(2005) 04 GUJ CK 0023

In the Gujarat High Court

Case No : Tax Appeal No. 191 of 2004

J.M. Industries APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Citation : (2005) 127 ECR 410 : (2005) 187 ELT 291

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Anilkumar D. Maru, No. 1, for the Appellant; Jitendra Malkan, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—Heard Mr.A.D.Maru, learned advocate for the appellant. None appears when the matter is taken up for hearing. Taking into consideration the nature of the controversy between the parties the appeal is taken up for final hearing and disposal today.

2. The appellant being aggrieved by the order dated 13th October, 2003 made by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (the Tribunal) has preferred this appeal proposing the following seven questions:

"(1) Whether Applicant is entitled to benefit of exemption Notification No.22/99-Cus. dtd.28.2.1999, Sr.No.5, read with para 121 of the Budget 1998-99 speech applying the ratio of the Hon''ble Bombay High Court''s judgment in the case of Commissioner of Sales Tax, Bombay v. Delhi Iron & Steel Co. Pvt. Ltd. reported in 1995(98) STC 202 (Bom.) or otherwise?

(2) If the said exemption Notification were not entitled to the Appellant, whether it tantamounts to double taxation or otherwise as Ship Breakers are paying Sales Tax on sale of ship breaking materials.

(3) Whether the tanks in engine room of the ship can be considered as

''machinery'' and thereby whether such fuel oil therein can be considered as ''contained in vessel''s machinery and engines'' or otherwise ?

(4) If there were no tanks in ship; can it be said as ''complete ship'' ? And without such tanks, whether ship can be put in sea for voyage or otherwise ?

(5) Even if such fuel oil, consumed, not for importation, Appellant not got, whether Appellant is liable to pay the Customs duty thereon as per Customs Act, 1962, & Customs Tariff Act, 1975 or otherwise ?

(6) Similarly regarding foodstuff, consumed by crew members on board the ship, not for importation, Appellant not got, whether Appellant is liable to pay the Customs duty thereon as per Customs Act, 1962, & Customs Tariff, 1975 or otherwise ? And whether such foodstuff can be imported or otherwise ?

(7) Bonded items collected and taken by Customs with them, whether its value to be deducted from the value of the ship because the same were ship''s stores ship''s property and whole value determined on ''as is where is'' basis, or otherwise?"

3. When the matter came up for hearing on 18th February, 2005 it was noticed that none of the proposed questions arise out of the impugned order of Tribunal in light of the fact that the Tribunal has not recorded any findings in relation to proposed question Nos. 1, 2, 6 and 7, while in so far as proposed question Nos. 3, 4 and 5 are concerned, the findings recorded by the Tribunal are based on facts and evidence on record. At this stage, it was submitted by the learned advocate that in relation to proposed question Nos. 1, 2, 6 and 7 various grounds were raised before the Tribunal but the Tribunal had failed to deal with the same. Accordingly, the appellant was granted time to produce certified copy of the Memorandum of Appeal and grounds filed before the Tribunal.

4. Today, the learned advocate for the appellant has tendered certified copy of the Memorandum of Grounds of Appeal filed before the Tribunal. The same, along with forwarding communication dated 6th April, 2005, are taken on record. On going through the same, prima facie, it appears that the grievance made by the appellant seems to be correct.

5. In the circumstances, the following substantial question of law arises for determination:

"Whether on the facts and in the circumstances of the case the order of the Tribunal can be said to be complete when the Tribunal had not dealt with all the Grounds of Appeal raised before it while passing the impugned order on 13-10-2003 ?"

6. As can be seen from the certified copy of the Memorandum of Appeal the appellant, while challenging the Order-in-Appeal dated 25th July 2003, raised the following Grounds of Appeal:

"5. Being aggrieved by the said OIA, Appellant prefers Appeal on the following amongst other grounds :-

GROUNDS OF THE APPEAL

1. The Appellant challenged the assessment of Bill of Entry contending that -

1. Fuel oil in engine room tanks, not liable to pay the duty classifying separately falls under para 2(b) of the Board''s circular No.37/96-Cus. dtd. 3.7.96; (xerox copy of circular annexed as Annexure. ''F'');

2. 4% Special Additional Duty (SAD) of Customs, not liable to pay being in lieu of Sales Tax and Sales Tax is being paid exempted under Notif. No.22/99-Cus. Dt.28.2.99;

3. Duty on foodstuff, not liable to pay being meant for crew members consumption, consumed by them on board the ship, not available for clearance and not imported by ship breakers."

7. Thus, it is apparent that apart from the controversy as to dutiability of Fuel Oil in Engine Room Tanks, the appellant had also challenged 4% Special Additional Duty of Customs on the basis of Notification No. 22/99-Cus dated 28th February, 1999 and duty on foodstuff. The Tribunal in its order has failed to deal with the said grounds. In the circumstances, it is apparent that the Tribunal committed an error in law in not disposing of all the grounds raised before it while deciding the appeal. It is not as if the grounds which have been not dealt with are mere aspects of the issue which is already decided by the Tribunal. As can be seen from the grounds itself they raise separate independent issues. The Tribunal has thus failed to dispose of the appeal in entirety.

8. In the result, the question is answered in the negative, that is to say, the Tribunal was not justified in law in not dealing with the other grounds of appeal raised before it and the impugned order cannot be said to be a complete order. The matter is hence restored to the file of the Tribunal to deal with and dispose of the remaining grounds of appeal which were not disposed of by the Tribunal while passing impugned order of 13th October, 2003.

The appeal is accordingly allowed. There shall be no order as to costs.