(2012) 07 GUJ CK 0063

In the Gujarat High Court

Case No : Civil Application No. 147 of 2012 in Tax Appeal No. 310 of 2012

Commissioner of C. Ex., Cus. and Service TAX — APPELLANT

Vs

Vishwa Traders P. Ltd. — RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2013) 287 ELT 243 : (2013) 21 GSTR 569

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

Bench : Division Bench

Advocate : Y.N. Ravani, SC, for the Appellant; Devan Parikh assisted by Nirav and P. Shah, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard learned Standing Counsel Mr. Y.N. Ravani appearing for Central Excise and Customs Department and learned senior counsel Mr. Devan Parikh, assisted by learned Counsel Mr. Nirav P. Shah for the respondent. Learned counsel Mr. Ravani has stated that the civil application can be heard, only if the appeal is heard and if the appeal is admitted, then the question of grant of stay would arise. Learned counsel Mr. Parikh has no objection, if the appeal is heard on merits. With the consent of learned counsel for the parties, we have taken the civil application alongwith the appeal for hearing, at the admission stage.

2. This Tax Appeal has been filed u/s 35-G of the Central Excise Act, 1944, challenging the order dated 1-11-2011 of the 2012 (278) ELT 362 on the following two proposed substantial questions of law, which are extracted below:-

(i) Whether the order of the Hon''ble Tribunal relying upon Tribunal''s own order dated 29-3-2007 [2007 (213) E.L.T. 64 (Tribunal)] passed in respect of one of the parties involved in the matter viz. M/s. Amur Ceramics Ltd. holding the retracted statement cannot be relied upon for the purpose of present order is legal and proper as the same appears to be an after thought and not in consonance with the law of retraction? And whether retraction after a period of 9 months can be considered to be valid ?

(ii) Whether the Hon''ble Tribunal has erred in holding that there were not sufficient evidence indicating clandestine manufacture, by ignoring the fact that the assessees themselves had admitted specifically in their application dated 5-10-2005 filed with the Settlement Commission ?

3. The main grounds of challenge of the appeal are that the findings recorded by the Tribunal are perverse. It has not considered the available relevant materials and the respondent has manufactured goods from clandestine raw-material and removed the goods and evaded the payment of duty. It is further stated that fake invoices were used. It is further submitted that the Tribunal has not considered the statement of the transporters and the settlement made before the Settlement Commissioner.

4. On the other hand, learned counsel for respondent has submitted that the appeal u/s 35-G of the Central Excise Act, 1944, would be maintainable only on substantial question of law. He has further submitted that the findings recorded by the Tribunal are just and proper.

5. Learned counsel Mr. Ravani stated that before the Settlement Commissioner, the respondent had made an application and the Settlement Commissioner rejected the said application and relegated the matter for adjudication. However, the Department raised the demand of duty, which was challenged by the appellant by way of a writ petition being Special Civil Application No. 228 of 2009 before this Court, which was decided on 12-3-2009 Vishwa Traders Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . This petition was allowed and in Paragraph No. 14 of the order, the Court directed the respondent-Authority to continue adjudication proceedings from the stage at which the proceedings before the Settlement Commissioner had commenced and further directed to issue notice of hearing to the respondent. The judgment is reported in 2009 (241) E.L.T. 168 (Bom.). For the aforesaid reasons also, the matter was to be adjudicated before the competent authority.

6. The Tribunal in Paragraph Nos. 12, 13 and 16 has recorded clear finding that when the premises of the respondent were visited, the stock of raw-material and finished goods were tallying with the recorded goods. Further, nothing on record was found by the authority, which showed that unrecorded raw-materials were purchased or consumed by the respondent or that the respondent had clandestinely manufactured or removed the goods. It is necessary to extract Paragraph Nos. 12, 13 and 16 of order of the Tribunal, which reads as under:-

12. Be that as it may be, it is to be noted that there is no dispute that to manufacture of said final product ''Frit'' requires the use of Quartz, Feldspar, Zinc, Borax Power, Calcium and Dolomite as inputs/raw material. On the date of visit of the officers to the factory premises of the appellant, it is undisputed that

the stock of raw materials as well as finished goods was tallying with recorded balances. This conclusion can be reached from perusal of records, as there is nothing on record to indicate otherwise. 13. On careful perusal of the entire records of the case, we find that there is nothing on record as to unrecorded purchases or consumption of various other raw material in the manufacture of Frit, there is also nothing on record to indicate that the appellant had purchased the Quartz, Feldspar, Zinc, Borax Powder, Calcium and Dolomite and without accounting them used for the manufacture of Frit for clandestine removal. There is also nothing on record nor there is any statement of the suppliers of other raw materials, which would indicate that the appellant had received unaccounted raw material from the suppliers of these raw materials. There is a solitary evidence in the form of statement of supplier of one of the raw material i.e. Borax Powder, who indicated that the appellant had procured Borax Powder and not accounted the same in his record; and the said entries and information were deduced from the documents of the premises of Shri Anil jadav and whose evidence has been discarded for having not been produced for cross examination; in the absence of any other tangible evidence to show that the appellant had been procuring the other major raw materials required for manufacture of Frit without recording in books of accounts, we are unable to accept the contentions of the Id. AR appearing for the Revenue and the findings of the adjudicating authority, that there was clandestine manufacture and clearance of the finished goods. The investigation has not proceeded further to bring on record unaccounted purchases of all the raw materials required for manufacturing of ''Frit''. 16. In the absence of any tangible evidence which would indicate that there was clandestine manufacture and clearance of the goods from the factory premises of M/s. VTPL, in the peculiar facts and circumstances of this case, we hold that the impugned order which confirms the demand on the appellant M/s. VTPL and imposes penalty on them is not sustainable and is liable to be set aside and we do so.

7. From the aforesaid findings of the Tribunal, it is clear that the appellant has not made any clandestine manufacture, which he has removed clandestinely and on which the duty was payable.

8. It is well settled that the findings of the Tribunal can be interfered only if it is perverse or some material evidence is ignored. In such circumstances, only the Court may exercise jurisdiction on issue which may give rise to any substantial question of law. In this appeal, no substantial question of law arises for consideration of this Court. We agree with the view taken by the Tribunal, and the appeal is devoid of any merits. Both the questions raised by the appellant do not involve any substantial question of law and therefore, the appeal is dismissed.

