(2012) 06 GUJ CK 0068

In the Gujarat High Court

Case No : Tax Appeal No. 611 of 1011

Satish B. Agrwal APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35B

Citation : (2013) 290 ELT 643

Hon'ble Judges : V.M. Sahai, J;N.V. Anjaria, J

Bench : Division Bench

Advocate : Paresh V. Seth, for the Appellant; Sejal K. Mandavia, for the Respondent

Judgement

V.M. Sahai, J.—Admit. Board has been revised. No one appears for the appellant to press this appeal.

2. We have gone through the record and considered the facts involved. We heard learned counsel Ms. Sejal Mandavia for the respondent Central Excise. After hearing the learned counsel for the respondent, we formulate following substantial question of law.

Whether CESTAT, Ahmedabad was correct in not exercising its powers vested in Section 35B of the Central Excise Act, 1944 in condoning the delay permitting the appellant to defend the case?

3. Learned counsel for respondent agrees that the appeal may be finally heard and that question can be decided therefore, we have proceeded to decide the question framed by us today itself.

4. The brief facts are that the petitioner is a partner of Time and Space Haulers (for short ''the Firm'') which was an established transporter having its office at various places. The appellant was raided by the DGCEI officers on various dates and documents and evidences were seized as well as statement of the appellant was recorded on 24-8-2007. After some investigation, the department issued

Show Cause Notice to M/s. Gujarat Cypromet Ltd. asking them to show cause as to why Cenvat Credit availed on the goods transported by the appellant should not be denied and as to why the penalty should not be imposed. Similar show cause was issued to the appellant to show cause as to why penalty should not be imposed under the provisions of Central Excise Rules read with Cenvat Credit Rules, 2004. The appellant was under the impression that since M/s. Gujarat Cypromet Ltd. had filed their submissions, he was not required to file any separate reply. But the adjudicating authority has recorded the findings against the appellant also levying the penalty. The tribunal did not condone the delay of 142 days in filing the tax appeal. Learned counsel Ms. Sejal Mandavia has vehemently urged that delay was rightly not condoned by the authorities below.

5. The appellant preferred appeal before the Tribunal which was beyond 142 days of the prescribed limitation period, in view of above stated facts. The appellant prayed for condoning that delay before the Tribunal.

6. Be that as it may, we are of the opinion that since delay was of 142 days and the appellant was under bona fide belief that if M/s. Gujarat Cypromet Limited has filed its reply to the show cause notice then case will be covered and he is not required to file any separate reply to the show cause notice. Further once the penalty was imposed, appeal was filed with delay which was condoned. Therefore, even if there was 142 days delay for filing appeal before the tribunal, in our opinion it ought to have been condoned. Therefore, the question framed by us is answered in favour of the assessee against the department. We condone the delay of 142 days in filing the appeal and remit the matter back to the Tribunal for deciding the tax appeal on merits. The tax appeal is accordingly disposed of.

