

(2014) 08 GUJ CK 0011
In the Gujarat High Court
Case No : Tax Appeal No. 112 of 2012

Minakshi Fashions Pvt. Ltd.

APPELLANT

Vs

Commissioner of Central Excise and Customs

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11(A)(1) 35G

Citation : (2015) 322 ELT 174

Hon'ble Judges : Harsha Devani, J; Sonia Gokani, J

Bench : Division Bench

Advocate : P.R. Nanavati and Dilbur Contractor, Advocate for the Appellant;
Gaurang H. Bhatt, Advocate for the Respondent;

Judgement

Harsha Devani, J.

1. This appeal under Section 35G of the Central Excise Act, 1944 is directed against the judgment and order dated 23rd November, 2010/24th January, 2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad has been admitted on the following substantial questions of law :--

"(1) Whether the Tribunal below committed substantial error of law in holding that the show cause notice issued to the appellant on the basis of Alert Circulars was valid in law when no evidence except Alert Circulars was relied upon for issuing the show cause notice?

(2) Whether the Tribunal below committed substantial error of law in holding that reasonable steps as enumerated under Rule 7(2) Cenvat Credit Rules, 2002 are not complied with by the appellant because the original manufacturer of fabrics were alleged to be fictitious though the supplier of the fabrics who directly dealt with the appellant are existing parties?

(3) Whether the Tribunal below committed substantial error of law in holding that the appellant had not taken "reasonable steps" within the meaning of the

explanation to Rule 7(2) of the Cenvat Credit Rules, 2002, by totally misinterpreting the same?

(4) Whether the Tribunal below committed substantial error of law in holding that the word "supplier" takes within its fold the traders/merchants who endorsed the invoices, as per the provisions of Rule 7(1)(e) of the Cenvat Credit Rules, 2002?

(5) Whether the Tribunal below committed substantial error of law in arriving at conclusion that the question as to whether the original manufacturer is fictitious or not is irrelevant to a case like the present one under Rule 7(1)(e) read with Rule 7(2) of the Cenvat Credit Rules, 2002?

(6) Whether the Tribunal below committed substantial error of law in not appreciating that the appellant could not be saddled with the demand in light of the provisions of Rule 12(B) which renders the dealers as the persons who are chargeable to duty on the processed fabrics?

(7) Whether the Tribunal below committed substantial error of law in relying upon the principle laid down by this Court in the case of Sheela Dyeing and Printing Mills Pvt. Ltd., reported in 2008 (232) E.L.T. 408, where the facts are totally different from the one involved in this case?

(8) Whether the Tribunal below committed substantial error of law in holding that the demand in question is not barred by limitation in the facts of the present case and that the larger period of limitation is applicable?"

Heard Mr. Premal Nanavati, learned advocate for the appellant and Mr. Gaurang Bhatt, learned standing counsel for the respondent.

2. It is an admitted position between the parties that the controversy involved in the present case stands concluded by the judgment and order dated 28th September, 2012 passed by this court in Prayagraj Dyeing and Printing Mills Pvt. Ltd. Vs. Union of India, and other cognate matters wherein the court has answered the above questions of law as follows :

"18. We, consequently, answer the questions of law formulated by the division Bench in the following way.

Question No. 1 - Does not arise as the show-cause notice is not based on alert circular.

Question No. 2 - In the negative and in favour of the Revenue.

Question No. 3 - In the negative and in favour of the Revenue.

Question No. 4 - In the negative and in favour of the Revenue.

Question No. 5 - In the negative and in favour of the Revenue except on the question of larger period of limitation.

Question No. 6 - In the negative and in favour of the Revenue.

Question No. 7 - In the negative and in favour of the Revenue except the question of larger period of limitation which was not the subject matter in that case.

Question No. 8 - In the affirmative and against the Revenue."

The Court, however, while allowing the appeals has made it clear that in those cases where larger period of limitation as prescribed in Section 11(A)(1) of the Central Excise Act has not been invoked, the matters can proceed in terms of the order impugned.

For the reasons stated in the judgment and order dated 28th September, 2012 made by this Court in Prayagraj Dyeing & Printing Mills Pvt. Ltd. v. Union of India (supra), this appeal is also allowed, by clarifying that in case larger period of limitation as prescribed in Section 11(A)(1) of the Central Excise Act has not been invoked, the matter can proceed in terms of the order impugned.