

(2016) 10 GUJ CK 0019
In the Gujarat High Court

Case No : Special Civil Application No. 16768 of 2016 with S.C.A. No. 16769 of 2016

Five Star Agrico Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Citation : (2017) 345 ELT 203

Hon'ble Judges : S.R. Brahmbhatt and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri Hardik P Modh, Advocate, for the Petitioner; Shri Devang Vyas, ASG, for the Respondent

Final Decision : Disposed Off

Judgement

A.Y. Kogje J. (Oral)—These petitions arise from the same factual background. Hence, with consent of the parties, are taken up for hearing together. The facts from SCA No. 16768 of 2016 are taken.

2. This petition under Article 226 of the Constitution of India is filed praying inter alia for quashing and setting aside of the recovery notice issued pursuant to Order-in-Original dated 30-8-2013.

3. The facts in brief are that the petitioner is a company engaged in manufacturing of various kinds of Hand Tools. The petitioner exports the final product outside India. Therefore, in terms of Rule 18 of Central Excise Rules, the petitioner claimed rebate of the central excise duty paid on input used in manufacturing of the goods exported. The waste scrape that is generated while manufacturing of such product, though sold in domestic market, is exempt from payment of duty.

3.1 It is the case of the petitioner that the petitioner, till 2005 cleared the waste and scrap generated during the course of manufacture of final product on payment of central excise duty. However, after communication from the Excise

authorities dated 17-6-2005, the petitioner had stopped paying the central excise duty on the clearance of the waste scrap generated during manufacturing of final product.

3.2 When the rebate on duty paid on the input used in manufacturing of goods exported was claimed, the Department raised an objection that such rebate of central excise duty was not payable in view of violation of certain conditions prescribed under relevant notification. The Department could not agree to the submissions of the petitioner on the claim of rebate and hence raised demand show cause notice calling upon the petitioner to show cause as to why rebate sanctioned to the petitioner during the period from 21-5-2008 to 23-11-2012 be not recovered. The demand notice was confirmed by the Order-in-Original dated 30-8-2013 wherein the demand to the extent of rebate granted within the period from 17-5-2002 to 16-5-2013 was granted, but for the period beyond the period of limitation, rebate was granted and demand was dropped.

3.3 An appeal came to be filed along with stay application challenging the order dated 30-8-2013. However, the said appeal also came to be rejected by Order-in-Appeal dated 28-1-2014.

3.4 It is this Order-in-Appeal dated 28-1-2014 which came to be challenged by the petitioner by preferring revision application under Section 35EE of the Central Excise Act along with stay application before the Joint Secretary of the Government of India, i.e. Respondent No. 2.

4. Learned Advocate for the petitioner submitted that even when the question of entitlement of rebate is subject matter of challenge before the appropriate authority, as the petitioner had persuaded the legal remedy available to the petitioner is still at large, in the meantime, the respondent authorities issued show cause notices which are impugned herein.

4.1 Learned Advocate for the petitioner contended that despite several reminders to the Respondent No. 2 to decide the revision application, which is pending since 2014, the same has remained undecided.

4.2 Learned Advocate for the petitioner relied upon a judgment of this Court in the case of Ashima Dyecot Ltd. v. Union of India, reported in 2014 (307) E.L.T. 512 (Guj.). He contended that in an identical situation, this Court has given direction to the Revisional Authority to conclude the proceedings within a stipulated period.

5. Considering the issue involved, Shri Devang Vyas, learned ASG was requested to appear on behalf of the respondents. Shri Vyas on behalf of the respondents accepts the notice and would contend that considering the issue involved in the matter and the fact that the revision is pending since 2014, some reasonable time will be required to finally dispose of the revision application which is pending.

6. Considering the overall facts and circumstances of the case, this Court is of

the considered opinion that these petitions can be disposed of by giving direction to the Revisional Authority, i.e. Respondent No. 2 to conclude and decide the revision application filed by the petitioners on 19-2-2014 against the Order-in-Appeal dated 28-1-2014 by the Additional Commissioner (Appeals). The Revisional Authority shall adjudicate and render its decision on the revision within a period of 3 months from the date of receipt of the order of this Court. Considering the direction, it would be in fitness of things to direct that the Respondent Nos. 3 and 4 would not proceed further with the impugned show cause notice pending the final decision in the revision application. Learned Advocate for the petitioner hereby undertakes that the petitioner shall cooperate in the hearing by Respondent No. 2 of the revision application.

7. Before concluding, this Court notices that the Punjab and Haryana High Court in a judgment in the case of Kent Malleables Pvt. Ltd. v. Union of India, reported in 2016 (339) E.L.T. 11 (P&H), has proceeded to hold that officer in the rank of Joint Secretary (Revisional Authority) to the Government of India is of the same rank as that of the Commissioner of Central Excise (Appeals). If that be so, in the present case, it would be appropriate if the present case is ordered to be decided by the officer on the post of Joint Secretary (Revisional Authority) who would be senior in rank to the Commissioner (Appeals).

8. The petitions are disposed of with the aforementioned directions. No order as to costs.