(2014) 11 GUJ CK 0069

In the Gujarat High Court

Case No : Tax Appeal Nos. 365-366 and 377-378 of 2014

Commissioner of Customs, Kandla APPELLANT

Vs

Link Enterprise RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:
Customs Act, 1962 — Section 6

Citation : (2015) 315 ELT 359

Hon'ble Judges : V.M. Pancholi, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Y.N. Ravani, Advocates for the Appellant; Harshal M. Shah, Advocates for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—The department has preferred these appeals challenging a common judgment of the Customs, Excise and Service Tax Appellate Tribunal (''the Tribunal'', for short) dated 22-4-2013 2013 (293) E.L.T. 746 (Tri. - Ahmd.)). The respondent had made several refund claims of special additional duty paid by them on the ground that the same was refundable upon production of proof of ultimate purchaser having paid Value Added Tax. Such refund applications were processed by the Assistant Commissioner, and to that extent, found payable, was ordered to be refunded. The department challenged such order of the Assistant Commissioner. The Commissioner reversed the decision of the Assistant Commissioner, upon which, the aggrieved assessee approached the Tribunal. The Tribunal, by the impugned judgment, allowed the appeal. One of the main grounds pressed by the Revenue in this group of appeals is that the Assistant Commissioner did not have jurisdiction to entertain the refund claims. Only the Director General of Foreign Trade, who would have all the necessary documents, could have entertained such applications. Learned advocate Mr. Ravani for the department submitted that the customs authority would not be appropriately equipped, and in any case, was not legally entitled to grant such refund claims. On the other hand, learned advocate Mr. Parikh for the respondent submitted that in absence of any Notification under Section 6 of the

Customs Act, the customs authority alone could decide such refund applications.

2. In the facts of the present case, we are not inclined to examine this question. Firstly there is nothing on record to suggest that the department questioned the genuineness of the refund claims of the assessee. In other words, the department does not seriously dispute that the special additional duty paid by the respondent was refundable since the purchaser had paid Value Added Tax to the department. Additionally, as an appellant before the Commissioner and respondent before the Tribunal, the department never questioned the jurisdiction and the authority of the Assistant Commissioner to entertain the refund claims. At this stage, particularly, in the facts of this case, we do not permit to do so. We are conscious that the question of jurisdiction can be raised at any stage of the proceedings. Keeping the question of law raised by the department open, to be gone in appropriate case, these Tax Appeals are dismissed.