(2013) 07 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No''s. 10587 to 10595 and 10597 of 2013

Shree Balaji Lumbers P. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2013) 23 GSTR 338

Hon'ble Judges : Sonia Gokani, J;M.R. Shah, J

Bench : Division Bench

Advocate : Hasit Dilip Dave, for the Appellant; Y.N. Ravani, for the Respondent

Judgement

M.R. Shah, J.—As common question of law and facts arise in these group of petitions, they are disposed of by this common order. A common grievance that is made in all these petitions by the respective petitioners is that either their refund applications are not entertained by the concerned respondents or if entertained, they are not adjudicated upon and finally decided and disposed of solely on the ground that against the decision of this court in Tax Appeal No. 86/2011 Commissioner of Customs Vs. Variety Lumbers P. Ltd., and allied matters with respect to other similarly situated assessees, the appeals are pending before the hon''ble Supreme Court.

2. The case of the respective petitioners is that in view of the decision of this court in Tax Appeal No. 86/2011 Commissioner of Customs Vs. Variety Lumbers P. Ltd., and allied matters, the respective petitioners are entitled to refund of special additional duty and at any rate their refund applications should be considered on merits. It is the case on behalf of the respective petitioners that with respect to some other assessees, the Division Bench of this court (Coram: Mr. Akil Qureshi and Ms. Harsha Devani, JJ.) while passing the order in Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)) and other allied matters has directed the respondents to entertain the refund applications and dispose of the same in accordance with law as early as possible, after giving reasonable opportunity to the respective

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petitioners to represent their case. However, despite the fact that the respective petitioners are similarly situated, their refund applications are either not accepted/entertained or they are not adjudicated upon on merits mainly on the ground that the respective petitioners are not party to the aforesaid Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)) and allied matters. It is the case on behalf of the respective petitioners that they are similarly situated and in view of the direction issued by this court in Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)) and other allied matters the concerned respondents are required to accept, entertain, adjudicate upon and finally decide and dispose of their refund applications and the respective petitioners are not required to make an application before this court and obtain similar order passed in the aforesaid Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)).

3. Having heard Shri Hasit Dave, learned advocate appearing on behalf of the respective petitioners and Shri Y.N. Ravani, learned counsel appearing on behalf of respondents Nos. 2 and 3 and considering the case of respective petitioners pleaded in the respective petitions and the order passed by the Division Bench of this court dated September 25, 2012 in Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)) and allied matters, we are of the opinion that the present special civil applications can be disposed of by issuing the directions as the issue in the order passed by the Division Bench of this court in Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)) are similar. We are of the opinion that if the case of the respective petitioners are similarly situated in that case, the concerned respondents were required to comply with the order passed by the Division Bench dated September 25, 2012 in Special Civil Application No. 5057/2012 (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)) and ought not to have insisted and ought not to have denied the similar benefit solely on the ground that the respective petitioners are not party to the aforesaid special civil applications and/or there is no order passed by the court in their favour like the order passed in favour of the respective petitioners of the aforesaid special civil applications. To avoid any further litigations and even the expenditure to be borne by the concerned petitioners and even the Revenue the concerned respondents ought to have complied with the directions issued by this court in its order dated September 25, 2012 passed in Special Civil Application No. 5057/2012 and allied matters (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)).

4. In view of the above and for the reasons stated in the order passed by the Division Bench dated September 25, 2012 in Special Civil Application No. 5057/2012 and allied matters (Utkal Lumbers P. Ltd. v. Union of India [2013] 23 GSTR 333 (Guj)), all these petitions are disposed of by directing the concerned respondents, more particularly, respondents Nos. 2 and 3 to accept and entertain the refund applications of the respective petitioners if the refund applications are

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for refund of special additional duty and adjudicate the said applications in accordance with law and on merits as early as possible, after giving reasonable opportunity to the respective petitioners to represent their case. It is made clear that this court has not expressed anything on merits whether the respective petitioners are entitled to refund of special additional duty as claimed or not and by this order we direct the concerned respondents to accept entertain and adjudicate the refund application of the respective petitioners in accordance with law and on its own merits.

5. We are sure that by doing so, the Department would be conscious of the decision passed by this court dated July 7, 2011 in Tax Appeal No. 86/2011 and allied matters Commissioner of Customs Vs. Variety Lumbers P. Ltd., and the interim order passed by the hon''ble Supreme Court challenging the decision of this court dated July 7, 2011 passed in the aforesaid tax appeals.

6. All these petitions stand disposed of accordingly. Before parting with the present petitions, it is observed that in case of other similarly situated assessees, who are claiming the refund of special additional duty like the petitioners and who have not come before the court, to avoid any further litigation and the expenditure to be borne by the respective assessee/applicants and even the Revenue, it is hoped that with respect to other similar cases/refund applications, respondents Nos. 2 and 3 may decide and dispose of the refund applications in accordance with law and on its own merits and they may not insist for individual orders from this court. With this, all these petitions are disposed of.

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