(2013) 08 GUJ CK 0045

In the Gujarat High Court

Case No : Tax Appeal No. 610 of 2013

Commissioner of Central Excise and Customs APPELLANT

Vs

Anita Synthetics (P.) Ltd. RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2014) 43 GST 19

Hon'ble Judges : Sonia Gokani, J;M.R. Shah, J

Bench : Division Bench

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

Judgement

M.R. Shah, J.—The present Tax Appeal has been preferred by the appellant-Commissioner of Central Excise & Customs, Surat to quash and set aside the impugned judgment and order dated 21/11/2012 passed by the Customs Excise & Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'') in Appeal No. E/807/2012 preferred by the appellant by which the Tribunal has dismissed the said appeal confirming the order passed by the Commissioner of Central Excise, Surat dated 05/09/2012 in OIO No. 50/Commr./Surat-II/2012 (Denovo). The appellant has proposed the following substantial questions of law;

(a) Whether the Tribunal has committed substantial error of law in dismissing appeal of the revenue solely on the basis of decision referred to by the adjudicating commissioner in the case of Shilpa Copper Wire Industries and without recording its finding on the points of contention raised before it by the revenue?

(b) Whether the expression "free on board value of export" appearing in para 9.9(b) of the EXIM policy includes value of domestic clearance for the purpose of extending benefit of exemption notification No. 2/95-CE dated 04/01/1995, as amended, to the respondent?

(c) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in by confirming order of the Adjudicating

Commissioner which is inconsistent with Circular F. No. 305/48/FTT dated 07/04/2000 issued by the Department, even though validity of the said circular has been upheld by the Madras High Court in the case of BAPL Industries Ltd v. Union of India 2007 (211) ELT 23 (Mad.)?

(d) Whether in the facts and circumstances of the case, impugned order passed by the Tribunal is contrary to the decision of the Tribunal in case of 2011 (268) ELT 81 and CCE & C v. Shilpa Copper Wire Industries 2009 (247) ELT 551 (Tri. - Mumbai) as well as decision of Madras High Court in the case of BAPL Industries Ltd v. Union of India 2007 (211) ELT 23 (Mad.)?

2. Shri R.J. Oza, learned Senior Counsel appearing on behalf of the appellant has vehemently submitted that the Tribunal while dismissing the appeal preferred by the appellant has relied upon the decision of this Court in the case of Commr. of Central Excise Vs. Shilpa Copper Wire Industries, however has not, as such, discussed the facts and observed anything whether on facts the said decision would be applicable or not. In support of his above submission, he has relied upon the decision of the Hon''ble Supreme Court in the case of Commnr. of Central Excise, Bangalore Vs. Srikumar Agencies etc. etc., No other submissions have been made.

3. Having heard Shri R.J. Oza, learned senior Counsel appearing on behalf of the appellant and considering the impugned judgment and order passed by CESTAT, it is true that as such CESTAT has not discussed at all whether on facts the decision of this Court in the case of Shilpa Copper Wire Industries (supra) would be applicable or not. It is true that CESTAT was required to narrate some facts and discus whether on facts the decision upon which reliance has been placed would be applicable or not. In the case of Srikumar Agencies (supra) in paragraphs 4, 5 and 6 the Hon''ble Supreme Court has observed and held as under:

4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid''s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed;

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office v. Dorset Yacht Co. 1970 (2) All ER 294 Lord Reid said, "Lord Atkin''s speech.... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russel L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board 1972 (2) WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

5. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

** ** **

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

6. Since the factual position has not been analysed in detail, disposal of appeals by mere reference to decisions, was not proper why to deal with the appeals. The CEGAT also does not appear to have dealt with the relevance and applicability of ITC''s case (supra) on which strong reliance has been placed by learned Solicitor General. The CEGAT ought to have examined the cases individually and the articles involved. By clubbing all the cases together and without analyzing the special features of each case disposing of the appeals in the manner done was not proper. In the circumstances, we set aside the impugned judgment in each case and remit the matter to CEGAT presently known as Customs, Excise & Service Tax Appellate Tribunal (in short ''CESTAT'') to be dealt with by the appropriate Bench. In view of the aforesaid order there is no need to answer the reference made.

4. However, in the facts and circumstances of the case and when on facts of the

present case, the issue involved is squarely covered by the decision of this Court, which is reported to be confirmed by Hon''ble the Supreme Court and the aforesaid is not as such disputed by the learned Counsel appearing on behalf of the appellant, instead of remanding the matter to CESTAT, we have considered the issue on merits and whether the decision in the case of Shilpa Copper Wire Industries (supra) would be applicable to the present case or not. In the case of Shilpa Copper Wire Industries (supra), this Court has specifically held that clearance made by one 100% EOU to another 100% EOU, which are deemed exports are to be treated as physical exports for the purpose of entitling refund of unutilized Cenvat credit contemplated under the provisions of Rules 5 of the Cenvat Credit Rules, 2004. Similar is the question proposed in the present appeal. Under the circumstances, as such, the issue raised in the present appeal is squarely covered by the decision of the Hon''ble Supreme Court in the case of Srikumar Agencies (supra). Under the circumstances and on facts, we see no reason to interfere with the impugned judgment and order passed by CESTAT and the present appeal deserves to be dismissed. No question of law, much less, substantial question of law arises in the present appeal. Hence, the present appeal is dismissed.