(2016) 11 GUJ CK 0007

In the Gujarat High Court

Case No : Tax Appeal No. 1166 of 2013

State of Gujarat APPELLANT

Vs

Madhusudan Texturises Pvt. Ltd. RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Citation : (2017) 345 ELT 3

Hon'ble Judges : M.R. Shah and B.N. Karia, JJ.

Bench : Division Bench

Advocate : Ms. Maithili Mehta, AGP, for the Appellant; Shri N.C. Shukla, Ms. Vaibhavi Parikh with Tushar P. Hemani, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah, J. (Oral)—Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Gujarat Value Added Tax Tribunal, Ahmedabad (for short "Tribunal") passed in Second Appeal No. 365 of 2011 by which the learned Tribunal has allowed the said appeal preferred by the respondent-assessee and has quashed and set aside the assessment order dated 31-3-2011, the appellantState has preferred the present appeal with the following substantial questions of law :

"(A) Whether on the facts and in the circumstances of the case, the Tribunal has rightly interpreted Section 11(3)(b) of the Gujarat Value Added Tax Act, 2003?

(B) Whether the opponent is entitled to entire Input Tax Credit paid at the time of purchase of goods within the State of Gujarat in spite of the fact that these goods are sent outside the State for job work activities?

(C) Whether the Tribunal has erred in adjudicating the issues on merits instead of restricting itself to the issue of predeposit?"

2. At the outset, it is required to be noted that while issuing the notice for final disposal, the Division Bench noted the contentions on behalf of the

appellantState that as the appeal before the learned Tribunal was against the order passed by the first appellate authority, the learned Tribunal ought not to have decided the appeal on merits and ought not to have restricted the issue of predeposit only. Therefore, considering the decision of the Hon''ble Supreme Court in the case of Commissioner of Central Excise, Chandigarh v. Smithkline Beecham Company Health C. Limited, [2003 (157) E.L.T. 497 (S.C.)], this Court issued notice for final disposal to remand the matter to the learned Tribunal or to consider the issue with respect to predeposit only.

3. Having heard the learned advocates for the respective parties and for the reasons stated below, this Court proposes to remand the matter to the learned Tribunal to consider the issue with respect to predeposit only, which is subject matter before the learned Tribunal.

4. It is not in dispute that the first appellate authority dismissed the appeal preferred by the assessee on the ground of nondeposit of predeposit which was challenged by the learned Tribunal. Despite the above and despite the fact that though it was pointed out to the learned Tribunal that on identical issues/questions, the High Court has seized with the matter, the learned Tribunal has decided the appeal on merits.

5. Now so far as whether in an appeal against the order passed by the first appellate authority dismissing the appeal on the ground of nondeposit of predeposit, the learned Tribunal could have decided the appeal on merits is concerned, the said issue is now not res integra in view of the decision of the Hon''ble Supreme Court in the case of Smithkline Beecham Company Health C. Ltd. (supra) and the decision of the Division Bench of this Court in the case of State of Gujarat v. Tudor India Limited rendered in Tax Appeal No. 711 of 2013.

6. In view of the above undisputed facts and the above decisions of the Hon''ble Supreme Court as well as of this Court, the impugned judgment and order passed by the learned Tribunal decided on merits cannot be sustained and the matter is remanded to the learned Tribunal to decide the appeal with respect to the issue of predeposit only.

7. Even otherwise, when it was pointed out to the learned Tribunal that the High Court is seized with the similar question of law in an appeal preferred by another assessee, in that case the learned Tribunal ought not to have decided the said question on merits, more particularly, when before the High Court, the decision of the learned Tribunal taking a contrary view against the assessee was at large. The appropriate procedure would have been to stay the hands till the similar/ same questions have been answered by the High Court.

8. Be that it may, as the appeal before the learned Tribunal was against the order passed by the first appellate authority dismissing the appeal on the ground of nondeposit of predeposit only. As observed above, the learned Tribunal ought not to have decided the appeal on merits and ought not to have restricted the appeal with respect to predeposit only. The impugned

judgment and order passed by the learned Tribunal deserves to be quashed and set aside and the matter is required to be remanded to the learned Tribunal to consider the issue with respect to predeposit only and/or the order passed by the first appellate authority dismissing the appeal on the ground of nondeposit of predeposit.

9. In view of the above and for the reasons stated above, and without further entering into the merits of the case and without expressing any opinion on merits of the matter, the impugned judgment and order passed by the learned Tribunal is hereby quashed and set aside and the matter is remitted back to the learned Tribunal to decide the issue of predeposit and to consider the legality and validity of the order passed by the first appellate authority dismissing the appeal on the ground of nondeposit of predeposit and decide the same on merits, in accordance with law.

10. The present appeal is partly allowed to the aforesaid extent. No costs.

