(2010) 03 GUJ CK 0079

In the Gujarat High Court

Case No : Tax Appeal No. 738 of 2009

Commissioner of C. Ex. APPELLANT

Vs

Lifeline Remedies Ltd. RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Citation : (2010) 20 STR 710

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

Bench : Division Bench

Advocate : Kalpesh N. Shastri, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—Appellant revenue has proposed following three questions stated to be substantial questions of law arising out of order dated 7-11-2008 made by Customs, Excise & Service tax Appellate Tribunal (Tribunal):

(i) Whether the CESTAT has correctly passed the order allowing SSI benefit under Notification No. 8/2003-C.E., dated 1-3-2003 by ignoring condition laid down at Para-2(vi) of the notification?

(ii) Whether the CESTAT has correctly interpreted the decision rendered in the case of M/s. Omega Pharmaceuticals [2006 (196) E.L.T. 332 (Tri. - Mumbai)] and M/s. Oshin Laboratories P. Ltd. where the Assessees were availing benefit of Notification No. 9/2002, 8/2003 and 175/86?

(iii) Whether the CESTAT has correctly interpreted the decision rendered in the case of 2006 (112) ECC 645 wherein the issue was with regard to availment of Notification No. 8/99-C.E. and 9/99-C.E. and firstly the Assessee was to exercise option either to avail full exemption or to avail MODVAT upto specified limit?

2. Heard learned advocate for the Appellant. It was submitted that the Tribunal has committed an error in ignoring condition laid down in Paragraph No. 2(vi) of Notification No. 8/2003-C.E. Similarly, in relation to the various orders of

different Benches of Tribunal referred to in Paragraph Nos. 2 and 3 of the impugned order of Tribunal, it was submitted that different notifications were applicable in those cases decided by other Benches of Tribunal and hence, the impugned order of Tribunal is required to be interfered with. It was also submitted that the Tribunal was required to read the show cause notice and the order made by the adjudicating authority.

3. A plain reading of the impugned order of Tribunal indicates, in the first instance that, the appeal, which was filed by Respondent Assessee before Tribunal, was heard and decided ex-parte in absence of any appearance on behalf of the Assessee. However, the Appellant herein, Central Excise Department, was duly represented. The impugned order of Tribunal does not indicate that the junior departmental representative appearing before Tribunal urged any of the contentions raised in the present appeal for Tribunal to record a finding.

4. There is nothing on record to indicate that the Tribunal was dealing with Notification No. 8/2003-C.E., dated 1-3-2003. Therefore, it is not possible to state that any paragraph of the said notification has been ignored as contended by the Appellant.

5. Similarly, in so far as the so-called distinction between the cases relied upon by the Tribunal and the respective notifications, suffice it to state that neither does the impugned order of the Tribunal indicate which were the notifications in the decided cases relied upon by Tribunal nor that any such distinguishing features, were ever pointed out to the Tribunal. There is nothing on record to even indicate that the different notifications were even placed on record of the Tribunal.

6. Furthermore, at the cost of repetition, it is required to be noted that the orders of the subordinate authorities or the appellate authority stand merged in the order made by the Tribunal, and correspondingly in the proceedings before the Tribunal, the orders of subordinate authorities stand merged in the order of the appellate authority. Therefore, the submission that the Tribunal is required to go through the show cause notice and the order of adjudicating authority is a fallacious proposition. If the submission is accepted, right of appeal granted by the statute would be rendered nugatory in a case where an order of adjudicating authority is given precedence over the order made by the appellate authority. In the case of the Commissioner, Central Excise and Customs, Vadodara-II v. Welspun Gujarat Stahl Rohren Ltd. 2010 (254) E.L.T. 211 (Guj.) Tax Appeal No. 695 of 2009 decided on 3-3-2010 the legal position has been enunciated.

7. The submissions made on behalf of the Appellant revenue basically relate to findings of fact recorded by the Tribunal and in the event the same are not correctly recorded the remedy of the aggrieved party lies in seeking rectification of apparent mistake by moving the Tribunal with an appropriate application in accordance with law. High Court cannot be converted into a fact finding body at

the stage of tax appeal wherein the High Court is only required to consider whether a substantial question of law arises from the order of the Tribunal.

8. In the aforesaid facts and circumstances of the case, no case is made out warranting interference in the impugned order of Tribunal in absence of any legal infirmity.

9. In the result, in absence of any substantial question of law, the appeal is dismissed.

