(2012) 07 GUJ CK 0022

In the Gujarat High Court

Case No : Tax Appeal No. 934 of 2011

Commissioner of C. Ex., Cus. and Service Tax APPELLANT

Vs

Union Quality Plastics RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2013) 291 ELT 322

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

Bench : Division Bench

Advocate : Gaurang H. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Mr. Gaurang Bhatt, learned standing counsel appearing for Central Excise, Customs and Service Tax department. This Tax Appeal has been admitted on the following proposed substantial question of law.

Whether the Tribunal below committed substantial error of law in granting option to the assessee to deposit the entire dues along with 25% interest of penalty, within a period of thirty days of communication of the order dated 9th November 2010, in which case the penalty should stand restricted to 25% of the duty-amount by relying upon the judgment of the Punjab and Haryana High Court in the case of CCE & C, Rohtak v. M/s. J.R. Fabrics Pvt. Ltd., reported in 2009 (238) E.L.T. 209?

The brief facts are that the respondent M/s. Union Quality Plastics Ltd. Plot No. 204, GIDC, Umbergaon is engaged in the business of manufacturing of HDPE Woven Laminated/Un Laminated Fabrics and Tarpaulin falling under Chapter 39 of Central Excise Tariff Act, 1985. The respondent''s factory was visited by Central Excise Officers on 3-10-2003, who conducted various cheks and investigation. During the course of verification of records, it was found that MODVAT Credit to the extent of Rs. 7,77,655/- stand availed by the assessee, in excess of their entitlement inasmuch as the same was availed without any valid duty paying documents or the documents were more than 6 month old. On being questioned, the respondent admitted their liability to pay said MODVAT credit and in fact, they debited the same. The same, accordingly, stand confirmed by the lower authorities in their order along with imposition of penalty of identical amount.

2. In Para 11, the CESTAT Tribunal has recorded in its findings in para 11 asunder:

In view of the foregoing discussion, the demand of duty of Rs. 7,77,655/- is upheld along with imposition of penalty of identical amount. However, an option is extended to the appellant to pay 25% of the penalty along with interest and other dues, if any, within a period of 30 days from the date of passing of the order, in which case, the penalty shall stands reduced to 25%. Further, as we have already held that there is no valid base for confirmation of demands of duties of Rs. 5,47,452/- and Rs. 75,412/- the same are set aside along with setting aside of penalty imposed upon M/s. Union Quality Plastics Ltd. on the above ground.

3. Neither the Adjudicating Authority nor the Commissioner (Appeals) gave any option to the respondent. Therefore, the Tribunal was justified in giving option to the respondent which was accepted by the respondent. Since the option has been extended to the appellant to pay 25% of the penalty along with interest and other dues within 30 days, we do not find that the impugned order of the Tribunal suffers from any illegality in any manner. Therefore we answer the question formulated in affirmative against the department in favour of the assessee.

4. In that view of the matter, the present Tax Appeal is not required to be entertained. Accordingly, this Tax Appeal is dismissed.