(2014) 04 GUJ CK 0120

In the Gujarat High Court

Case No : Tax Appeal No. 198 of 2014 and OJ Civil Application No. 171 of 2014

Commissioner of C. Ex. APPELLANT

Vs

Gopi Synthetics Pvt. Ltd. RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11AC, 14, 35G

Citation : (2014) 310 ELT 299

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Amar N. Bhatt, Advocate for the Appellant

Judgement

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Sonia Gokani, J.—Challenging the order of the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad ("CESTAT" for short) dated 27th September 2013 [2014 (302) E.L.T. 435 (Tri.-Ahmd.)], the present Tax Appeal is preferred under Section 35G of the Central Excise Act, 1944 ("the Act" for short), raising following substantial questions of law for our consideration:-

(A) "Whether the CESTAT is correct on holding that the retraction of the statements recorded under Section 14 of the Central Excise Act, 1944 was legal, proper and valid particularly when the affidavit retracting such statements was sent by UPC and not registered post?"

(B) "Whether the authorities below were correct in holding that the document being affidavit retracting statements not submitted to the adjudicating authorities was valid?"

(C) "Whether the CESTAT and the Commissioner (Appeals) were justified in rejecting evidence in the form of Kacha chits (loose slips) showing illicit removal of goods found during the preventive operations at the premises of the assessee confessed by the assessee?"

(D) "Whether CESTAT and the Commissioner (Appeals) are right in holding that the goods sold to fictitious bodies were to be investigated upon and corroborated?"

(E) "Whether CESTAT and the Commissioner (Appeals) are right in holding that there was some personal vendetta against the assessee even though the DGCEI officers have done their work according to the provisions of the Central Excise Act, 1944 and the Rules framed therein?"

(F) "Whether CESTAT and the Commissioner (Appeals) are right in setting aside the demand under Section 11A of the Central Excise Act, 1944 from the assessee even though the assessee had confessed about duty evasion and there are plenty of evidences to prove evasion of the Central Excise Duty?"

(G) "Whether CESTAT and the Commissioner (Appeals) are right in dismissing penalty imposed on the assessee under Section 11AC and interest under Section 11AB of the Central Excise Act, 1944 as they had a clear intention to evade the payment of Duty?"

(H) "Whether CESTAT and the Commissioner (Appeals) are right in holding that the seizure of the goods under Rule 25 of the Central Excise Rules, 2002 was not valid even though the same were not entered in their records?"

(I) "Whether CESTAT and the Commissioner (Appeals) are right in dismissing the penal provisions imposed on the employees, director and the broker under Rule 26 of the Central Excise Rules, 2002 even though they abetted in evasion of the Central Excise Duty?"

We have heard learned counsel Shri Amar Bhatt for the Revenue. He has fervently urged basing the same on the order-in-original that the stamp paper on which the retraction is made was purchased prior to the recording of the statement. He also has urged that the order-in-original also further notes that the retracted statement of Shri Subhash Chandra Omkarmal Agarwal, Director of the assessee-Gopi Synthetics Private Limited was whether sent to ADG, DGCEI or not is not being culled out. He urged that both the authorities have not appreciated the facts rightly, and therefore, the issues deserve consideration.

2. Brief facts are as under:-

On 28th/29th June 2004, the officers from the DGCEI, Ahmedabad conducted search at the factory premises of the assessee and recovered under panchnama, certain ''kachha notes/chits'' from the drawer of one Shri Sanjay Patel, Excise Clerk. Names of twelve buyers were revealed from these notes. The investigating officer was of the opinion that these loose papers reflect huge quantity of grey fabric received by the respondent for the purpose of processing. Such fabrics were not only processed in the factory but were removed to the concerned buyers, however, the same was not accounted. Therefore, for the alleged illicit and clandestine clearance of man-made fabric to the tune of Rs. 64.39 lakhs (rounded off) and cotton fabrics valued at Rs. 1.01 crores (rounded off), the

Department initiated proceedings for evasion of Central Excise duty to the tune of Rs. 16.62 lakhs (rounded off). Statements of Shri Sanjay Patel, Excise Clerk and Shri Subhash Agrawal, Director of the assessee-firm and Shri Shambu Bhavsar, middleman had been recorded during the course of investigation. These statements were later on retracted by all the three persons.

3. Show cause notice issued resulted into order-in-original confirming the clandestine removal of the fabrics. The material seized were confiscated, allowing the same to be redeemed on payment of redemption fine and penalty on the assessee-firm and separate penalties on all the three persons above-named.

4. In an appeal preferred by the firm as well as individuals, the Commissioner (Appeals) held and observed that there was no evidence to prove the charges of clandestine removal. In his detailed order, Commissioner (Appeals) concluded that none of the charges were proved. The adjudicating authority however in its enthusiasm to decide the issue in favour of the Revenue, had not displaced a judicious approach and had held that there was evasion of duty even in the absence of slightest corroborative evidence. Commissioner (Appeals) therefore concluded that the Department failed to establish a case of duty evasion even on the principle of preponderance of probability.

5. Such order of Commissioner (Appeals) was challenged before the Tribunal, which concurred with the finding of the Commissioner (Appeals). The Tribunal not only confirmed the order of Commissioner (Appeals), but, also observed that there was some kind of settling of personal vendetta amongst the officers of the Department. It also was of the opinion that the Investigating Wing chose not to collect any evidence after having recorded the confessional statements. It ought to have examined those buyers to whom the fabrics are said to have been sold. In absence of any corroborative evidence, the Tribunal was of the firm opinion that no case was made out. Resultantly, the present appeal proposing aforementioned questions of law. Both - Commissioner (Appeals) and Tribunal, on the basis of factual matrix presented before them, have concluded in favour of the respondent-assessee. We do not find any reason to interfere with the findings of both the authorities concurrently given as they both have rightly said that the onus was on the Department to prove that there was clandestine removal of the fabrics by the assessee. Investigating agency appears not to have examined twelve buyers whose names have been revealed in the confessional statements of all the three individuals, which later on have been retracted. It appears that the show cause notice, which was issued after nearly six months, and therefore, there was sufficient time available with the investigating agency. However, in absence of any corroboration, if both the authorities have chosen not to uphold the action of the Revenue, no perversity could be seen in the findings of both of them. Predominantly, the issue is decided on facts. Tax Appeal, resultantly, stands dismissed. Consequently, Civil Application is also not entertained.