

(2015) 01 GUJ CK 0037
In the Gujarat High Court
Case No : Tax Appeal No. 1304 of 2005

Commissioner of Central Excise and Customs

APPELLANT

Vs

Dada Associates

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Citation : (2015) 50 GST 154

Hon'ble Judges : V.M. Sahai, C.J.; R.P. Dholaria, J.

Bench : Division Bench

Advocate : Y.N. Ravani, for the Appellant; Paresh M. Dave, Advocates for the Respondent

Judgement

V.M. Sahai, C.J.—We have heard learned advocate Mr. Y.N. Ravani for the appellant and learned advocate Mr. Paresh Dave for the respondent.

2. This appeal was admitted on the following substantial question of law:

"Whether the Tribunal has committed error in granting claim of cash refund of unused accumulated deemed credit contrary to the provisions of Rule 57A of the Central Excise Rules, 1944 and Notification No. 85/87-CE dated 1st March, 1987?" 3. The brief facts of the case are that show cause notice was issued by the Assistant Commissioner of Central Excise, Division III, Surat to the respondent M/s. Dada Associates to show as to why refund claim of Rs. 1,18,754/- should not be rejected on the grounds stated in the show cause notice. The Assistant Commissioner of Central Excise passed order on 21.1.2000 confirming the show cause notice and rejected the claim of refund of the respondent. Against which the respondent filed appeal under Section 35 of the Central Excise Act before the Commissioner of Central Excise and Customs (Appeals). The appeal was allowed by judgement dated 31.1.2002. Paragraph No. 4 of the order passed by the Commissioner (Appeals) on 31.1.2002 is quoted below:

"I have carefully examined the records of the case and the defence taken in the memorandum of appeal. The issue involved in this case is that the appellant filed a refund claim for the accumulated deemed modvat credit of duty paid on inputs under Notification No. 29/96-CE(N.T.) dated 3.9.96 as amended read with Rule 57F(13) of the Central Excise Rules. This refund claim pertains to the quarter October to December, 1998. With effect from 16.12.98, compounded levy scheme was introduced in respect of independent processors of man made fabrics. The refund claim filed by the appellant has been rejected by the adjudicator on the ground that the appellants could have utilized this balance during the quarter towards payment of duty for home clearances. It has also been found that certain documents were not attested, they had not submitted attested copies of deemed register and certain other procedural issues were also mentioned while rejecting the said refund claim. I find that regarding procedural objection, it has been held by the Hon"ble CEGAT in the case of Hotline Teletube and Components Ltd. Vs. CCE, Indore, reported in 1998 (102) ELT 33 (T)ENDLAWFINDER that the non-fulfilment of procedural requirement cannot result in denial of the substantive benefit of refund conferred under Rule 57F. Now coming to the ground that the appellants could have utilized this amount towards payment of duty for home clearances, I find that with effect from 16.12.1998, the compounded levy scheme was introduced. Even if they wanted to pay duty from their deemed modvat account, the appellants could not have done so from 16.12.1998. Accordingly, the view taken by the adjudicator does not appear to be factually correct. Moreover, as already mentioned, in view of the introduction of compounded levy, this amount would have remained as unutilized credit balance and in case of M/s. Laxminarayan Industries, Surat, decided by me vide OIA No. RG/01/SRT/2002 dated 18.1.2002, I have held that the appellants in any case utilize this deemed credit balance lying with them under Notification No. 7/2001-CE(N.T.) now Notification No. 53/2001-CE(N.T.) dated 29.6.2001."

4. The order passed by the Commissioner (Appeals) was challenged by the Department before the Central Excise and Service Tax Appellate Tribunal (CESTAT). The CESTAT by its judgement upheld the order of Commissioner (Appeals) which has been challenged by the appellant in this Tax Appeal. It is not disputed by the appellant's counsel that the amount to be refunded is less than Rs. 2 lakh and in view of the Circulars issued by the Department which have been considered in COMMR. OF C. EX. and CUS., VADODARA-I VS. PHARMANZA HERBAL PVT. LTD. reported in 2014(306) E.L.T. 153 (Guj) and Commissioner of C. Ex. and Customs Vs. Stovec Industries Ltd. reported in 2014 (33) S.T.R. 124 (Guj)ENDLAWFINDER , the Tax Appeal below amount of Rs. 2 lakh is not maintainable. Even though the appeal was filed prior to issuance of the Circulars in the year 2010, the Circulars would apply even to the pending appeal. Therefore, we dismiss this appeal as not maintainable.