(2010) 09 GUJ CK 0055

In the Gujarat High Court

Case No : Tax Appeal No. 2266 of 2009

Commissioner of Central Excise APPELLANT

Vs

AIA Engineering Ltd. RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2011) 21 STR 367 : (2011) 39 VST 33

Hon'ble Judges : K.A. Puj, J;Harsha Devani, J

Bench : Division Bench

Advocate : Y.N. Ravani, SC, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Commissioner of Central Excise, Ahmedabad has filed this Tax Appeal u/s 35G of the Central Excise Act, 1944 proposing to formulate the following substantial question of law for the determination and consideration of this Court:

A. Whether period of limitation can be excluded if previously rebate claim application is filed before an authority not competent to sanction refund claim, more particularly, when a notification issued is clearly describing Jurisdictional Assistant or Deputy Commissioner of Central Excise to grant refund?

B. Whether the Tribunal committed error in extending period of limitation, in absence of provision for condonation of delay?

2. Heard Mr. Y.N. Ravani, learned Standing Counsel appearing for the Revenue and perused the orders passed by the authorities below.

3. Here in the present case, the only issue involved is the rejection of the refund claim made by the Respondent-Assessee on the ground that the application was not filed in time. The Assistant Commissioner of Central Excise passed an order on 25-8-2008 rejecting the refund claim of Rs. 5,72,628/- on the ground that the

same was time barred.

4. This order was challenged before the Commissioner (Appeals) who vide his order dated 20-3-2009 allowed the said appeal and set aside the order passed by the Assistant Commissioner, rejecting the refund claim of the Respondent Assessee.

5. The Revenue has taken up the said matter further before the Tribunal and the Tribunal vide its order dated 28-8-2009 2009 (248) E.L.T. 826 confirmed the order of the Commissioner (Appeals) and dismissed the appeal.

6. Mr. Ravani has submitted that the statutory time limit prescribed for the purpose of filing refund claim is 60 days from the end of the relevant quarter during which the goods have been exported. He has further submitted that the provisions contained in the Notifications issued by the Revenue are very clear that the manufacturer/exporter shall file the claim to the Assistant Commissioner/ Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacturer or warehouse. He has further submitted that the exemption notifications have to be construed strictly and there is no place for intention. He has, therefore, submitted that the finding recorded by the Tribunal that a wrongly filed refund claim of service tax on 28-2-2008 can be construed to have filed with proper authority in time i.e. within 60 days thereby fulfilling the condition of Notification No. 41/2007-S.T., dated 6-10-2007. He has further submitted, that the refund application filed by the Respondent-Assessee before the wrong authority cannot be considered as the application filed within time and hence, the question of law as proposed by the Revenue does arise out of the order of the Tribunal and hence, the appeal deserves to be admitted.

7. We have considered the submissions made by Mr. Ravani and also gone through the orders passed by the authorities below. The Commissioner (Appeals) in his order has clearly observed that on verification of the records, it was found that first time, the Respondent-Assessee filed the refund claim to the Deputy Commissioner, Service Tax on 28-2-2008 with acknowledgement with proper authority in time i.e. within 60 days and fulfilled the condition in the Notification No. 41/07-S.T., dated 6-10-2007. He has, therefore, held that the Respondent-Assessee''s refund claim of service tax under Notification falls within the purview of the Assistant Commissioner/Deputy Commissioner of the Central Excise having jurisdiction over the factory/manufacturing unit. The concerned authority has returned the claim on 8-4-2008 with a direction to file the claim to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise. He, therefore, found that the application of refund was filed within time limit and this was returned by the authorities and the Respondent filed the same after lapse of time and as such, it is not barred by limitation. This finding was confirmed by the Tribunal with an observation that there was no infirmity in the view taken by the Commissioner (Appeals). The Tribunal has also reiterated that the original refund claim was filed within time before wrong authority. As such, subsequent refiling of refund claim beyond the limitation period should not be

held against the Assessee.

8. The above findings recorded by the appellate authorities are findings of fact and even otherwise, since the original application for refund was filed within time, though before wrong authority, it cannot be said that the said application was barred by limitation. We are of the view that there is no infirmity in the order passed by the authorities below. No question of law, therefore, arises out of the order of the Tribunal and hence, the appeal is dismissed.