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(2013) 10 GUJ CK 0195

In the Gujarat High Court

Case No : Special Civil Application No. 11862 of 2013

Solvay Specialities India (P.) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2014) 44 GST 516

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

Bench : Division Bench

Judgement

M.R. Shah, J.—Rule. Shri R.J. Oza, learned counsel waives service of notice of Rule on behalf of respondent No. 2. In the facts and circumstances of the case and with the consent of the learned advocates for the respective parties, the present petition is taken up for final hearing today. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and order quashing and setting aside the recovery order dated 9.7.2013 (Annexure C) and to declare the same as illegal and bad in law. It is also further prayed to direct the respondent to immediate refund of their rebate claims in 7 days to the petitioner and not to initiate any coercive recovery and/or take any action pending hearing and final disposal of their stay applications and the appeals.

2. It appears that Order-in-Original dated 28.2.2013 has been passed by the Commissioner of Central Excise, Surat against the petitioner unit demanding the service tax of Rs. 1,20,79,520/-. By the said OIO, the Commissioner has also imposed the penalty of equivalent amount and has also passed an order to pay interest under the provisions of Central Excise Act. It appears that being aggrieved and dissatisfied with the OIO dated 28.2.2013, the petitioner has preferred appeals before the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as the CESTAT. That along with Appeals, the petitioner also submitted the stay applications/application for waiver of pre-deposit. That the said appeals and the stay applications came to be filed on 10.5.2013. That as

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the department was insisting for recovery of amount under the 010, the petitioner served a letter dated 4.7.2013 to the Divisional Assistant Commissioner informing that their stay applications are yet not heard and therefore, it was requested not to proceed further with the recovery. It appears that despite the above and pending the stay applications, the department recovered an amount of Rs. 1,49,92,754/- from the other 9 sanctioned rebate claims of exports of the petitioner and adjusted towards dues under the OIO. Being aggrieved and dissatisfied with the aforesaid action, the petitioner preferred present Special Civil Application for aforesaid relief.

3. It appears that during the pendency of the present petition, the learned CESTAT has disposed of Stay Application Nos. E/S/11151, 11202 and 11230/13 and the learned CESTAT has directed the petitioner to deposit an amount of Rs. 10 lakh within a period of 8 weeks as pre-deposit and has further passed order that subject to such compliance being reported, application for waiver of pre-deposit of balance amounts involved are allowed and recovery thereof is stayed till the disposal of the appeals. Thus, it appears that the learned CESTAT has directed the petitioner to deposit a sum of Rs. 10 lakh as pre-deposit against the demand under the OIO of Rs. 1,20,79,520/- + interest and penalty. That the department had already recovered an amount of Rs. 1,49,92,754/- from the other 9 sanctioned rebate claims of exports of the petitioner and adjusted towards above dues themselves. How it is the case on behalf of the petitioner that after deducting the amount of Rs. 10 lakh which the petitioner is directed to deposit as a pre deposit, respondent No. 2 be directed to refund the remaining amount of Rs 1,39,92,754/-.

4. Shri R.J. Oza, learned advocate appearing on behalf of the respondent No. 2 has made only one submission that against the action of the Divisional Assistant Commissioner i.e. respondent No. 2 recovering an amount of Rs. 1,49,92,754/- from the other 9 sanctioned rebate claims of exports of the petitioner, petitioner has a statutory remedy available by way of appeal. However, is not in a position to dispute the fact stated hereinabove, more particularly, the subsequent orders passed by the learned CESTAT passed in the stay applications submitted by the petitioner.

5. Heard Shri H.D. Dave, learned advocate for the petitioner and Shri R.J. Oza, learned advocate for the respondent No. 2. At the outset, it is required to be noted that as such during the pendency of the stay application, respondent No. 2 recovered an amount of Rs. 1,49,92,754/- from the other 9 sanctioned rebate claims of exports of the petitioner and adjusted towards the dues under the OIO. It is required to be noted that as such the petitioner submitted appeals within statutory period of limitation along with stay applications. However, stay applications could not be heard by the learned CESTAT at the earliest. It is not the case on behalf of the respondent that as such there was any deliberate delay on the part of the petitioner in getting the stay applications decided. It is also not the case on behalf of the respondent that the delay in deciding the stay

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application is attributable to the petitioner. Now, subsequently the stay applications are decided and the petitioner is directed to deposit a sum of Rs. 10 lakh only as pre-deposit and on such deposit further recovery has been stayed. As stated above, in the meantime respondent No. 2 has recovered an amount of Rs. 1,49,92,754/- by adjusting the same from the other 9 sanctioned rebate claims of exports of the petitioner. Thus, respondent No. 2 is now required to refund the balance amount of Rs. 1,39,92,754/- (after deducting Rs. 10 lakh which the petitioner is directed to deposit as pre-deposit). If the respondent No. 2 would have waited till the stay applications are decided such an eventuality may not have taken place. Be that it may now in view of the disposal of the stay applications subsequently, petitioner is entitled to refund of Rs. 1,39,92,754/- which the respondent No. 2 has recovered by way of adjusting the same from the other 9 sanctioned rebate claims of exports of the petitioner. In view of the above and for the reasons stated above, petition succeeds. Respondent No. 2 is hereby directed to refund a sum of Rs. 1,39,92,754/- (i.e. after deducting Rs. 10 lakh out of Rs. 1,49,92,754/- recovered by way of adjusting the same from the other 9 sanctioned rebate claims of exports of the petitioner). However the same shall be without prejudice to the rights and contentions of the respective parties in the appeals and subject to ultimate outcome of the main Appeal Nos. E/11293, 11354 & 11388/2013 pending before the CESTAT. Respondent No. 2 to refund the aforesaid amount of Rs. 1,39,92,754/- at the earliest but not later than three weeks from the date of receipt of the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted.

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