(2010) 01 GUJ CK 0035

In the Gujarat High Court

Case No : Tax Appeal No. 1294 of 2009

Commissioner of C. Ex. and Customs APPELLANT

Vs

Sanhay B. Gohil RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 209, 209A, 35G
Central Excise Rules, 2002 — Rule 25, 26
Customs Act, 1962 — Section 58

Citation : (2010) 253 ELT 760

Hon'ble Judges : Rajesh H Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : R.M. Chhaya, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

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

A. Whether in the facts and circumstances of the case, the Hon''ble CESTAT is right in holding that Rule 209A of the Central Excise Rules is not attracted even though it is the statement of the Director himself that he has received the goods from M/s. Shivam Exports?

B. Whether in the facts and circumstances of the case, the Hon''ble CESTAT has rightly come to the conclusion that Rule 209A of the Central Excise Rules, is not applicable?

2. Heard Mr. R.M. Chhaya, learned Standing Counsel appearing for the Revenue and perused the orders passed by the authorities below.

3. It is the case of the appellant that the respondent-assessee is a 100% export oriented unit and is, inter alia, engaged in manufacture of ready made garments

classifiable under Chapter No. 62 of the Central Excise/Customs Tariff and operating under 100% EOU Scheme of the EXIM Policy 1997-2002 for which they have obtained registration Certificate No. 22/1999-2000, dated 10-12-1999 u/s 58 of the Customs Act, 1962. During the course of verification at the factory premises of the respondent Company, on 25-7-2000, by the Directorate of Revenue Intelligence, Regional Unit, Surat, it was found that the respondent Unit had issued CT 3 No. 1, dated 24-7-2000 to procure 100% Polyester hand print fabrics admeasuring 3,75,000/- L. Mts. From M/s. Shivam Export, Surat (100% EOU). On further verification, it was found that the consignment of 100% polyester hand print fabrics was not received. On further investigation of the factory premises of M/s. Shivam Export, Surat, it came to light that they have removed processed fabrics under AR3A Nos. 1 to 8 on various dates to the respondent Company, total admeasuring 2,99,143 L. Mts., valued at Rs. 65,87,086/- in the local market in cash and to cover up the said transactions, it had prepared said 8 AR 3. As. Though the goods were cleared in local market, the respondent colluded with M/s. Shivam and promised to send back receipted AR3 As. The Director of the respondent in his statement dated 5-1-2001 accepted that the Company had not received goods under AR3 As Nos. 1 & 2, but have received the goods under remaining AR3 As and the signatures appearing on delivery challans were those of his Manager and they have made payments of the said goods by cheques.

4. After this investigation, a show-cause notice dated 22-10-2003 was issued to the respondent Company. The said show-cause notice was adjudicated upon by the Commissioner of Central Excise and Customs, Surat-I vide his order in original dated 27-5-2004 whereby the penalty of Rs. 10 Lacs was imposed on the respondent Company. The penalty of Rs. 10 Lacs was also imposed on the Director of the respondent Company.

5. Being aggrieved and dissatisfied with this order in original dated 27-5-2004, the respondent preferred appeal before the CESTAT and the CESTAT vide its order dated 29-4-2008 allowed the said appeal and deleted the penalty.

6. It is this order of CESTAT which is under challenge in the present tax appeal.

7. Mr. Chhaya has submitted that CESTAT has not considered in its proper perspective the provisions contained under Rule 209A of the Central Excise Rules while passing the impugned judgment and order. The Tribunal has wrongly held that Rule 25 is applicable on producer, manufacturer etc. and not on the purchaser and, therefore, the Tribunal has wrongly come to the conclusion that the penalty under Rule 25 cannot be imposed on the respondent. The Tribunal has wrongly placed reliance on the larger Bench in the case of Steel Tubes of India 2007 (217) E.L.T. 506 (Tri.-LB) for arriving at the conclusion that Rule 26 is not applicable to the Director as the goods were not physically dealt with by him. He has, therefore, submitted that the questions of law proposed to be formulated by the Revenue are substantial questions of law and hence, this tax appeal should be admitted and the questions proposed by the Revenue are formulated

as the substantial questions of law.

8. We have considered the submissions made by Mr. Chhaya and also perused the orders passed by the authorities below. This tax appeal pertains to M/s. Dhanlaxmi Garments and penalty of Rs. 10 Lacs was imposed on M/s. Dhanlaxmi Garments under Rule 209 of the erstwhile Central Excise Rules, 1944 (now Rule 25 of Central Excise Rules, 2002). The questions framed by the Revenue talk about the penalty levied under Rule 209A of the Central Excise Rules. As a matter of fact, penalty of Rs. 10 Lacs is levied on Shri Sanjay B. Goyal, Director of M/s. Dhanlaxmi Garments Private Limited under the provisions of Rule 209A of the erstwhile Central Excise Rules, 1944 (now Rule 26 of Central Excise Rules, 2002). However, this appeal is not pertaining to the said Shri Sanjay B. Goyal. Hence, only on this short ground, the appeal deserves to be dismissed. Even on merits also, the order of CESTAT does not call for any interference by this Court. The Tribunal has given specific finding that Rule 25 is applicable only in respect of producer, manufacturer, registered person of re-ware housing or registered Dealer. The respondent herein is a purchaser of the goods manufactured by M/s. Shivam Exports and hence, the said Rule is not attracted in the present case. We are, therefore, of the view that no substantial questions of law arise out of the order of the Tribunal. This appeal is, therefore, summarily dismissed.