(2014) 07 GUJ CK 0080

In the Gujarat High Court

Case No : Tax Appeal Nos. 619 and 621 of 2014

Commissioner of Central Excise APPELLANT

Vs

Chandresh C. Shah RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 11AC

Citation : (2014) 47 GST 295 : (2014) 36 STR 972

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

Bench : Division Bench

Advocate : Y.N. Ravani, Advocate for the Appellant

Judgement

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Mukesh R. Shah, J.—As common question of law and facts arise in this group of appeals as such they arise out of the common impugned judgment and order passed by the learned Customs, Excise, Service Tax Appellate Tribunal (hereinafter referred to as "Tribunal"), all these appeals are decided and disposed by this common order. It appears that the Commissioner of Central Excise, Ahmedabad-I initiated the proceedings under the Central Excise Act, 1944 (hereinafter referred to as "Act") by issuing the show-cause notice against the Company M/s. Doshion Ltd. and the respondents herein i.e. Pankaj Navnitlal Mehta, Authorized Signatory of the Company; Shri Chandresh C. Shah, General Manager (Accounts) and Shri Sanjay Patni, General Manager (Finance & Accounts) of the Company. By the aforesaid show-cause notice the Company M/s. Doshion Ltd. was directed to show cause as to why the Cenvat Credit of service tax involved on input service amounting to Rs. 1,51,51,730/- (Cenvat Credit of Service Tax Rs. 1,48,67,947/- + Cenvat Credit of Education Cess Rs. 2,80,997/- + Cenvat Credit of Secondary and Higher Education Cess of Rs. 2,786/-) availed and utilized by the Company during March 2005 and August 2007 should not be recovered from them under Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") read with Section 11A of Act. The

Company was also called upon as to why the interest at prescribed rate should not be charged and recovered from them under Rule 14 of CCR, 2004 read with Section 11AB of Act. The Company was also called upon to show cause as to why the penalty under Section 11AC of the Act and sub-rule (3) of Rule 15 of CCR, 2004 should not be imposed on them. That the respective respondents herein viz. Pankaj Navnitlal Mehta, Authorized Signatory of the Company; Shri Chandresh C. Shah, General Manager (Accounts) and Shri Sanjay Patni, General Manager (Finance & Accounts) were also served with the show-cause notices and were called upon to show cause as to why the penalty under sub-Rule (3) of Rule 15 of CCR, 2004 and Rule 26 of Central Excise Rules, 2002 (hereinafter referred to as "CER, 2002") should not be imposed on them.

1.1. That the show-cause notice was adjudicated by the Commissioner of Central Excise, Ahmedabad-1 and by order dated 15.12.2008, the adjudicating authority - Commissioner of Central Excise, Ahmedabad-1 dropped the recovery of Cenvat Credit of service tax involved on input services amounting to Rs. 44,01,429/- being the credit pertaining to the Vatva Manufacturing Unit of the Company namely M/s. Doshion Ltd. The adjudicating authority also passed an order that the cenvat credit of service tax involved on input service amounting to Rs. 1,07,07,142/- availed and utilized is to be recovered from the Company under Rule 14 of CCR, 2004 read with Section 11A of the Act. The adjudicating authority also ordered recovery of service tax credit amounting to Rs. 43,159/- pertaining to the service tax paid before September 2004 utilized towards payment of central excise duty by their manufacturing unit under Rule 14 of CCR, 2004 read with Section 11A of the Act. The adjudicating authority also directed for recovery of interest on the aforesaid ground at the prescribed rates from them under the provisions of section 11AB of the Act. The adjudicating authority also imposed penalty on the Company of Rs. 1,07,50,301/- under Section 11AC of the Act. The adjudicating authority also imposed the penalty under Rule 26 of the CER, 2002 upon the respondents herein being authorized signatory, General Manager (Accounts) and General Manager (Finance & Accounts) of the Company respectively to the extent of Rs. 5 lac each.

1.2. That feeling aggrieved and dissatisfied with the order passed by the Commissioner of Central Excise, Ahmedabad-1, the Company as well as the respondents herein upon whom the penalty under Rule 26 of the CER, 2002 prefers appeals before the learned Tribunal being Appeal Nos. E/378-381/2009. That by a common judgment and order the learned Tribunal has been pleased to partly allow the aforesaid appeals more particularly appeal preferred by the Company and has quashed and set aside the demand cenvat credit of Rs. 1,07,07,142/- with interest and penalty equal to the sum imposed under Section 11AC of the Act. The learned Tribunal has also set aside the order passed by the adjudicating authority imposing the penalty upon the respondents herein imposed under Rule 26 of the CER, 2002.

1.3. That feeling aggrieved and dissatisfied with the impugned orders passed by the learned Tribunal insofar as allowing appeals preferred by the respondents herein - individuals in deleting the penalty imposed by the adjudicating authority imposed under Rule 26 of the CER, 2002, the common appellant herein - Revenue has preferred the present tax appeals with the following proposed question of law.

"Whether the CESTAT is justified in setting aside the personal penalty under Rule 26 of the Central Excise Rules, 2002 imposed on the employees/Director though they had the knowledge that their employer viz. M/s. Doshion Ltd., Ahmedabad was availing inadmissible Cenvat Credit?"

2. We have heard Shri Yogesh Ravani, learned advocate appearing on behalf of the common appellant.

At the outset it is required to be noted and it is not in dispute that against the impugned common judgment and order passed by the learned Tribunal more particularly against the judgment and order passed by the learned Tribunal in the case of Company, the Revenue had preferred CCE v. Doshion Ltd. [Tax Appeal No. 415/2013] before this Court and the Division Bench of this Court vide order dated 01.05.2013 has admitted the said tax appeal to consider the question of law whether the Customs, Excise and Service Tax Appellate Tribunal committed an error in fact and in law in reversing the order of CIT (Appeals) confirming the demand for wrongfully availed Cenvat Credit of Rs. 1,07,07,142/- on the ground that the issue is revenue neutral? However, it is required to be noted that so far as the order passed by the learned Tribunal deleting the penalty against the Company, under Section 11AC of the Act is concerned, the Division Bench has confirmed the order passed by the learned Tribunal by observing that there was no material to even prima facie suggest that there was any fraud, collusion or wilful misstatement or suppression of facts or controversy of the provisions of the Act or the Rules on the part of the assessee with intent to evade payment of duty. Shri Ravani, learned advocate appearing on behalf of the appellant is not disputing that as such the order passed by the learned Tribunal deleting the penalty imposed against the Company, under Section 11AC of the Act, has been confirmed by this Court.

3. In view of the above, the present tax appeals against the impugned common judgment and order passed by the learned Tribunal deleting the penalty imposed upon the respective respondents herein imposed under Rule 26 of the Rules, 2002 also deserves to be dismissed.

3.1. At this stage it is required to be noted that as such while deleting the penalty imposed against the Company under Section 11AC of the Act by the learned Tribunal, the learned Tribunal in the impugned judgment and order has observed in para 5 as under: "5. We have considered the submissions made by both sides. We find considerable force in the arguments advanced by the learned counsel. The registered office and Vatva office both are located in the same place and appellant has simply utilised the credit at Vatva instead of distributing it to various units. As submitted by the learned counsel, during the relevant period, there was no restriction for utilization of such credit without allocating proportionality to various units. The omission to take registration as an Input Service Distributor can at best be considered as procedural irregularity and in view of the decision cited, has to be considered sympathetically. Further, it is also noticed that appellant has not got any extra benefit by doing this. In fact from the statement of Shri Chandresh C. Shah, as explained that above cenvat credit available to them, 20% of service tax payable only was paid and balance was paid in cash. In fact, proper distribution would have enabled them to utilise full credit. It would show that the exercise is totally Revenue neutral and no loss has been caused to the Revenue (in fact Revenue has gained). In the absence of any legal requirement to avail credit based on the services received during the relevant time and in the light of the decision cited by the learned counsel, the procedural irregularity has to be ignored and the demand confirmed has to be set aside on this ground. In the result, demand for cenvat credit of Rs. 1,07,07,142/- with interest and penalty equal to the same imposed under Section 11AC of the Central Excise Act, 1944 are set aside."

In view of the above, more particularly when the judgment and order passed by the learned Tribunal deleting the penalty imposed against the Company under Section 11AC of the Act has been confirmed by the Division Bench of this Court by observing that there is no material to even prima facie suggest that there was any fraud or collusion or wilful misstatement or suppression of facts or controversy of the provisions of the Act or the Rules on the part of the assessee with intent to evade payment of duty, all these appeals deserve to be dismissed and are, accordingly, dismissed.