(2005) 12 GUJ CK 0086

In the Gujarat High Court

Case No : Tax Appeal No. 331 of 2005

Commissioner of Central Excise and Customs — APPELLANT

Vs

Banco Aluminium Ltd. — RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Citation : (2009) 13 STR 88

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

Bench : Division Bench

Advocate : Naynaben K. Gadhvi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—The appellant-revenue has proposed the following three questions.

(A) Whether the Tribunal could have allowed the appeal on the procedural/ technical grounds by ignoring the issue on merit that too when the confessional statement of the employee of the assessee not retracted at all corroborated by the documentary and other statements of the suppliers?

(B) Whether the Tribunal could have allowed the appeal for the want of cross-examination of persons whose confessional and un-retracted statements are on the record especially when such a procedure is unwarranted for in taxation matters as discussed in above grounds of appeal?

(C) Whether the Tribunal could have allowed the appeal by raising the doubt on the department especially when the assessee themselves right from the initial stage is delaying the matter and has raised the issue of cross-examination to cover up for the confessional statements of their own employee which was not retracted on the spot.

2. Heard learned Counsel for the appellant.

3. As can be seen from the impugned order of Tribunal dated 13-8-2004, the Tribunal had in the earlier round vide order dated 17-6-1997 1998 (99) ELT 186 remanded the matter back to the Commissioner of Central Excise with the following directions.

On consideration of the submissions made by both the sides, we are inclined to hold that in the facts and circumstances of the case, it would be more appropriate to remand the matter to the adjudicating authority for de novo adjudication. This is because we find substance in the plea that in respect of the appellants M/s. Banco Aluminium Ltd., an effective hearing and the facility of cross-examination of witnesses which though was extended to them and had not in fact taken place. Such cross-examination, we find, is essential for establishing case against this appellants and their employees beyond doubt. It is true that more than one opportunity of hearing had been offered to the appellants but as it happened it would appear from the record that the ultimate date of hearing prior to the adjudication was in Nov. 1996. On that date, the ld. Counsel appearing for M/s. Banco Aluminium in his own personal court case was away from Vadodara. Therefore, it may be in the interest of justice to allow the facility of cross-examining the witnesses to this appellants and for this purpose the case is remanded to the Commissioner, Central Excise, Vadodara considering the fact that the cross examination was, in fact, promised to them during the personal hearing. The ld. D.R. pointed out that there may be difficulty for the Commissioner to ensure presence of witnesses to be cross-examined after such a lapse of time since the events in the case has been in the year 1992. Having regard to this submission, we direct that the appellants should co-operate in the culmination of the de novo adjudication within the reasonable time. The witnesses will have to be summoned by the department and if their presence cannot be ensured because of the practical difficulties, the appellants may be intimated of it and in such circumstances, the appellants should come forward and make their submissions before the Commissioner personally for cross-examining the witnesses whose presence is made available to them. If the appellants did not respond within the reasonable time the Commissioner is at liberty to proceed in the de novo consideration.

(underline supplied)

4. In the second round, the Commissioner adopted a very strange attitude and approached the problem with bias as could be seen from the following findings of the Commissioner reproduced by the Tribunal:

Since it was considered that Cross Examination of Shri A.J. Shimpi, Excise Officer of M/s. Banco Aluminium Ltd., and two officers who investigated the case viz. Shri N.M. Brahmabhatt and Shri K.N. Jadav, will not jeopardize in any manner the defence of the notice, they were not called for cross-examination....

5. It is in this context that the Tribunal has come to the conclusion that order in remand has not been complied with and there appears to be no desire to do so.

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In fact, the Tribunal found that "there is an underlying current to some-how confirm the liabilities. Such approach cannot be upheld."

6. As against the aforesaid findings recorded by the Tribunal, the learned Advocate for the appellant has not been able to point out as to how the said findings are incorrect or against the record. In fact, in the memorandum of appeal, an irresppnsible sweeping statement is made to the effect. "Thus conclusion drawn by the learned Tribunal is in isolation and as per their own whims and fancy to go through the abstract of the OIO best suitable to them without following the principle of justice."

There are other observations also against the Tribunal in the memorandum of appeal which do not reflect maturity, to say the least.

7. However, in light of what is stated herein before as regards the findings of the Tribunal, not being against the evidence on record, no substantial question of law arises from the impugned order of Tribunal. The appeal is accordingly dismissed.

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