(2014) 03 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Application No. 302 of 2073 in Tax Appeal No. 452 of 2013 and C.A. Nos. 303-304 of 2013 in T.A. Nos. 453-454 of 2013

Gujarat State Petronet Ltd. APPELLANT

Vs

Commr. of C. Ex. RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Citation : (2014) 35 STR 527

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

Bench : Division Bench

Advocate : Sujit Ghosh, Sr. Advocate, Kanupriya Bhargava, Maulik G. Nanavati and Nikita Mehta, Advocate for the Appellant; Y.N. Ravani, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—These applications are filed by the Gujarat State Petronet Limited ["GSPL" far short]. GSPL is in the business of providing industrial gas to its different consumers at different points. For such purpose, GSPL requires laying down of the underground pipelines. For laying'' down such pipelines, GSPL gave contract to one EPC Contractor ("EPCC" far short). It is the case of GSPL that EPCC would purchase necessary equipments and pipes from the manufacturer, which would be delivered to GSPL under invoice at its sites. GSPL would in turn release the pipes to the contractor without any charges. Such pipes would be used for laying down the pipeline system. Respondent-Commissioner of Central Excise, Ahmedabad issued a show ''cause notice and called upon GSPL to explain why the CENVAT credit availed by them should not be recovered. In various show cause notices, GSPL was called upon to explain why CENVAT credit of duty with additional cess and interest should not be recovered.

2. Various grounds were raised in the show cause notices including that GSPL utilized pipeline system and not pipes for providing output services and such

pipeline system cannot be considered as capital goods and that therefore, credit cannot be taken for realizing such pipeline system for providing output service. The Commissioner observed that in the present case, the pipes were used for providing the output service of construction of pipeline system, an immovable property akin to ports, and were not used by GSPL for providing the service of transportation of goods through pipeline.

3. The Commissioner also noted that EPCC had availed of Notification No. 12 of 2013 which would show that the value of service rendered by contractors included the value of pipes, as the pipes being the contractor''s input. Inter alia, on such grounds, the Commissioner called upon the GSPL to explain why CENVAT credit along with interest should not be recovered.

4. Despite stiff opposition by the GSPL, the Commissioner confirmed the duty demand with interest and penalties.

5. GSPL approached the Tribunal. Tribunal granted partial relief by confirming the duty demand but deleted the penalty and invocation of extended period 2013 (32) S.T.R. 510 (Tri.-Ahmd.). Against such judgment of the Tribunal, both the sides have filed appeals. Both the sets of appeals have been admitted by us. In the present group of appeals filed by GSPL, stay applications have been filed.

6. Having heard learned counsel for the parties and having perused the documents on record, we notice that there are multiple questions of law which require examination in the appeals. We also notice that there are sizeable duty amounts arising out of the Tribunal''s judgment, even after deletion of penalty and denial of extended period to the Department. At the same time, we also notice that GSPL is a Government company.

7. In the facts and circumstances of the case, therefore, at this stage the appellant-GSPL would deposit with the respondent, 50% of the duty demand arising out of the judgment of the Tribunal. Counsel far the GSPL pointed out that the respondent has not yet quantified such demand after the judgment of the Tribunal. This shall be done within a period of two weeks from the date of receipt of copy of this order. The appellant thereafter to make deposit as mentioned above within six weeks therefrom. Considering the fact that GSPL is a Government company, there shall be no further requirement of any security for remaining demand. Civil Applications are disposed of accordingly.

