(2011) 02 GUJ CK 0190

In the Gujarat High Court

Case No : Tax Appeal No. 187 of 2011 and Civil Application No. 113 of 2011

Kwality Tube Industries APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:
Central Excise (Valuation) Rules, 1975 — Rule 4, 5, 6

Citation : (2011) 267 ELT 27

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Adil R. Mirza, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Assessee has challenged the judgment dated 8th October 2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zone Bench, Ahmedabad [hereinafter referred to as, "the Tribunal"] confirming the duty and penalty demanded by the Assessing Officer which was confirmed by the appellate authority. Counsel for the Appellant submitted that proper procedure was not followed to establish that the goods were under valued. He drew our attention to Rule 4 of the Central Excise (Valuation) Rules, 1975 to contend that the Department had not undertaken any exercise of comparing the value of the goods sold by the Assessee for delivery at the nearest point of time, compared to the sale of the goods in question.

2. From perusal of the orders under challenge, and particularly that of the Tribunal, we find that the entire issue has been examined at length and on the facts, the Tribunal came to the conclusion that the goods were under-valued. The Tribunal concluded these issues against the Assessee by observing as follows:

Learned advocate appearing on behalf of the Appellants, though advanced number of arguments, but fairly agreed that he is not able to show that the value at which the goods were being sold to M/s. Deepesh Trading Company was the value at which the same goods were being sold by M/s. Kwality Tubes Industries to other independent whole-sale buyers. He also admitted that Proprietor of M/s. Kwality Tubes Industries being the partner of M/s. Deepesh Trading Company and other partners being close family members like his daughter-in-law. It is also a fact that the goods were being cleared to said M/s. Deepesh Tading Company at a lower value. In view of the above factual reasons, we find no infirmity in the views adopted by the authorities below. Accordingly, demand of duty of Rs. 4,41,407/= stand confirmed against the Appellant.

Further, the demand of duty of Rs. 5,81,310/- stand confirmed on the ground that Copper pipes/tubes/coils stand cleared by M/s. Kwality Tubes Industries without payment of duty. The said demand is based upon the recovery of octroi receipts from the unit of M/s. Deepesh Trading Company, reflecting upon the movement of the goods. In as much as M/s. Kwality Tubes Industries could not place any corresponding invoice showing clearance of the goods relateable to the said octroi receipts, Revenue entertained a view that the said goods were removed clandestinely. Accordingly, investigations were conducted and statement of proprietor of M/s. Kwality Tubes Industries were recorded, wherein he admitted having cleared the goods without payment of duty. The said statement does not stand retracted by the proprietor. As such, we find that there is enough material reflecting upon the act of clandestine removal by M/s. Kwality Tubes Industries. Accordingly, demand of Rs. 5,81,310/- is upheld.

3. We do not find any question of law, much less substantial question of law, arising in this Appeal. The Tribunal has taken into account the evidence on record and come to a factual finding, which is not shown to be perverse. Additionally, the procedure laid down in Rule 4 is not only parameter for ascertaining undervaluation of goods, but reference can also be made to Rules 5 & 6 of the Rules which gives further power to the Assessing Officer to detect the cases of undervaluation. No case is made out. Tax Appeal stands dismissed.

4. Imposition of penalty was subsequent to confirmation of the duty demanded. Hence, Civil Application No. 113 of 2011 has no merits and is accordingly rejected.