(2014) 07 GUJ CK 0076

In the Gujarat High Court

Case No : Tax Appeal No. 834 of 2014 (Arising out of order of Tribunal in Application No. E/MA (Ext.)/14166 of 2013 in Appeal No. E/1616 of 2009)

Commissioner of Central Excise and Service Tax — APPELLANT

Vs

Patel Airtemp (P.) Ltd. — RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35C(2A), 35C(2A)

Citation : (2015) 318 ELT 187 : (2014) 47 GST 598

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : V.D. Nanavati, Advocate for the Appellant

Judgement

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Mukesh R. Shah, J.—Draft amendment allowed.

1.1 In this appeal the appellant-Revenue has challenged the order passed by the learned Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (hereinafter referred to as "Tribunal") in extending the stay granted earlier during the pendency of the appeal beyond the total period of 365 days from the date of grant of initial stay and extending the stay till final disposal of the appeal with the following proposed substantial questions of law.

"(a) Whether the Hon''ble Customs, Excise and Service Tax Appellate Tribunal (CES-TAT), West Zonal Bench, Ahmedabad, while passing M/10060-10125/2014 dated 07.01.2014 in Application No. E/MA(Extn.)/14166/2013 in Appeal No. E/616/2009, has exceeded the jurisdiction vested in it by extending stay beyond period of total 365 days, in violation of statutory provisions contained in Section 35C(2A) of Central Excise Act, 1944?

(b) Whether the Hon''ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), West Zonal Bench, Ahmedabad, while passing Misc. Order

M/10060-10125/2014 dated 07.01.2014 in Application No. E/ MA(Extn.)/14166/2013 in Appeal No. E/616/2009 has exceeded the jurisdiction vested in the Hon''ble CESTAT being a creature of a statute to extend a period of stay beyond 365 days in total?

(c) Whether the Hon''ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), West Zonal Bench, Ahmedabad, while passing Misc. Order M/10060-10125/2014 dated 07.01.2014 in Application No. E/ MA(Extn.)/14166/2013 in Appeal No. E/616/2009, is right to the extent to grant extension of stay in an appeal pending for more than 4 years after the amendment dated 10.05.2013 in Section 35C(2A) of the Central Excise Act, 1944?

(d) Whether the Hon''ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), West Zonal Bench, Ahmedabad, while passing M/10060-10125/2014 dated 07.01.2014 in Application No. E/MA(Extn.)/14166/2013 in Appeal No. E/616/2009, has committed an error in passing a common order for extension of stay when each matter is required to be considered independently on the aspect of delay and the reasons for delay?"

At the outset it is required to be noted that while answering the same questions which are involved in the present appeal, by judgment and order in Tax Appeal No. 341/2014 and other allied appeals, this Court has observed and held as under:

"6. In view of the above and for the reasons stated above, question No. 1 is answered against the revenue and in favour of the assessee and it is held that in case and having satisfied that delay in not disposing of the appeal within 365 days (total) from the date of grant of initial stay is not attributable to the appellant/assessee in whose favour stay has been granted and that the Appellate Tribunal is satisfied that such appellant/assessee has fully cooperated in early disposal of the appeal and/or has not indulged into any delay tactics and/or has not taken any undue advantage, the learned Appellate Tribunal may, by passing a speaking order as observed hereinabove, extend stay even beyond the total period of 365 days from the date of grant of initial stay. However, as observed by the Hon''ble Supreme Court in the case of Kumar Cotton Mills Pvt. Ltd (supra), it should not be construed that any latitude is given to the Appellate Tribunal to extend the period of stay except on good cause and if the Appellate Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Appellate Tribunal for the reasons not attributable to the assessee. It also may not be construed that the Appellate Tribunal can extend stay indefinitely. On expiry of every 180 days the concerned assessee/appellant is required to submit an appropriate application before the learned Appellate Tribunal to extend the stay granted earlier and the Appellate Tribunal may extend the stay for a further period but not beyond 180 days at a stretch and on arriving at the subjective satisfaction, as stated hereinabove, the Appellate Tribunal may extend the stay even beyond 365 days from the date of grant of initial stay and even thereafter. Meaning thereby after 180 days, the Appellate Tribunal is required to review the situation and consider the application for extension of stay appropriately Thus, on expiry of maximum period of 180 days the assessee/ appellant is required to submit application for extension of stay each time and the Appellate Tribunal is required to consider the individual case and pass a speaking order, as stated hereinabove. By the aforesaid it may also not be understood that the Appellate Tribunal may go on extending the stay indefinitely and may not dispose of the appeals within stipulated time i.e. within 365 days from the date of grant of initial stay and/or at the earliest. All efforts shall be made by the learned Appellate Tribunal to dispose of the appeals at the earliest more particularly in a case where stay is operative against the revenue. The learned Appellate Tribunal and/or registrar of the Appellate Tribunal is required to maintain separate register with respect to the appeals in which stay has been granted fully and/or partially and appeals in which no stay has been granted and the Appellate Tribunal must and shall give priority to the appeals in which stay has been granted, continued and/or extended.

So far as the Question No. 2 is concerned, i.e. Whether the learned Appellate Tribunal is required to pass a speaking order while extending stay or not, for the reasons stated above, the said question is answered in favour of the revenue - department and against the assessee. Consequently, all the matters are remanded to the learned Appellate Tribunal to pass appropriate order afresh and pass speaking and reasoned order in light of the observations made hereinabove. Such exercise shall be completed within a period of two months from today. So as to see that the applications of the respective appellants/assesses for extension of stay do not become infructuous, it is directed that the stay order which is extended by the Appellate Tribunal shall be continued for a further period of two months. It goes without saying that even during the aforesaid period of two months, the Appellate Tribunal may dispose of the appeals finally.

All these appeals are partly allowed to the aforesaid extent and the matters are remitted back to the file of the learned Appellate Tribunal for passing orders afresh, as stated above."

2. Considering the above as such on expiry of maximum period of 180 days, the assessee - orig. appellant is required to submit application for extension of stay each time after completion of 140 days and the learned Tribunal is required to consider the individual case and pass a speaking order whether the delay in not disposing the appeal is attributable to original appellant-assessee or not and if it is found that the original appellant-assessee in whose favour the stay has been granted is not cooperating in early disposal of appeal and/or the delay in disposing appeal is attributable to the original appellant-assessee, the learned Tribunal is not required to extend the stay more particularly considering the provisions of section 35-C(2A) of the Central Excise Act.

3. In view of the above, we dispose of the present appeal by reserving the liberty in favour of the department to submit appropriate application before the learned

Tribunal and place the order passed by this Court in Tax Appeal No. 341/2014 and other allied appeals in the appeal so that the learned Tribunal may pass appropriate order on the said application calling upon the appellant-assessee to prefer separate application after completion of every 180 days and thereafter the Tribunal to pass appropriate speaking order considering the observations in our judgment and order passed in Tax Appeal No. 341/2014 and other tax appeals. As and when such application is made, the learned Tribunal to consider the same in light of observations made in decision rendered in Tax Appeal No. 341/2014 and other allied appeals. With this liberty and observations and directions, present tax appeal is disposed of.