
(2015) 01 GUJ CK 0068
In the Gujarat High Court
Case No : Tax Appeal No. 444 of 2006

Commissioner of Central Excise

APPELLANT

Vs

Rajsheela Steel Industries

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Citation : (2015) 50 GST 160

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

Bench : Division Bench

Advocate : Y.N. Ravani, for the Appellant; S.N. Thakkar, Advocates for the Respondent

Judgement

V.M. Sahai, Actg. C.J.

1. We have heard Mr. Y.N. Ravani, learned counsel for the appellant. This appeal was admitted in terms of the following substantial question:

"Whether the Tribunal is correct in extending the deemed credit benefit to a unit availing Notification No. 1/93-CE, dated 28.2.1993, even after crossing the value of clearances of their goods of Rs. 75 lakhs and when they are paying full rate of duty after crossing the exemption limit?"

2. The brief facts are that the respondent assessee has availed deemed credit on Iron and Steel Re-rollable materials @ Rs. 920 PMT, but the said facility pertains to re-rollers who were availing the benefit of Notification No. 1/93-CE dated 28.02.1993 upto the exemption limit of Rs. 75 lakhs only. So the deemed credit so availed after crossing the exemption limit was illegal and is thus liable to be recovered. The show cause notices were therefore issued to the assessee for recovery of the total amount of Rs. 1,70,255/-. The assessee in their defence invited the attention to Order No. TS/36/94-TRU, dated 1.3.1994 issued by the Ministry of Finance, Department of Revenue, Government of India wherein, it was indicated that Ingots and Re-rollable materials of Iron and Steel purchased from outside lying in stock on or after 1.4.1994 with the Re-rollers, who had

been availing of exemption under Notification No. 1/93-CE, dated 28.2.1993 will be deemed to have paid duty and the credit of duty under Rule 57A would be allowed @ Rs. 920 PMT without production of documents evidencing the payment of duty. Further, they stated that the benefit of deemed credit was available so long as the manufacturer avails of the exemption under Notification No. 1/93-CE, dated 28.2.1993 and so they have availed deemed credit correctly. The Assistant Commissioner held that the benefit of deemed credit to the assessee is actually availing concessional slab rate under Notification dated 28.2.1993 and demand against the assessee was dropped.

3. The department challenged the order passed by the Assistant Commissioner and the Commissioner (Appeals) dismissed the appeal of the department on 6.3.2002. The department also challenged the orders passed by the authorities below before the CESTAT, Mumbai by filing the appeal which has also been dismissed on 11.10.2005 by placing the reliance on the judgment of the Tribunal at Madras in the case of Collr. of Central Excise vs. Sri Venkateswara Steel Industries 1996 (65) ECR 1 03

4. In this appeal, validity of the order of the Tribunal has been challenged. This Court in Tax Appeal No. 56 of 2005 and allied matters decided on 27.8.2014 in the case of Vinubhai Steel Co. (P.) Ltd. v. CCE has affirmed the view taken by the Tribunal at Madras as the Madras High Court has also affirmed the view of the Tribunal. The result is that the respondent assessee was entitled to the benefit of deemed credit benefit in pursuance of the notification dated 28.2.1993. For the aforesaid reason, we do not find any merit in the tax appeal. The appeal is dismissed. The question is answered accordingly against the department and in favour of the assessee.