(2010) 01 GUJ CK 0025

In the Gujarat High Court

Case No : Tax Appeal No. 2442 of 2009

Commr. of C. Ex., Cus. and S.T. — APPELLANT

Vs

J.J. Polyplast Ltd. — RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Central Excise Rules, 2002 — Rule 11, 25
Central Excises and Salt Act, 1944 — Section 11AC, 35G
CENVAT (Credit) Rules, 2004 — Rule 9(1)

Citation : (2010) 252 ELT 511 : (2010) 25 STT 444

Hon'ble Judges : Rajesh H Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : Varun K. Patel, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Commissioner, Central Excise, Customs and Service Tax, Vapi, has filed this Tax Appeal u/s 35G of the Central Excise Act, 1944, proposing to formulate the following substantial question of law for determination and consideration of this Court.

Whether in the facts and circumstances of the case, the CESTAT is right in law in allowing the Appeal of the assessee against penalty imposed under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act after holding that the assessee''s contravention of provisions of Rule 9(1)(a)(iii) of CENVAT Credit Rules, 2004 read with Rule 11 of the Central Excise Rules, 2002 is rectifiable procedural lapse/defects?

2. Heard Mr. Varun K. Patel, learned Standing Counsel, appearing for the Revenue and perused the orders passed by the authorities below.

3. Mr. Varun K. Patel submitted that the penalty was rightly imposed on the respondent assessee under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act and the alleged contravention cannot be

said to be rectifiable procedural lapse/defects. He has further submitted that M/s. J.J. Polyplast Ltd. Unit No. 6 Gitanjali Apartment, Daman, was registered as dealer with Central Excise Range-III, North Daman Division. However, the said Unit had surrendered its registration certificate on 1-6-2005 and thereafter imported goods under Bill of Entry No. 888064 dated 9-6-2005. On the strength of said Bill of Entry, M/s. J.J. Polyplast Limited, Mumbai, who has registered as a dealer with Mumbai-II Commissionerate, availed credit on the basis of documents issued by M/s. J.J. Polyplast, Mumbai It is further submitted that there is statutory violation and penalty was rightly imposed, the Tribunal has committed error in deleting the said penalty.

4. We have considered the submission made by Mr. Patel and also perused the order passed by the Tribunal. The Tribunal has specifically held in its order that apart from the fact that Rule 25 is applicable only to manufacturer, the issue as to whether Head Office can issue modavatable invoices in respect of the goods imported by the respondent in the name of unit, stands decided by various decisions of the Tribunal. The Tribunal referred to three judgments on this issue, which are as under:

1. Eupec Welspun Coatings India Limited v. CCE as reported in 2009 (235) E.L.T. 347 (Tri.-Ahmd.) : 2008 (89) RLT 412 (CESTAT);

2. Union of India v. Marmagoa Steel Limited as reported in 2008 (229) E.L.T. 481 (S.C) : 2008 (88) RLT 893 (S.C.); and

3. CCE v. Myron Electricals Pvt. Ltd. as reported in 2007 (207) E.L.T. 664 (P & H).

5. The Tribunal thereafter held that the invoices could have been endorsed by the Daman Office of the same appellant in the name of their Mumbai Office. This is rectifiable defect and can be rectified at any point of time. There being no dispute otherwise about the entitlement of the Mod vat Credit, such procedural lapse should not result in denial of benefits to them otherwise admissible credit. After considering this position of law, the Tribunal has set aside the impugned order of penalty and allowed the Appeal with consequential relief in favour of the respondent assessee.

6. We do not find any infirmity in the order passed by the Tribunal, It could not give raise to any substantial question of law and, hence, the Appeal is summarily dismissed.