

(2017) 02 GUJ CK 0026
In the Gujarat High Court
Case No : 537 of 2007

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

APPELLANT

Vs

M/S. SHABNAM SYNTHETHCS

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Citation : (2017) 02 GUJ CK 0026

Hon'ble Judges : M R Shah, B N Karia

Bench : Division Bench

Advocate : Sudhir M Mehta

Final Decision : Dismissed

Judgement

1. Feeling aggrieved and dissatisfied with the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal in Appeal No.E/93 to 95/2003, by which the learned tribunal has dismissed the said appeals without entering into the merits of the matter and solely on the ground that the assessee's appeal against the very judgement and order which were assailed in the appeals, have been dismissed earlier by the learned tribunal, revenue has preferred the present appeal to consider the following substantial question of law :- "(A) Whether the Tribunal is justified in dismissing the appeals filed by the revenue following Larger Bench decision in the case of CCE v. LML Ltd., Scooter Division, reported in 2002 (143) ELT 431 (Tri-LB) without considering the appeal of the revenue filed within limitation on merits solely on the ground that the appeals were filed much after orders were passed in the appeal of the assessee?"

2. A show cause notice was issued upon the respondent herein - M/s. Shabnam Synthetics, Surat by which the respondent assessee was called upon to show cause as under :- (i) recover the duty of Excise of Rs.34,00,011/- leviable on finished goods (including rejects) and waste yarn valued at Rs.52,49,838/- from them under proviso to Section 11A(1) of Central Excise Act, 1944;

(ii) recover the duty of Excise of Rs.6,88,236/- leviable on indigenous POY/PFY

(raw material) valued at Rs.19,94,887/- from them under proviso to Section 11A of Central Excise Act, 1944;

(iii)recover the duty of Customs amounting to Rs.36,21,129/- leviable on imported POY/PFY (raw material) valued at Rs.40,72,894/- from them under Section 72 of Customs Act, 1962 read with proviso to Section 28(1) of Customs Act, 1962;

(iv)impose penalty on them under Rule 209 of Central Excise Rules, 1944 read with Section 11AC of central excise act, 1944 and section 72, 112(a) read with Section 114(A) of Customs act, 1962; and

(v)impose interest @24% per annum on evaded Central Excise duty and customs duties from them under Section 11AB of Central Excise Act, 1944 read with Section 28AB of Customs Act, 1962.

2.1. The said show cause notice was adjudicated by the appropriate authority - Commissioner Central Excise and Customs, Surat-I, who determined the duty payable at Rs.34,00,011/- payable by the respondent assessee M/s. Shabnam Synthetics, Surat in terms of section 11A(2) of the Central Excise Act, 1944. However, the adjudicating authority did not pass further order. The Assessing Officer did not impose any penalty.

2.2. Similar show cause notice was also issued, which was adjudicated by the appropriate authority.

2.3. Feeling aggrieved and dissatisfied with the orders passed by the adjudicating authority, the respondent assessee preferred three different appeals before the learned tribunal. The learned tribunal disposed of the said appeals in favour of the respondent assessee and relying upon its earlier decision in the case of Ginni International Ltd. Versus Commissioner, reported in 2002 (139) ELT 172 (Tri. Del.), held that when in respect of 100% EOU Permission to sell goods manufactured by them in DTA in accordance with paragraph 9.9 of the EXIM Policy, Government cannot go beyond such permission and dispute the value of clearance allowed by the competent authority, which in the case was the Development Commissioner.

2.4. It appears that after the the order passed by the learned tribunal in the aforesaid appeals preferred by the assessee, by which the learned tribunal has quashed and set aside the order passed by the adjudicating authority, revenue preferred appeals before the CESTAT being Appeal Nos.E/93 to 95/2003. The same has been dismissed by the learned CESTAT without further entering into the merits of the appeal and solely on the ground that in view of the decision of the Larger Bench of the learned tribunal in the case of Commissioner of C. Ex. New Delhi Versus L.M.L. Ltd. (Scooter Division), reported in 2002 (143) ELT 431 (Tri. LB) appeals preferred by the revenue are required to be dismissed.

2.5. Feeling aggrieved and dissatisfied with the impugned order passed by the learned tribunal in dismissing the appeals preferred by the revenue solely on the

ground that the appeals preferred by the assessee are disposed of and therefore, appeals preferred by the revenue are required to be considered on merits, revenue has preferred present appeal with the aforesaid question of law.

3. Mr.Sudhir Mehta, learned advocate appearing on behalf of the revenue has vehemently submitted that the decision of the Larger Bench of the learned tribunal in the case of LML Ltd. (Scooter Division) shall not be applicable to the facts of the case on hand. It is submitted that as such the appeals preferred by the revenue was on altogether different grounds and therefore, the same ought to have been considered by the learned tribunal on merits. 3.1. Mr.Sudhir Mehta, learned advocate appearing on behalf of the revenue has further submitted that in the case of Ginni International Ltd. (supra) was pending before the Hon''ble Supreme Court which was required to be considered by the learned tribunal in the appeals preferred by the revenue. It is, therefore, submitted that in that view of the matter, the matters are required to be remanded to the learned tribunal to decide the appeals preferred by the revenue on merits.

4. Heard Mr.Mehta, learned counsel appearing on behalf of the revenue. 4.1. It is required to be noted that against the order passed by the adjudicating authority, the assessee preferred appeals before the learned tribunal and the learned tribunal has allowed the said appeals on merits and has quashed and set aside the orders passed by the adjudicating authority. It appears that the order passed by the adjudicating authority has been set aside by the learned tribunal in the appeals preferred by the assessee. It is required to be noted that the order passed by the learned tribunal in the appeals preferred by the assessee has been confirmed by the Division Bench of this Court in the decision reported in Commissioner of C. Ex. & Cus. Versus Sabnam Synthetics Ltd. reported in 2015 (321) ELT 436 (Gujarat), which is further confirmed by the Hon''ble Supreme Court.

4.2. It is also required to be noted that subsequently in the case of Ginni International Ltd. (supra), the Hon''ble Supreme Court decided the issue against the revenue.

4.3. In view of the above, the issue on merits now has been concluded by the Hon''ble Supreme Court against the revenue. Therefore, no fruitful purpose would be served in remanding the matter to the learned tribunal to consider the issue on merits which is already concluded against the revenue in view of the decision of the Hon''ble Supreme Court in the case of Virlon Textile Mills Ltd. Versus Commissioner of Central Excise, Mumbai, reported in (2007) 4 SCC 440 as well as decision of the Division Bench of this Court in the case of very assessee and against the very impugned judgement and order passed by the adjudicating authority reported in 2015 (321) ELT 436 (Gujarat).

4.4. Under the circumstances, without entering into the larger question, whether the learned tribunal was justified in not considering the appeals of the revenue on merits and whether decision of the Larger Bench of the learned tribunal in the

case of LML Ltd. was applicable or not, when the main issue on merits has been concluded against the revenue, as observed hereinabove, we dismiss the present appeal. In the facts and circumstances of the case, there shall be no order as to costs.