(2014) 08 BOM CK 0048

In the Bombay High Court

Case No : Central Excise Appeal No. 281 of 2013

Electropneumatics and Hydraulics (India) (P.) Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2014) 309 ELT 408 : (2014) 47 GST 707

Hon'ble Judges : S.C. Dharmadhikari, J;A.K. Menon, J

Bench : Division Bench

Advocate : Prakash Shah and Jas Sanghavi, Advocate for the Appellant; Y.S. Bhate, Advocate for the Respondent

Judgement

1. This Appeal by the Assessee challenges the order passed by the Tribunal on 31.07.2013 in Appeal No. E-1390/2004-Mum. This Appeal was filed in the West Zonal Bench of the Customs, Excise and Service Tax Appellate Tribunal challenging the Order-in-Original which was passed by the Adjudicating Authority on 29.01.2004. The Tribunal was firstly approached for waiver of a condition of pre-deposit and stay of recovery of taxes pending the Appeal and on such an application the Tribunal made an order on 24.05.2004, copy of which is at Annexure-I. The Appeal was then heard finally on 31.07.2013.

2. Mr. Prakash Shah, learned counsel appearing for the Appellant/Assessee, would submit that detailed written submissions were tendered on 02.04.2013 and same were very much before the Tribunal. The issues were highlighted and under several heads. First was with regard to revenue neutrality, second was with regard to the demand and which has been confirmed by the order-in-original, but was barred by limitation and thirdly, there is no basis for calculation of overhead percentages alleged in the show cause notices.

3. Mr. Shah would submit that the period of dispute is April, 1999 to March, 2003 during which the Assessee inter alia manufactured the excisable goods, namely, pneumatic cylinders, pneumatic valves, control panels with monitors at its

factory at MIDC, Marol Industrial Area, Andheri, Mumbai. That was transferred at its another factory at Talegaon Road, Rajgurunagar, Chakan, Pune. That was for the purpose of manufacturing the dutiable final products. The Marol factory was subsequently closed and the Unit was transferred to Pune factory. In the circumstances the Appellant/Assessee pointed out that the goods manufactured at Marol factory were transferred on payment of appropriate excise duty under the Central Excise Act, 1944. That was on the basis of actual cost of raw material plus overheads calculated at 25% of previous years'' overheads. That was practice followed for several years. However, the Department found that this was not a practice which could have been adopted and hence, three show cause notices were issued. They were adjudicated and aggrieved by such order-in-original that the Appeal was filed.

4. It is in these circumstances the minimum that was expected from the Tribunal was complete application of mind to the controversy, dealing with the submissions canvassed orally and in writing and by a reasoned order either uphold or reject them. Mr. Shah would complain that in a five paragraph cryptic order, out of which paragraphs 1 to 4 contain the facts and referred to the oral submissions, the Tribunal has disposed of the entire appeal and against the Assessee. In the submission of Mr. Shah this unsatisfactory and perfunctory manner of disposal of the Appeal by the Tribunal, which is the last fact finding authority, raises a substantial question of law.

5. Mr. Bhate, learned counsel appearing for the Revenue, would submit that if one peruses the order-in-original, then, the ultimate conclusion of the Tribunal cannot be faulted. The grievance raised pertains to the form and not the substance. Had the same conclusion been reached by an elaborate process of reasoning, then, this court would not have interfered with the order under challenge as no substantial question of law arises for consideration. Consequently, the Appeal be dismissed.

6. We have perused the Appeal paper book and some of annexures to which our attention was invited. We have noted that the order-in-original was not passed on 25.06.2004, but on 29.01.2004. The certified true copy of the order of the Tribunal and which is annexed to the main memo of Appeal in this Court would demonstrate that the Tribunal was unaware of the date of the order-in-original and throughout. The order-in-original has not been passed on 25.06.2004 as erroneously noted, but on 29.01.2004. Further, what we find from reading of the impugned order is that the Assessee had raised several contentions before the Tribunal. The order-in-original and which was assailed before the Tribunal contains several references and to worksheets and manner of calculations. It confirms the demand after elaborate discussion. The demand has been confirmed not only on the count that the duty liability occurs and in the circumstances set out in the order-in-original, but also this was a fit case for imposition of penalty. The findings at internal page 5 of the order-in-original would denote that the order-in-original considers the objections with regard to time bar, so also, on

merits. With regard to imposition of penalty there were objections and serious in nature raised by the Assessee.

7. To our mind, the Tribunal was required to consider the issues raised in the Appeal in-depth and render a complete finding. If a particular issue was pressed or was given up that should be indicated in the order of the Tribunal. We would expect the Tribunal, which is manned by both judicial and technical experts, to be aware of the seriousness of the adjudication and not take up the assignment lightly and casually. There is no specific target which has to be achieved nor could the Tribunal be expected to decide particular number of appeals during a calender year. Therefore, undue haste is not at all called for. That results in miscarriage of justice and in a given case would result in vital issues of both sides being concluded in most unsatisfactory manner. We would expect the Tribunal to guide the Adjudicating Authorities so that they would properly adjudicate the cases with reasoned orders and after considering the evidence on record. It is this duty of the Tribunal which has been repeatedly emphasized and to be performed to the best of its ability.

8. In such circumstances and not being satisfied with the cryptic order of the Tribunal that this Appeal is admitted on the following substantial questions of law:--

"(a) Whether in the facts of the present case, the Appellate Tribunal was right in holding that costs of production calculated by the Assistant Director (Costs) was as per Cost Accounting Standard 4?

(b) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in sustaining the demand, notwithstanding that the entire exercise was revenue neutral?

(c) Whether in the facts and circumstances of the case, the Appellate Tribunal ought to have set aside the demand having regard to the fact that the entire duty paid at the Marol Factory was available as credit at the recipient factory and recipient factory paid duty in excess of subject demand and there was no loss of revenue?

(d) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in not considering the plea of the Appellant that entire exercise is revenue neutral when the said plea was specifically raised both in memorandum of appeal and written submission filed at the time of final hearing?

(e) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in hot holding that the demand made pursuant to the SCN1 for the period April 1999 to November 2001 of Rs. 33,66,574/- was barred under Section 11A of the Act?

(f) Whether in the facts and circumstances of the case the Appellate Tribunal is right in holding that the Appellant did not raise contention of revenue neutral and time bar at the hearing of the appeal?

(g) Whether in the facts and circumstances of the case the Appellate Tribunal was right in dismissing the appeal only upon deciding the main contention of the Appellant?"

9. With the consent of the learned counsel appearing for the parties this Appeal is disposed of finally. Finding that both sides deserve to be given an opportunity to argue their case completely before the Tribunal that we are of the opinion that we are not required to decide the merits of this Appeal and answer the questions though they are substantial questions of law. The requirement of this Court going into all these issues would be obviated if as requested by the parties, the Tribunal decides the matter afresh on merits and in accordance with law and uninfluenced by its earlier order and conclusions therein. In such circumstances we are constrained to set aside the impugned order and remand the case back to the Tribunal for a decision afresh and in accordance with law. Ordinarily we would not have granted such request and passed a wholesale order of remand, but in the facts and circumstances where it is not possible to ascertain from the Tribunal''s order as to which of the contentions have been dealt with and considered that this is a fit case for setting aside the impugned order and restoring the Appeal to the Tribunal''s file in its entirety.

10. As a result of the above discussion, the impugned order of the Tribunal dated 31.07.2013 is quashed and set aside. The Appeal is restored to the file of the Tribunal for a decision afresh and in accordance with law. The Tribunal should render a fresh finding and without being influenced by its earlier order and conclusions therein. We clarify that all contentions of both sides and in relation to the Appeal are kept open. The Tribunal shall endeavour to dispose of the Appeal expeditiously since it is an old one pending on its file. Needless to clarify that the interim order passed by the Tribunal, which was operating during the pendency of the Appeal, shall continue to operate till the Appeal is heard and disposed of by the Tribunal. This Appeal is, accordingly, disposed of. No costs.