22-3-2000. In fact, it can be reasonably concluded that such visit was the result of disclosure made by the appellant vide their above letter dated 16-3-2000.

4.1 Thus, the assessee voluntarily stated that certain moulds were cleared and duty was not paid thereon. The letter was of 16-3-2000 i.e. prior to the date when the Central Excise officers visited the factory and noticed the clearances of casting moulds without duty. Therefore, the conduct of the assessee was honest and cannot be ascribed with an intention to evade the duty. The Tribunal rightly held that the invocation of extended period of limitation was not approvable.

5. Even otherwise, the entire exercise was to end up in a revenue neutral situation since, admittedly, the goods were cleared by the appellant to its sister concern, which was registered with the Central Excise Department as a separate and distinct unit. In that view, following observations by the Tribunal deserve to be upheld.

In any case, we find that the law on the above issue is no more *res integra* and stands settled by various subsequent decisions. In case of *Indian Oil Corporation Limited v. CCE Mumbai - 2010 (262) E.L.T. 751 (Tri. Mumbai)*, it was held that clearance of cenvated inputs to sister unit without payment of duty result in Revenue neutral situation and no mala fide can be attributed for invocation of longer period of limitation. At this stage, we may refer to the Hon'ble Supreme Court decision in the case of *CCE, Pune v. Coca-cola (India) Pvt. Limited - 2007 (213) E.L.T. 490 (S.C.)*. It was held that, inasmuch as the excise duty payable on beverage basis/concentrate was available as Modvat credit to the manufacturer of beverages, the consequence of payment of excise duty after availing Modvat credit was, Revenue neutral. The appeal of the Revenue on above ground was dismissed. At this stage, we also take note of the Hon'ble Gujarat High Court decision in the case of *Commr. of C. Ex. and Cus. Vs. Indeos ABS Limited*, , vide which the appeal filed by the Revenue against the Tribunal order was rejected. The Tribunal had allowed the assessee's appeal on the ground that since the goods were cleared to sister concern, whatever duty was payable by the assessee was available as credit to their own sister concern, the entire exercise

was Revenue neutral.

6. As a result of above discussion, it is held that the Tribunal committed a substantial error in interpreting the provisions of Section 11A of the Central Excise Act, 1944. As noted above, the assessee had on its own brought to the knowledge of the Department the fact about clearances of the goods to its sister unit without duty before the date of visit of the officers who noticed such clandestine clearances. The assessee's conduct was candid and therefore bona fide. There was no element of intentional evasion.

7. Accordingly, question No. 1 is answered in negative in favour of the assessee. Question No. 2 is answered in affirmative, but against the Department and in favour of the assessee. Accordingly, the Tax Appeal stands dismissed.