(2009) 12 GUJ CK 0007

In the Gujarat High Court

Case No : Tax Appeal No. 2348 of 2009

R.A. Shaikh Paper Mills Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Citation : (2010) 258 ELT 198

Hon'ble Judges : Rajesh H. Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : P.R. Nanavati, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present appeal has been filed by the Appellant challenging the order dated 11-9-2008 : 2009 (238) E.L.T. 125 (Tribunal) passed by the CESTAT confirming the order passed by the Commissioner (Appeals), Central Excise and Customs, Daman dated 19-10-2004, proposing to formulate the following substantial questions of law:

(A) Whether Hon''ble Central Excise & Service Tax Tribunal was justified in dismissing the appeal of the Appellant by holding those proceedings initiated by the Respondents authorities in respect of the alleged case initiated against the Appellant for clandestine removal of goods and non-payment of duty, though the action taken by the Respondents were beyond the statutory time limit prescribed under Central Excise Act, 1948, i.e. beyond the period of six months?

(B) Whether Hon''ble Central Excise & Service Tax Tribunal was justified in rejecting the Application for Rectification of Mistake (ROM) by way of cryptic order, though direct judgment of the Hon''ble Tribunal in the case reported in case of Tonira Pharma reported in 2009 (237) E.L.T. 65 (Tribunal-Bombay) which was based upon the judgment rendered by the Apex Court as well as in the case of Jetex Caburettors Pvt. Ltd. reported in 2007 (210) E.L.T. 73 : 2007 (5) S.T.R. 446 , which is upheld by this Hon''ble Court involving identical issues, by passing an unreasoned order and without considering the said judgments cited at the time of hearing and the application for Rectification of Mistake?

2. Heard learned Counsel Mr. P.R. Nanavati for the Appellant. Learned Counsel Mr. Nanavati has referred to the order passed by the Tribunal and submitted that the Tribunal has failed to appreciate the aspect of limitation. He submitted that the investigations were carried out in the factory premises on 7-8-2000 and was completed by June 2001 when the last statement was recorded and thereafter the show cause notice issued on 28-8-2003 after the period of six months was contrary to the provision of law, and therefore, it was barred by limitation. He further submitted that on one hand the Tribunal has observed that;

We find from the fact that the allegations in the present case relate to clandestine activities, thus giving an extended period of limitation to the Revenue, we note that the Appellant''s stand that the investigations were completed by June, 2001 is not supported by any evidence on record.

3. He further submitted that it is also observed that the statements of some of the consignees could not be recorded on account of non-compliance of the summons issued to them. Therefore, learned Counsel Mr. Nanavati submitted that if there was no evidence quoted in further investigation, the judgment and order of the Tribunal confirming the findings of the CIT (Appeals) is erroneous. He has also referred to the order passed by the CIT (Appeals) in detail and emphasized about the material and evidence to further emphasize the submission that further investigation has not revealed any material which could lead to such findings, and therefore, the further investigation, which was carried on, has not supported the case of Revenue. The impugned notice issued after the period of six months would be invalid. He submitted that therefore the Tribunal and the CIT (Appeals), both have committed an error.

4. Though the submissions have been made, it is required to be appreciated the facts in brief that the investigation was carried out at the factory premises and the unit is alleged to have clandestinely removed MG Kraft Paper mentioned therein without the payment of duty and the statements were recorded, including that of S.K. Shaikh, Director and the panchnama was drawn at the unit. In the statement, it has been admitted that two invoice books recovered by the Central Excise Officers were not the regular invoice books. Further, it has also been admitted that the dispatch made was not recorded or accounted for in the Central Excise Statutory records and further scrutiny and the verification of the records seized as per the panchnama dated 7-8-2000 revealed about the clandestine removal of the goods without the payment of duty as reflected from the other material, including the statements recorded during the investigation which has been discussed in detail by the CIT (Appeals) in his order. It is clearly observed referring to this aspect:

It is seen that the said two invoice books are not regular invoice books but fake (parallel) invoice books, that they had utilised these fake invoices for removal/

delivery of their finished goods i.e. M.G. Kraft paper to the consignee shown in invoices without accounting for the quantity in any Central Excise statutory records and without payment of Central Excise duty leviable thereon. This fact was admitted by Shri S.K. Shaikh, Director of the Appellant in his statement dt. 17-8-2000 that they have maintained parallel invoice book and cleared the finished goods without payment of central excise duty and cess, without accounting the same in central excise statutory records. He also admitted that the parallel fake/bogus invoice book was maintained by his staff under his own instructions and shown his willingness to pay the central excise duty/cess due thereon. In this regard, I rely upon the Tribunal''s decision in case of 2003 (152) ELT 139 wherein it was held that "Demand - Clandestine manufacture and removal - Parallel invoices/G.P.Is maintained -Partner of firm admitted maintenance of two sets of invoices, one set of invoices not disclosed to Central Excise Department, no explanation offered -Demand upheld." In any case, the Appellant is not disputing the demand of duty of Rs. 6,31,702/- and demand of cess of Rs. 4,935/- and they have also paid the same. Therefore, the impugned order in this regard is upheld.

5. However, at the instance of the Appellant, the further investigation was sought to be made, for which summons were issued to the consignees for which no response has been received. However, merely because in further investigation there is no response from the consignees by itself would not set at nought the material evidence and collected during the investigation. Initially it was at the instance of the Appellant the further investigation was made and therefore it is not open for the Appellant now to contend that the impugned notice issued, is beyond the period of limitation inasmuch as on one hand he himself has accepted in further investigation that every record should be properly verified and then after allowing the time to pass, raise the contention about the limitation. From the discussions which have been made detail by the CIT (Appeals), the Tribunal has observed while confirming the order of the CIT (Appeals):

We find that the Appellants are not disputing their duty liability in respect of the annexures which are based upon the entries made in the parallel Central Excise invoices. In respect of delivery challans, it is being contended before us that all the consignees have not admitted having received the goods and as such benefit should be extended to them. We find that the main and regular consignee M/s. Graph Packaging has admitted that they were receiving paper without payment of duty either under the cover of a bogus, invoice or without the cover of any document. It has also come on record that the payments for the goods received under the cover of bogus invoices were being made in cash and such records were being destroyed subsequently.

6. There is a reference to the statements recorded and on the basis thereof the Tribunal has further observed:

When it stands established that the entries made in the delivery challan and note books are in respect of clandestine activities and when some of the entries from the same very note books stand proved, the same will lead to a inevitable conclusion that the other entries though may not be proved to the extent of beyond doubt, relate to clandestine removal only.

It is therefore observed by the Tribunal that;

Merely because the investigations, which might have been continued after June, 2001 have not resulted in any fruitful evidence and as such, do not make a part of the show cause notice will not be conclusive proof that the investigation were over.

7. However, the clandestine clearances were being effected, which has been established from the record cannot be overlooked and therefore the Tribunal has confirmed the order and still has reduced the penalties on the Directors.

8. Therefore, in view of the findings given by both, CIT (Appeals) and the CESTAT, we do not find any merit and there is no substantial question of law which can be said to have been involved. Therefore, the present appeal deserves to be dismissed and accordingly stands dismissed.

