(2010) 03 GUJ CK 0071

In the Gujarat High Court

Case No : Tax Appeal No. 672 of 2009

Commr. of C. Ex. and Cus. APPELLANT

Vs

Indeos ABS Limited RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Citation : (2010) 254 ELT 628

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Amee Yajnik, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This appeal, preferred by Appellant-Revenue proposes following three questions stated to be substantial questions of law:

(a) Whether in the facts and circumstances of the case, CESTAT is right in allowing appeal filed by the assessee on the ground of revenue neutrality which issue has been kept opened by the Hon''ble Supreme Court in the two cases relied upon by CESTAT?

(b) Whether CESTAT is right in ignoring the main issue of undervaluation adopted by the assessee?

(c) Whether determination of correct assessable value for the purpose of charging central excise duty can be done away with simply on the ground of revenue neutrality?

2. Heard learned Counsel for the appellant. It was submitted that the Tribunal has committed an error in not dealing with the aspect of undervaluation of goods manufactured by assessee despite the fact that the Adjudicating Authority had discussed the said issue at length in the adjudication order.

3. As can be seen from order of the Tribunal dated 10-11-2008 impugned in this

appeal, the Tribunal has disposed of the appeal holding that the goods manufactured by the assessee were being cleared to its own sister concern, who is availing the benefit of Mod vat Credit. The Tribunal has further found that as such whatever duty the assessee was paying was available as credit to its own unit (sister concern) and hence the entire exercise was revenue neutral.

4. The aforesaid findings of facts are not disputed. The grievance was that the aspect of undervaluation has not been considered by the Tribunal at all. Grievance would have merited acceptance if the ultimate exercise would have benefited the Revenue by collection of duty in the coffers of the exchequer. In the facts of the present case, admittedly no such benefit accrues to the exchequer. In the circumstances, if the Tribunal has chosen not to determine an academic issue, it is not possible to state that any legal infirmity exists in the impugned order of the Tribunal.

5. In the circumstances, in absence of any substantial question of law, the Appeal is dismissed.

