(2010) 11 GUJ CK 0090

In the Gujarat High Court

Case No : Tax Appeal No. 1143 of 2009

Commissioner of Central Excise APPELLANT

Vs

Steel Cast Ltd. RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 69, 75, 75A, 76, 77

Citation : (2011) 21 STR 500 : (2011) 39 VST 200

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : Sejal K. Mandavia, for the Appellant; None Appeared, for the Respondent

Final Decision : Dismissed

Judgement

Harsha Devani, J.—In this appeal u/s 35G of the Central Excise Act, 1944, the Appellant, Commissioner of Central Excise, Bhavnagar, has challenged order dated December 12, 2008 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal), proposing the following questions:

(a) Whether, in the facts and circumstances of this case, the Tribunal is right in dropping the demand that show-cause notice issued in this case and remanding the matter to the original adjudicating authority on the ground that it is barred by limitation even though it is held that the services rendered by the Respondent is management consultant services?

(b) Whether the Tribunal is right in holding that there is bona fide intention of the Respondent for not paying the duty and the Respondent has not evaded payment of duty?

2. The Respondent-Assessee is engaged in manufacturing of casting and casting articles falling under Chapter Heading No. 84/73, respectively, of the Schedule to the Central Excise Tariff Act, 1985. A show-cause notice dated November 7, 2002

came to be issued to the Assessee in relation to the period October 16, 1998 to December 2001, calling upon it to show cause as to why its application dated March 18, 2002 for registration under the category of "scientific and technical consultancy services" applied for u/s 69 of the Finance Act, 1994 ("the Act") should not be rejected for the said category and should not be considered for grant of registration under the category of "management consultancy services" ; as to why the service tax amounting to Rs. 1,11,800 with interest should not be recovered ; and as to why interest u/s 75 of the Act, and the penalty under Sections 75A, 76, 77 and 78 of the Act should not be levied.

3. The Assessee, in the proceedings before the adjudicating authority, raised a specific contention that the extended period of limitation could not have been invoked in the light of the fact that there was no suppression on the part of the Assessee. The adjudicating authority in its order dated August 17, 2004 has merely stated that the Assessee had suppressed the fact that it was providing management consultancy services and had also suppressed the value of taxable service provided and as such, was liable to penalty u/s 78 of the Act and has held that the services provided by the Assessee fell within the purview of "management consultancy services" and confirmed the duty demand along with interest and penalties as proposed in the show-cause notice. It was also held that the Assessee was liable to be registered under the category of "management consultancy services".

4. Being aggrieved, the Assessee carried the matter in appeal before the Commissioner (Appeals), who confirmed the order passed by the adjudicating authority. The Assessee preferred a second appeal before the Tribunal, and partly succeeded. Though on merits the Tribunal held that the services provided by the Assessee fell under the category of "management consultant" and not under the category of "scientific or technical consultancy", on the question regarding invocation of the extended period of limitation, the Tribunal held in favour of the Assessee. Being aggrieved by the impugned order of the Tribunal insofar as it has held that in the facts and circumstances of the present case the extended period of limitation could not be invoked, the Revenue is in appeal before this Court.

5. Assailing the impugned order of the Tribunal, Ms. Sejal Mandavia, learned standing counsel for the Appellant, has submitted that the Assessee had suppressed the fact that it was running services which fell within the category of "management consultancy services" and had not got itself registered under the provisions of the Finance Act, 1994 and had failed to pay service tax on such services rendered by it and as such, the adjudicating authority had rightly invoked the larger period of limitation and the Tribunal was, therefore, not justified in holding that the larger period of limitation could not have been invoked.

6. On a perusal of the order made by the adjudicating authority, it is apparent that he has not recorded any specific finding as regards suppression except for

holding that the Assessee had suppressed the fact that it was providing management consultancy services and had suppressed the value of taxable service provided. Before the Commissioner (Appeals), on behalf of the Assessee a specific contention had been raised to the effect that the Assessee had shown the income from the services in question in the balance sheet and that the activity of running such services was only a small and trivial portion of the entire manufacturing activity of the Assessee. The Assessee had made detailed submissions in support of its claim that the show-cause notice was hit by limitation and hence, the demand was unsustainable. Despite such specific contentions having been raised by the Assessee, the Commissioner (Appeals) has not dealt with the same in his order.

7. The Tribunal in the impugned order has, while dealing with the contention of the Assessee that as the demand of tax for the period October 16, 1998 to December 2001 had been raised on December 7, 2002, the same was barred by limitation for the major period, recorded the following findings:

(8) However, we find force in the Appellant''s contention that the demand of tax for the period October 16, 1998 to December, 2001 having been raised on November 7, 2002, was barred by limitation for the major period. The income received from such services was being collected by raising invoices and the same was also being reflected in the annual balance sheets being prepared by the Appellant. As such, it cannot be held that there was any suppression or any mis-statement on the part of the Appellant, with an intent to evade payment of duty. At the most, it can be a case of bona fide interpretation of law and entertaining belief that the services being rendered by them does not amount to management consultant services. The Appellants having reflected entire income in their balance sheets reflects upon their bona fide and not on their attempt to suppress or hide the fact from the Revenue. Keeping in view that lot of confusion was prevailing during the relevant time, we extend the benefit to the Appellant and hold that there is no justification for invocation for longer period of limitation. Inasmuch as part of the demand would fall within the limitation, we set aside the impugned order and remand the matter to the original adjudicating authority for quantification of the Appellant''s duty liability and penalty.

8. Thus, the Tribunal upon appreciation of the evidence on record and considering the submissions advanced by the Assessee has found as a matter of fact that there was no suppression on the part of the Assessee. The Tribunal has further found that the Assessee was entertaining a bona fide view that the services rendered by it did not fall within the ambit of management consultancy services and that at the relevant time a lot of confusion was prevailing in respect thereto. As to whether there is any suppression or mis-statement with intent to evade payment of duty is a question of fact and the Tribunal upon appreciation of the evidence on record has found as a matter of fact that there was no suppression or misstatement. Moreover, in the light of the fact that there was confusion prevailing in respect of the controversy in issue at the relevant time,

the Assessee was entitled to entertain a view that the services rendered by it did not fall within the ambit of management consultancy services. On behalf of the Revenue nothing has been pointed out to the contrary to dislodge the findings recorded by the Tribunal so as to persuade the court to take another view. In the circumstances, it is not possible to state that the Tribunal has committed any legal error so as to warrant interference.

9. In the light of the aforesaid discussion, the impugned order of the Tribunal does not give rise to any question of law, much less, a substantial question of law. The appeal is, accordingly, dismissed.

