(2016) 04 GUJ CK 0071

In the Gujarat High Court

Case No : Tax Appeal Nos. 277-278 of 2016

Commissioner of C. Ex. & Cus., Surat-I APPELLANT

Vs

Jai Bhawani Metal Industries RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Citation : (2016) 338 ELT 203

Hon'ble Judges : Akil Kureshi and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri R.J. Oza, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—These tax appeals arise in common background. Revenue has suggested following questions for our consideration :

(a) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that 62 reconstructed challans-cum-proforma invoices cannot be relied upon for fixing the case of clandestine manufacture and clearance of finished goods against the assessee and co-noticees?

(b) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that in absence of confirmatory statements of the buyers the authenticity of 62 reconstructed documents and the supply of finished goods contained therein, demand of duty from the assessee is not permissible, even though the evidence on record in form of admission by the assessee and other co-noticees recorded under Section 14 of the Central Excise Act, 1944 in their respective statement corroborated by other material and evidence on record?

(c) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in setting aside demand of duty made on the basis of two delivery challan Nos. 1 and 3 both dated 23-4-2007 by application of decision of the Tribunal in the case of DXN Herbal Mfg. (India) v. CCE, Pondicherry?

(d) Whether the impugned order passed by the Tribunal is substantial in law more particularly in absence of recording findings on all the points of contentions raised by and on behalf of the Revenue at the hearing of appeals?

2. The issue pertains to alleged clandestine production and removal of goods by the manufacturer assessee. Principally, the Revenue placed reliance on 62 reconstructed challans to establish such allegation. The Commissioner (Appeals) deleted part of the duty demand to the extent of Rs. 10,62,000/- (rounded off) but confirmed the rest, upon which, the assessee filed further appeal before the Tribunal. The Tribunal, in the impugned order, noted that the case of clandestine removal is based predominantly on 62 reconstructed copies of delivery challans-cum-proforma invoices. Such challans were, however, neither original nor xerox copies. There was no identification of the author of these challans. Thus, reconstructed challans were not recovered from the premises of the assessees. Even Commissioner (Appeals) had found that 20 of these reconstructed documents were fake. In the challans, neither the vehicle number nor the name of the transporter was mentioned. No investigation was undertaken by the department to corroborate the contents thereof by recording the statements of the transporters. No confirmatory statements of the buyers were available on the record. The Tribunal, in view of such background, concluded as under :

"4.4 In the light of above observation and settled proposition of law 62 reconstructed challans-cum-proforma invoices cannot be relied upon for fixing the case of clandestine manufacture and clearance of finished goods against the appellants. No variation in the stock of raw materials/finished goods was noticed in the factory of the main appellant during the search. No finished goods and cash have been seized anywhere in transit or in the premises of the buyers who disowned having received any such goods."

3. With respect to duty demand of Rs. 3.48 lacs on the basis of two delivery challans, the Tribunal observed as under :

"5. So far as duty demand of Rs. 3,48,740/-, on the basis of two delivery Challan Nos. 2 and 3 both dated 23-4-2007, is concerned it is the case of main appellant that these goods were purchased by their trading company M/s. Jai Bhavani Metal Co., Surat (JBMC). That due to major renovation at the office/godown of JBMC, subject goods were temporarily stored in Appellant''s factory premises. It is observed from case records that there are documentary evidences to the effect that said goods were purchased by JBMC from M/s. Malaxmi Metals Ahmedabad under delivery Challan No. 5, dated 21-4-2007. This delivery Challan also has the Truck Number mentioned on it. No investigation has been done in order to refute the claim of the main appellant, by recording the statement of transporter or the supplier of trader from whom the goods have been claimed to be purchased from

JBMC. It is a well established law that documentary evidence will prevail over an oral evidence especially in these proceedings where cross examination of such witness is not provided."

4. It can thus be seen that the decision of the Tribunal was based entirely on appreciation of evidence on record. No question of law arises. Tax appeals are, therefore, dismissed.

