
(2014) 01 GUJ CK 0131
In the Gujarat High Court
Case No : Tax Appeal No. 1120 of 2013

Commissioner of Central Excise and Customs	APPELLANT
Vs	
Gujarat Fashions (P.) Ltd.	RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Citation : (2014) 43 GST 615 : (2014) 28 GSTR 510

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

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

Judgement

Akil Abdul Hamid Kureshi, J.—The Revenue is in appeal against the judgment of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (hereinafter referred to as "the Tribunal") dated May 14, 2013, raising the following questions for our consideration:

(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 Commissioner (Appeals) Surat II in the case of Amitex Silk (P.) Mills Ltd. 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 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 Jumbo Bag Ltd. v. Commissioner of Customs 2011 (268) ELT 81 (Tri. Chennai) and Commr. of Central Excise Vs. Shilpa Copper Wire Industries, as well as decision of Madras High Court in the case of BAPL Industries Ltd. v. Union of India 2007 (211) ELT 23?

Briefly stated the facts are that the respondent-manufacturer was 100% Export Oriented Unit (hereinafter referred to as "the EOU"). As per the EXIM policy prevailing at the relevant point of time, the respondent-assessee was entitled to some tax benefit calculated on the Free on Board (for short "FOB") value of the exports. In the course of manufacturing activity, the respondent-assessee generated certain scrap which was sold in Domestic Tariff Area (hereinafter referred to as "the DTA"). The assessee claimed tax exemption benefit on the basis of FOB value which included such sales to 100% EOUs in DTAs. The Departmental authorities contested the claim and disallowed the same. The appellate authority i.e. Commissioner (Appeals) allowed the respondent's appeal on the following grounds:

9. I find that the above decision of adjudicating authority is at variance with the decision of Hon"ble Tribunal in similar facts of case. The Hon"ble Tribunal in the case of 2005 (98) ECC 264 has observed that ratio of decision of Tribunal in the case of Ginni International (supra) is fully applicable and held that the value of deemed export is not to be excluded while determining the FOB value of export.

10. In view of the above decision of Hon"ble Tribunal, which is a latter decision and squarely covers the present appeal, I am of the opinion that the appellant was entitled to clear the goods availing the benefit of Notification 2/95-CE dated 4.1.1995, 13/98-CE dated 2.6.1998 as applicable to sales in DTA on the basis of 50% of the value of the deemed export also. Therefore, demand of differential duty on the finished goods (including rejects), imposition of penalty and demand of interest cannot sustain.

11. Further, as regards to the demands with respect to raw material utilized, I find that in a situation where the finished product is cleared in DTA on the basis of value of deemed export and is duly permitted by the development Commissioner, the said clearance has to be treated as legally permissible, as held by Hon"ble Tribunal in above referred Case and therefore, it cannot be held that there was any contravention of provision of Exim Policy or the violation of conditions of Notification No. 1/95 CE Dt. 4.1.1995 as amended. Since there was no violation of Exim Policy and or Notification No. 53/97-Cus dtd. 03.06.1997 and/or Notification No. 1/95 CE Dt. 4.1.1995 as amended, there is no ground to demand duty on raw materials consumed in the manufacture of the goods (rejects), which were cleared in DTA on the basis of Deemed Export. Accordingly, the demand of duty on Input/raw material, imposition of penalty and demand of interest shall also not sustain.

12. In view of the above discussion the appeals are allowed and the impugned OIO is set aside. The Stay applications also stands disposed off, accordingly.

2. The Revenue approached the Tribunal in further appeal. The Tribunal by the impugned judgment rejected the Revenue's appeal following the decision of the Tribunal in the case of 2005 (98) ECC 264 , which was confirmed by the Court in the decision in the case of 2010 (254) ELT 98 .

3. Having heard the learned counsel Mr. Oza for the Department, we notice that the question of treating the DTA clearances by an EOU for the purpose of deemed export had come up for consideration before this Court in the case of Commr. of Central Excise Vs. Shilpa Copper Wire Industries, . When the issue once again came up before this Court, the Revenue relied on the decision of Madras High Court in the case of BAPL Industries Ltd. v. Union of India 2007 (211) ELT 23. This Court in the case of CCE & C v. NBM Industries [Tax Appeal No. 1805 of 2009, dated 8-9-2011], however, rejected the Revenue's appeal by following earlier decision in the case of Shilpa Copper Wire Industries (supra), making the following observations:

4. Counsel for the Revenue, however, submitted that a Division Bench of the Madras High Court in the case reported in 211 ELT 23 has taken a different view. We find that the decision of this Court being directly on the issue, we are bound by the said decision. Further we find that the Apex Court in the case of Virlon Textile Mills Ltd. Vs. Commissioner of Central Excise, Mumbai, , though not in identical situation while examining the nature of DTA sales to 100% export oriented units observed that DTA sales against foreign exchange or other supplies in India can be equated with physical exports.

The principal issue being covered by the decision of this Court, we have no hesitation in dismissing Revenue's appeal. The same is, therefore, dismissed.