(2013) 11 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application Nos. 9290 and 9291 of 2011

Rivaa Exports APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 44 GST 580

Hon'ble Judges : R.P. Dholaria, J;Mukesh R. Shah, J

Bench : Division Bench

Judgement

M.R. Shah, J.—As common question of law and facts arise in both these petitions, they are disposed of by this common judgment and order. Both these special civil applications under Article 226 of the Constitution of India have been preferred by the common petitioners praying to quash and set aside the impugned common order F No. 485 to 538/09-RS-CX in F No. 195/110 to 111/09-RA dated 13.08.2010 in respect of 5 revision applications passed by the Joint Secretary, Government of India, Ministry of Finance (Department of Revenue), New Delhi, by which the revisional authority has dismissed the said revision applications.

2. That the common petitioner M/s. Rivaa Exports during 2004-2006 was engaged in export of duty paid processed fabrics falling under Chapter 54 of the Central Excise Tariff. That it made certain exports of processed fabrics manufactured by Rivaa Textiles Industries Ltd. [hereinafter referred to as "processor"]. That the grey fabrics was purchased by the petitioner from M/s. Rivaa Exports Ltd. against Central Excise Invoices issued by supplier of grey fabrics in their name. These invoices were endorsed by the petitioner No. 1 M/s. Rivaa Exports in favour of the processor who took credit of duly reflected on the processor out of the credit so availed. The petitioner claimed rebate of excise duty against exports made under ARE-1 issued by the processor.

2.1 A large scale scam was unearthed, in 2005, in Surat wherein it was discovered that numerous excise invoices have been issued in the name of about

500 units which are non-existent and addresses declared fake. It was found that the reason for such invoices issued in the name of fictitious person was to avail CENVAT credit wrongly and claim abnormal and fraudulent rebate on exports. Alert circulars were issued by the Commissioner of Central Excise, Surat-I and also Director General Central Excise Intelligence declaring about 500 such units as fictitious/bogus/fake. Circulars were also issued for proper verification of claims of rebate. During verification of the rebate claim it was discovered that certain suppliers of grey fabrics were non-existent/fictitious persons. The processor took credit based on invoices purported to be issued by the suppliers who are found fictitious. These invoices of grey fabrics were endorsed by M/s. Rivaa Exports [petitioner No. 1 herein] in favour of processor.

2.2 Show Cause notices were issued and the petitioner No. 1 firm as well as M/s. Rivaa Textiles Industries Ltd. (processor) proposing to reject claim of rebate relating to processed fabrics corresponding to invoices of grey fabric. The notice also proposed penalty against the processor. Order in Originals came to be passed rejecting the part rebate amount. Penalty also came to be imposed against the processor under Rule 15(2) of the CENVAT Credit Rules, 2004. The part rebate claim was rejected mainly on the ground that part of the grey fabric was under invoices of fictitious and non-existent persons.

2.3 Feeling aggrieved and dissatisfied with the OIOs, the petitioners preferred appeals before the Commissioner (Appeals), which came to be rejected by the Commissioner (Appeals).

Feeling aggrieved and dissatisfied with the order passed by the Commissioner (Appeals), the petitioners preferred revision applications u/s 35EE of the Central Excise Act, 1944 before the Central Government and by impugned order, the Revisional Authority has dismissed the revision applications.

Feeling aggrieved and dissatisfied with the impugned order passed by the Revisional Authority, petitioners have preferred the present special civil applications.

3. Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioners has made only two following submissions while assailing the impugned common order passed by the revisional authority confirming the orders of rejecting the part rebate claim.

1. That Alert Circulars upon which the reliance was placed by the Department were not given to the petitioners.

2. The petitioners made the payments to the processor through account payee cheques and the Central Excise Invoices were also received by the petitioner from such processors who were holding central excise registration certificate.

3.1 Shri Joshi, learned counsel appearing on behalf of the petitioners has submitted that when the department relied upon the alert circulars issued by the concerned Commissioner, petitioner ought to have been given the alert circulars.

It is submitted that in absence of providing the alert circulars at the time of adjudication, the OIO cannot be sustained.

3.2 It is further submitted by Shri Joshi, learned counsel appearing on behalf of the petitioners that as the payment of such weavers/processors was made through account payee cheques and the central excise invoices were also received by the petitioners from such processors who were holding central excise registration certificate, there was no justification of refusing rebate as the department has not established that the weavers/processors concerned were fake and fictitious.

To substantiate that the amount was paid to the processors by cheques, Shri Joshi, learned counsel appearing on behalf of the petitioners has relied upon the documents at pages 159 to 310 [bank accounts of the weavers/processors].

Making above submissions, it is submitted that both the authorities below have erred in denying the part rebate claim. Therefore, it is requested to allow the present special civil application.

4. Both these petitions are opposed by Shri Gaurang Bhatt, learned Central Government Standing Counsel appearing on behalf of the respondents.

It is submitted that there are concurrent findings of fact given by all the authorities below that the processor availed CENVAT credit on fake central excise invoices of the petitioners purchased grey fabrics against the central excise invoices issued by the supplier to grey fabrics in their names and the said invoices were endorsed by the petitioners in favour of the processor who took credit of duty reflected on the processor out of the credit so availed. It is submitted that it has been found that the said invoices of grey fabrics which were found to be fictitious and fake were endorsed by the petitioners in favour of the processors M/s. Rivaa Textile.

4.1 It is submitted that as such the Commissioner of Central Excise, Surat-I and the Director General Central Excise Intelligence issued alert circulars declaring all the said units suppliers of grey fabrics in question as fake, fictitious and non-existent. It is submitted that the said circulars were duly published and placed on notice board and nobody challenged the same including the petitioners - M/s. Rivaa Exports. It is submitted that even the petitioners have not denied that the said suppliers are bogus, fake, fictitious and non-existing. It is submitted that thus when it has been found that the applicant has knowingly that no such suppliers existed, endorsed the fake invoices to the processors for facilitating availment of CENVAT credit and thereafter paying central excise duty therefrom, the part rebate claim has rightly been rejected.

4.2 Now, so far as the contention on behalf of the petitioners that petitioners made payment to the suppliers by cheque, it is submitted that as such the said issue has been covered by the Division Bench of this Court in Tax Appeal No. 1153/2011 and the judgment and order dated 11.10.2012 passed in Special Civil

Application Nos. 98/2012 with 101/2012. It is submitted that the Division Bench of this Court in the aforesaid decisions has negatived such defence on the part of the petitioners and has accepted the contention of the revenue that in order to get the credit of CENVAT, Rule 7(2) cast a further duty upon the appellants/ petitioners to take all reasonable steps to ensure that the inputs or the capital goods in respect of which they have taken the credit of CENVAT are the goods on which appropriate duty of excise as indicated in the documents accompanying the goods, has been paid. Therefore, it is requested to dismiss the present special civil applications.

5. Heard learned counsel appearing on behalf of respective parties at length. At the outset it is required to be noted that as such there are concurrent findings of fact given by all the authorities below that the invoices which were endorsed by the petitioners in favour of the processor who took the credit of duty reflected on processor were bogus, fake, fictitious and non-existing. It also appears that as such the alert circulars were issued by the Commissioner of Central Excise, Surat-I and also Director General Central Excise Intelligence declaring about 500 said units as fictitious, bogus, fake and the circulars were also issued for proper verification of claims of rebate. As observed by the revisional authority it appears that the said alert circulars were duly published and placed on a notice board and nobody challenged the same inclusive of the petitioners. The petitioners did not come forward with any evidence regarding any existence of said supplier of grey fabric. The petitioners also did not deny that the said suppliers are bogus, fake, fictitious and non-existing. It is also observed by the authorities below that the applicant had knowledge that no such suppliers existed, endorsed the fake invoices to the processors for facilitating availment of CENVAT credit and thereafter paying central excise duty therefrom. Considering the aforesaid facts and circumstances, it cannot be said that any error and/or illegality has been committed in denying the rebate claim with respect to those invoices which were found to be bogus, fake, fictitious and non-existent.

5.1 Now, so far as the contention on behalf of the petitioners that copies of the alert circulars relied upon by the department were not supplied to them is concerned, it is required to be noted that as such the alert circulars issued by Commissioner of Central Excise, Surat-I and also Director General Central Excise Intelligence were duly published and placed on a notice board. Even such a submission/objection was not raised by the petitioners either at adjudication stage or at appellate stage. It is required to be noted that at the adjudication stage no defence reply was filed to the show cause notices. Therefore, it is rightly observed by the revisional authority that there is no justification for raising such a plea at the revision application stage. The aforesaid contention has been dealt with by the revisional authority in extenso in paras 8 and 9, which reads as under:

8. Government notes that M/s. Rivaa Exports purchased grey fabrics from the suppliers of grey fabrics on Central Excise Invoices and sent the grey fabrics for

processing to the processor after endorsing the said invoices. Commissioner of Central Excise, Surat-I and Director General Central Excise Intelligence had issued alert circulars declaring all the said units suppliers of grey fabrics in question as fake, fictitious and non-existing. The said circulars were duly published and placed on a notice board and nobody challenged the same. M/s. Rivaa Exports has not come forward with any evidence regarding existence of said suppliers of grey fabrics. Rather the applicant has not denied that the said suppliers are bogus, fake, fictitious and non-existing. Thus, the applicant has knowingly that no such suppliers existed, endorsed the fake invoices to the processors for facilitating availment of Cenvat credit and there after paying central excise duty therefrom. Applicants have contended that they have availed Cenvat credit on the basis of duty paying documents and also cited CBEC Circulars No. 703/19/2003-Ex dated 25.3.03. The applicant is ignoring the fact that CBEC Circulars talks of genuine duty paying documents. In this case, the factitious duty paying documents are issued by bogus, fictitious and non-existing suppliers. No movement of goods have taken place as per finding in the investigations. The range Supdt. has also categorically stated that the grey fabrics suppliers are fictitious and non-existing. In such a situations, how the valid and genuine central excise invoices can be issued by such suppliers. As such, this argument of the applicant fails.

9. Applicants has also contended that the copies of alert circulars a relied upon documents were not supplied to them. In this regard, Government observes that the applicants have not raised this plea either at adjudication stage or at appellate stage. Rather it is noticed that at adjudication stage no defence reply was filed to the show cause notices. There is no justification 1 or raising this plea at revision application stage. Moreover, they have never claimed that said grey fabrics suppliers ever existed. No such supplier was ever produced before either adjudicating authority or appellate authority. Government does not find any force in the said argument.

5.2 Now, so far as the contention on behalf of the petitioners that they made the payment to the suppliers by cheques and the reliance placed upon the documents produced at Pages 159 to 310 is concerned, as such, such a contention came to be considered by the Division Bench of this Court in the decision in Prayagraj Dyeing and Printing Mills Pvt. Ltd. Vs. Union of India, . After considering the relevant provisions of CENVAT Credit Rules, 2004 and on interpretation of Rule 7(2) of the CEN VAT Credit Rules, 2004, it is held that Rule 7(2) cast a further duty upon the appellants to take all reasonable steps to ensure that the inputs or the capital goods in respect of which they have taken the credit of CENVAT are the goods on which appropriate duty of excise as indicated in the documents accompanying the goods, has been paid. In the present case also, it has been found that no proper care and/or reasonable steps were taken to ensure the proper identity and existence of the suppliers. The petitioners did not produce any evidence to prove the transaction of grey fabrics as recorded in their books was genuine transaction. The petitioners have also not denied that the said suppliers are bogus, fake, fictitious and non-existing. It is observed that the petitioners were knowing that no such suppliers existed, still endorsed the fake invoices to the processors for facilitating availment of CENVAT credit. Under the circumstances, no error has been committed by the adjudicating authority in denying the part rebate claim with respect to the CENVAT credit with respect to those bogus, fake, fictitious and non-existing invoices and no error has been committed by the Commissioner (Appeals) as well as the revisional authorities in confirming the orders of rejecting the part rebate claim. No case has been made out to interfere with the impugned orders.

5.3 Now, so far as the reliance placed upon the documents produced at pages 159 to 310 are concerned, it is required to be noted that such documents were never produced before the adjudicating authority and/or even before the first appellate authority and/or even the revisional authority and they are relied upon and placed for the first time before this Court. It is also required to be noted that even before the adjudicating authority no defence reply was filed by the petitioners. Therefore, it is not open for the petitioners now to rely upon those documents for the first time before this Court. Even otherwise the aforesaid issue is covered by the Division Bench of this Court in Prayagraj Dyeing & Printing Mills (P.) Ltd. (supra).

In view of the above and for the reasons stated above, both petitions deserve to be dismissed and are, accordingly, dismissed. Rule is discharged.

