
(2016) 04 GUJ CK 0112

In the Gujarat High Court

Case No : Special Civil Application No. 1784 of 2016

Lubi Industries LLP

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Citation : (2016) 337 ELT 179

Hon'ble Judges : Akil Kureshi and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri Paresh M. Dave, Advocate, for the Petitioner; Shri Y.N. Ravani, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Akil Kureshi, J.(Oral)—The petitioner has challenged an Order-in-Original dated 16-10-2015 passed by the Assistant Commissioner of Central Excise, Ahmedabad confirming demand of central excise duty of Rs. 1.37 lac (rounded off) with interest and matching amount of penalty. Though this order is appealable, we had entertained the writ petition on the premise that identical issue has already been decided by the CESTAT in favour of the petitioner, despite which the adjudicating authority had once again given a decision against the petitioner.

2. The petitioner manufactures and supplies submersible pumps to the Government agencies. The contracts envisage pre-delivery inspection charges by third party agency at the cost of the buyer. However, initially, the payment would be made by the petitioner and reimbursement claimed from the Government. The contest between the petitioner and the Department is with respect to the inclusion of these charges towards assessable value of the goods. This precise question in identical circumstances in case of this very petitioner came to be decided by CESTAT by judgment dated 16-6-2014. The Tribunal relied on its earlier decision in case of CCE, Ahmedabad-II v. Johnson Pumps (I) Ltd., reported in 2010 (251) E.L.T. 560, and ruled in favour of the assessee. The

Department had placed reliance on the Larger Bench judgment in case of Maruti Suzuki India Ltd. v. CCE, Delhi-III, reported in 2010 (257) E.L.T. 226. However, the Tribunal distinguished the said judgment as under :-

"5. Ld. AR has relied upon Larger Bench judgment in the case of Maruti Suzuki India Ltd. v. CCE, Delhi-III (supra), wherein it has been held that PDI charges are required to be included in the assessable value. However, it is observed from this case law that the issue before the Larger Bench, in the case of Maruti Suzuki India Ltd. (supra), was only on inspection done on compulsory PDI done in all cases by the appellant in that case. It was not the case before the Larger Bench that PDI inspections were done at the instance of the buyer. In view of the interpretation made by the bench in the case of CCE, Ahmedabad-II v. Johnson Pumps (I) Ltd. (supra), PDI charges recovered at the instance of the buyer are not included in the assessable value and accordingly appeal filed by the revenue is required to be rejected and cross objection filed by the respondent is required to be allowed."

3. When such a question again arose, the Assistant Commissioner issued a show cause notice against the petitioner why the pre-delivery inspection charges should not be included in the assessable value and resultantly unpaid dues of Rs. 1.37 lacs not be recovered. The petitioner opposed such proposals and relied heavily on the decision of the Tribunal in its own case. The Assistant Commissioner, however, by the impugned order confirmed the duty demand with interest and penalty. In such order, the Assistant Commissioner relied on judgment of the Supreme Court in case of Commissioner of Central Excise, Tamil Nadu v. Southern Structures Ltd., reported in 2008 (229) E.L.T. 487, and on the judgment of the Larger Bench in case of Maruti Suzuki (supra). Following observations of the adjudicating authority may be noted :-

"(iv) I find that in a similar issue, Hon"ble Supreme Court of India in the case of Commissioner of Central Excise, Tamilnadu v. Southern Structures Ltd. - 2008 (229) E.L.T. 487 (S.C.), has upheld the Tribunal decision 2002 (146) E.L.T. 678 (Tri.-Chennai), which held that cost of inspection paid to any third party in addition to the normal inspection would form part of the value and the amount received would be includible in the assessable value.

(v) The assessee had relied on order of Hon"ble Tribunal dated 16-6-2014 in the case of the assessee himself. The Tribunal in its order No. A/11100/2014, dated 16-6-2014, has held that PDI charges recovered by the respondent for conducting test at the instance of the buyer are not includible in the assessable value and according appeal filed by the Revenue is required to be rejected. However, I observe in this case that third party inspection charge is part of transaction value as reflected in the tender documents produced by the assessee. The charges which are recovered as part of transaction value cannot be separated to be on instance of the buyer. I firmly hold that any expenses made in relation to goods before being removed would add to the cost of the goods and the amount recovered from customers in the name of such costs

should undoubtedly be part of transaction value and should form basis for calculation of assessable value.

(x) I find that the aforementioned decision in the matter of Maruti Udyog Ltd. clarifies to this effect in abundant. I find that the Larger Bench in this landmark judgment has observed that the transaction value does not merely include the amount paid to the assessee towards price but also includes any amount a buyer is liable to pay by reason of or in connection with the sale of the goods and measure of levying is expanded and its composition is broad based to bring all that a buyer is liable to pay or incur by reason of sale or in connection on therewith."

4. Learned Counsel Shri Dave for the petitioner submitted that the Assistant Commissioner committed a serious error in confirming duty demand contrary to the decision of the Tribunal in case of the petitioner itself. This was in breach of the principles of judicial discipline. The Assistant Commissioner could not have ignored a binding judgment of a superior forum, when the Department accepted the judgment of the Tribunal without further appeal. Attempt to rely on the Supreme Court judgment in case of Southern Structures Ltd. (supra), was improper since the decision did not lay down any ratio on the issue at hand. The decision in case of Maruti Suzuki (supra), was considered by the Tribunal in case of the petitioner. In any case, the said judgment has since been overruled by the Supreme Court.

5. Shri Ravani for the Department opposed the petition contending that impugned order is appealable. The Department did not file appeal against the judgment of the CESTAT in case of the petitioner due to low tax effect. This would not prevent the Department from keeping the issue alive. The Assistant Commissioner has given proper reasons for taking a different view.

6. In our opinion, the Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in case of the same assessee. The principle of precedence and judicial comity are well established in our legal system, which would bind an authority or the Court by the decisions of the Coordinate Benches or of superior Courts. Time and again, this Court has held that the departmental authorities would be bound by the judicial pronouncements of the statutory Tribunals. Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. It only means that the Department does not consciously agree to the view point expressed by the Tribunal and in a given case, may even carry the matter further. However, as long as a judgment of the Tribunal stands, it would bind every Bench of the Tribunal of equal strength and the departmental authorities taking up such an issue. An order that the adjudicating authority may pass is made appealable, even at the hands of the Department, if the order happens to aggrieve the Department. This is clearly provided under Section 35 read with Section 35E of the Central Excise Act. Therefore, even after the adjudicating

authority passes an order in favour of the assessee on the basis of the judgment of the Tribunal, it is always open to the Department to file appeal against such judgment of the adjudicating authority.

7. Reliance of the adjudicating authority on the decision of the Supreme Court in case of Southern Structures Ltd. (supra), was plainly erroneous. In such judgment, the question of penalty was a sole question required to be considered. In fact, the question of includability of the pre-delivery inspection charges in the assessable value of the goods, which was decided by the Tribunal, had achieved finality since the assessee had not filed appeal against such judgment. The case of Southern Structures Ltd. (supra), therefore, did not touch this aspect at all. Likewise reliance on Larger Bench decision of the Tribunal in case of Maruti Suzuki (supra), was also misconceived. This judgment was also considered by the Tribunal in petitioner's own case, despite which the demand was ordered to be deleted. Only choice open for the adjudicating authority, therefore, was to decide the case in consonance with the judgment of the Tribunal dated 16-6-2014 and thereafter leave it to the departmental authorities to decide the question of filing appeal against such an order, if otherwise permissible in law. Impugned order dated 16-10-2015 is set aside. Ordinarily, in view of the above discussion, we would have allowed the Assistant Commissioner to pass a fresh order, leaving it open to the Department to take its options thereafter. However, the amount involved is not substantial. In any case, it is below the minimum tax effect prescribed by the Department in its latest circular enabling the Department to prefer appeal to the Tribunal and the High Court. Additionally, we are informed that in case of other assesseees, similar issues have been dropped at the show cause notice itself within the same Commissionerate.

8. Under the circumstances, petition is disposed of in above terms. We make it clear we have expressed no opinion on the legal issue of includability of the pre-delivery inspection charges in the assessable value of the goods.