
(2013) 01 GUJ CK 0078
In the Gujarat High Court
Case No : Tax Appeal No. 953 of 2012

Commr. of C. Ex.	Vs	APPELLANT
Ratnamani Metals and Tubes Ltd.		RESPONDENT

Date of Decision : 27-01-2013

Acts Referred:

Citation : (2013) 296 ELT 327

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Manisha Lavkumar, for the Appellant;

Final Decision : Dismissed

Judgement

Sonia Gokani, J.—Aggrieved by the judgment and order dated 31st May 2012 2013 (195) ECR 1 75 passed by the Customs, Excise &

Service Tax Appellate Tribunal, Ahmedabad [""CESTAT"" for short], the present Tax Appeal u/s 35G of the Central Excise Act, 1944 [""Act"" for short], proposing the following substantial questions of law:--

(A) Whether the Hon"ble Customs, Excise & Service Tax Appellate Tribunal [CESTAT], West Zonal Bench, Ahmedabad while passing Order

No. A/803/WZB/AHD/2012, dated 31-5-2012 2013 (195) ECR 1 75 is right in holding that the benefit of reduced penalty to the extent of 75%

of the duty liability is available to the assessee as per the provisions of Section 11AC of the Central Excise Act, 1944, when the duty, interest and

the penalty to the extent of 25% of the amount of the duty was not paid within 30 days of the order of the adjudicating authority?

(B) Whether the Hon"ble Customs, Excise and Service Tax Appellate Tribunal [CESTAT], West Zonal Bench, Ahmedabad can award such

option to the assessee when Section 11AC of the Central Excise Act, 1944 is clear and provides no such scope for the Tribunal?

The assessee-respondent, engaged in the manufacture of MS Tubes & pipes, availed the benefit of Cenvat credit on the inputs/capital goods used

for manufacture and clearance of dutiable and exempted finished goods. A show cause notice was issued for recovery of wrongly availed Cenvat

credit amount of Rs. 41,84,290/- under Rule 12 of the Cenvat Credit Rules, 2002 read with proviso to Section 11A(1) of the Central Excise Act,

1944 and Rule 13 of the Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

2. Order-in-Original confirmed the amount of demand and imposed penalty. Aggrieved by such Order-in-Original dated 23rd March 2006, the

assessee approached the Commissioner, Central Excise (Appeals) which also rejected the appeal on 19th September 2006.

3. When CESTAT was approached, it decided the appeal on 31st May 2012. It held against the assessee-respondent on merit by holding that it

cannot claim the benefit of Rule 6 by debiting the amount equal to 8% of the value of the exempted goods as also cannot avail the CENVAT credit

on the HR coils received by them which were to be exclusively used for manufacturing pipes by claiming exemption under Notification No.

6/2006-C.E.

4. The Tribunal, however, while concurring with the findings of the first appellate authority on limitation, on imposition of penalty, directed the

respondent to pay the differential duty within thirty days from the date of its order with interest and in that event, gave an option of paying penalty

equivalent to 25% of the amount of duty liable, confirmed and upheld by the Tribunal, following the decision of this Court in case of The DCIT vs.

Akash Fashion Prints Pvt. Ltd.

5. We have heard learned advocate Ms. Manisha L. Shah for the Department. She vehemently submitted that such leniency granted in payment of

penalty was acting contrary to the very object of the law and therefore, she further urged this Court to quash and set aside the order of the Tribunal

permitting payment; as directed in the order impugned. She also further urged that the decision of this Court has not been rightly construed by the

Tribunal and at the appellate stage, such an offer of reduction of penalty could

not have been made.

6. It is required to be noted that at no stage, either in the Order-in-Original or in the order of Commissioner (Appeals), the assessee-respondent

has been given the benefit of payment of reduced penalty. Instead of giving independent reasons on the issue, it would be appropriate to refer to

the decision of this Court rendered in case of Commissioner of Central Excise & Customs, Surat-I v. M/s. Krishnaram Dyeing & Finishing Works

[OJMC No. 11/2013 : 24-1-2013] dealing with identical question of law, after discussing various case laws, concluded thus -

14. As can be noted from the decisions mentioned hereinabove, this Court has followed a consistent view that the assessee is required to be given

the option by the adjudicating authority where he is asked to pay a duty demand with interest and 25% of penalty within 30 days from the date of

adjudication of the order and in such case, he would be liable to pay only 25% of the penalty. Whenever such option had not been given, the

remand had been made to the concerned authorities. And period of 30 days is being considered, if in case option is not given earlier, from the date

of availing such option.

In the present case also, the remand had been made to the Tribunal and in the order of remand, it was also directed to consider the provision of

section 11AC and the Tribunal had specifically noted that none of the two authorities below had availed any option to the assessee to pay duty

demand with interest and penalty of 25% of the duty within 30 days from the date of adjudication, and therefore, the Tribunal in its order impugned

maintained that the case of the assessee is squarely covered by the explanation to Section 11AC. The Tribunal also noted that the duty determined

u/s 11AC(2) was subsequent to the year 2000 and, therefore, the case would be covered by the explanation to Section 11AC of the Central

Excise Act.

When no option was given by any of the adjudicating authorities after determination for payment of duty, interest and penalty of 25% of the duty,

what all Tribunal had done, pursuant to the direction in remand order, was to avail option to the respondent-assessee and this was in consonance

with the ratio laid down by the Court time and again.

This Tax Appeal, for the aforementioned reasons, stands dismissed.