(2015) 03 GUJ CK 0093

In the Gujarat High Court

Case No : Tax Appeal No. 1654 of 2008

Commissioner of Central Excise APPELLANT

Vs

Navin C. Tolia RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 14

Citation : (2015) 51 GST 394

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

Bench : Division Bench

Advocate : Kalpesh N. Shastri, for the Appellant

Judgement

V.M. Sahai, Acting C.J—This Tax appeal has been preferred by the Revenue challenging the order dated 1.4.2008 passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad ["Tribunal" for short], whereby the Tribunal has allowed the appeal of the assessee. While admitting the appeal, this Court framed the following substantial questions of law:

"(1.) Whether in the facts and circumstances of the case the Tribunal has committed substantial error of law in ignoring relevant statements of the witnesses recorded under Section 14 of the Central Excise Act and by exonerating the respondent from charge of clandestine removal of excisable goods by relying upon extract of letter dated 30.11.1998 purportedly written by Shri Sharad N. Vadalia?

(2.) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in not considering the well reasoned judgment of the Commissioner of Central Excise dated 28.11.2001?

(3.) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in setting aside penalty on the respondent under under Rule 209A of the Central Excise Rules, 1944?"

2. We have heard Mr. Kalpesh N. Shastri, learned counsel appearing on behalf of the appellant. Though served, none appears on behalf of the respondent.

3. We propose to take up both the questions together as both are interlinked. We have gone through the order of the Tribunal and we deem it necessary to extract paras 2 and 3 of the order of the Tribunal dated 1.4.2008, which are as under:

''2. Ld. Advocate Sh. S.P. Mathew appearing on behalf of the appellant has drawn our attention to the correspondences between Sh. Jitendra Tolia, Managing Director, with the other Directors. The crux of the said correspondences is allegations by Sh. Jitendra Tolia against the other Directors indicating that they are indulging in clandestine removals, which is an offence and they should pay the duty immediately. We find that after prolonged correspondence, one of the Director Shri Sharad N. Vadalia, in his letter dt. 30.11.1998 addressed to Sh. Jitendra Tolia, observed as under;

"These transactions were deal by me & Mr. Kamlesh Mehta only. Mr. Navin Tolia [Chairman] was not involved in these transactions in fact he had no knowledge about it. All documents, accounts, finance, excise and sales tax work were done by me and Kamlesh Mehta from 1st Feb., ''98 to 30th Nov. ''98"

3. From the above, it is seen that Sh. Navin Tolia, Chairman of the company, was not in knowledge of the fact of removal of goods without payment of duty. We also find that there is no evidence on record to show his involvement or knowledge. Accordingly, we do not find any justifiable reason to impose a separate penalty upon him. His appeal is, accordingly, allowed.''

4. From the reasons given by the Tribunal, it is clear that Shri Navin Tolia [Chairman] had no knowledge about the removal of goods without payment of excise duty nor is there any evidence contrary to it on record and, therefore, if excise duty was not leviable, penalty could not be leviable. The Tribunal has approved the reasons given by the learned counsel for the assessee that the transactions were done by Mr. Kamlesh Mehta and Shri Sharad N. Vadalia, one of the directors of the assessee company only and Mr. Navin Tolia was nowhere involved in the transaction nor had he any knowledge about the same. We, therefore, do not find any error in the order of the Tribunal. The appeal is dismissed. The questions are, therefore, answered in favour of the respondent-assessee and against the Revenue.

