(2016) 03 GUJ CK 0140

In the Gujarat High Court

Case No : Tax Appeal No. 238 of 2016

National Impex APPELLANT

Vs

Commissioner of C. Ex. & Cus., Daman RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2017) 345 ELT 109

Hon'ble Judges : Harsha Devani and G.R. Udhwani, JJ.

Bench : Division Bench

Advocate : Shri R.C. Jani, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Harsha Devani, J. (Oral)—The appellant, M/s. National Impex, has challenged the order dated 2-11-2015 passed by the Customs, Excise and Service Tax Appellate Tribunal in Appeal No. E/389/2008 [2016 (335) E.L.T. 567 (Tribunal)] by proposing the following two questions stated to be substantial questions of law :

"(a) Whether in the facts and circumstances of the case, the Customs, Excise and Service Tax Appellate Tribunal has committed substantial error of law in deciding the case of the appellant without production of documents/evidence, which are already seized and in the custody of the respondent authority?

(b) Whether in the facts and circumstances of the case, the Customs, Excise and Service Tax Appellate Tribunal has committed substantial error of law in casting the burden of proof on the appellant where the documents/evidence, which are already seized and in the custody of the respondent authority?"

2. The appellant is a hundred per cent EOU engaged in the manufacture of polyester dupatta and scarves. The appellant exported the goods under the cover of six ARE-1s during the period from 13-2-2002 to 17-3-2003. The appellant produced proof of export in respect of four ARE-1s but failed to produce proof in

respect of ARE-1s Nos. 328 and 329, both dated 29-1-2003, involving Central Excise duty of Rs. 7,96,027/-. The adjudicating authority confirmed the demand of duty of Rs. 7,96,027/- under the two ARE-1s along with interest and imposed penalty of equal amount under Rule 25(1) of the Central Excise Rules, 2002 and also imposed penalty of Rs. 7,00,000/- on Shri Umar T. Chamadia, partner of the appellant firm.

3. The appellant carried the matter in appeal before the Customs, Excise and Service Tax Appellate Tribunal but did not succeed.

4. Mr. R.C. Jani, learned advocate, for the appellant assailed the impugned order by submitting that the appellant had produced evidence before the competent authority to show that out of six transactions, four transactions were complied with and for the remaining two transactions, the appellant had not made any export and hence, no tax is required to be levied thereon. It was submitted that the appellant had produced export register before the Superintendent of Customs pursuant to the summons issued to the appellant to show that the items qua two ARE-1s have not been exported and the appellant has not availed of the benefit thereof. Reference was made to the documents annexed at Pages 23 and 25 and pointed out that the Superintendent of Customs had seized certain documents including the export register and that while returning the documents, the export register had not been returned. It was submitted that a specific contention has been taken before the Tribunal that the appellant had requested the adjudicating authority to provide copies of the seized documents to establish the cancellation of ARE-1s from the record. However, no such documents were furnished to the appellant and therefore, the appellant was not able to establish the same. It was submitted that non-furnishing of the relevant documents which have been seized by the respondents, would amount to breach of the principles of natural justice and hence, the Tribunal ought to have given an opportunity to the appellant after directing the adjudicating authority to furnish the documents to the appellant. It was, accordingly, urged that the appeal deserves to be admitted on the questions as proposed or as may be formulated by this Court.

5. This Court has considered the arguments advanced by the learned Counsel for the appellant and has perused the orders passed by the authorities below.

6. From the facts as emerging from the record, it appears that this was the third round of litigation in this very case. Earlier there were two remands. The case of the appellant is that the record was seized in the year 2003. However, at no point of time at any earlier stage does the appellant appear to have made any request for furnishing any such document.

7. The Tribunal, after affording an opportunity of hearing to the parties, has noted that by an order dated 20-2-2007 the matter was remanded to the adjudicating authority to consider the question of eligibility of the appellant to the benefit of the Notification No. 125/84-C.E., dated 20-5-1984. That before the

Tribunal the appellant had submitted that though they had prepared the said two ARE-1s, the same were subsequently cancelled, but there was no corresponding entry in their export register. The Tribunal with reference to the letter dated 28-4-2003 to which reference has been made by the learned counsel for the appellant, found that the Superintendent of Customs detained some register for verification and that the matter was fixed for personal hearing before the adjudicating authority on four occasions. The Tribunal further found that there was no evidence to the effect that the appellant had approached the Superintendent of Customs for release of the goods which were detained in 2003, nor was the seizure memorandum produced by the appellant. The Tribunal took note of the fact that it had remanded the matter twice by orders dated 23-11-2004 and 20-2-2007 and upon appreciating the evidence on record, found that there was no dispute on facts that the appellant had cleared the goods under cover of ARE-1s without payment of duty and that the same was not recorded in the export register. That, the appellant failed to provide any evidence that the two ARE-1s were cancelled and also found that the plea of seizure of the documents is without any basis. It is in these circumstances that the Tribunal, upon appreciation of the evidence on record, has not accepted the case of the appellant that there was seizure of documents and that there was any failure on the part of the adjudicating authority to furnish such documents to the appellant.

8. In the light of the finding of facts recorded by the Tribunal, this court is of the view that it is not possible to state that the conclusion arrived at by the Tribunal is, in any manner, contrary to the material on record. Under the circumstances, the impugned order passed by the Tribunal does not give rise to any question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is accordingly dismissed.