(2015) 04 GUJ CK 0098

In the Gujarat High Court

Case No : Tax Appeal No. 222 of 2015 and Civil Application (OJ) No. 291 of 2015 in Tax Appeal No. 222 of 2015

State of Gujarat APPELLANT

Vs

Star Industries RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 45(2)(c), 54(1)(aa)

Citation : (2015) 04 GUJ CK 0098

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Chintan Dave, AGP, for the Appellant; Apurva N. Mehta, Advocates for the Respondent

Judgement

M.R. Shah, J.—0 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Gujarat Value Added Tax Tribunal dated 02/09/2014 in Second Appeal No. 347/2013, the appellant-State of Gujarat-revenue has preferred the present Tax Appeal to consider the following substantial questions of law;

"(A) Whether the Hon''ble Tribunal has erred in holding that the dealer is entitled to interest under Section 54(1)(aa) on refund arising from appellate order?

(B) Whether the Hon''ble Tribunal has erred in deleting levy of penalty under Section 45(2)(c) of the Act?"

2.0 We have heard Shri Chintan Dave, learned AGP appearing on behalf of the appellant and Shri Mehta, learned advocate appearing on behalf of the respondent-assessee-dealer at length. We have perused and considered the impugned judgment and order passed by the learned Tribunal.

3.0 Now so far as substantial question No. (A) i.e. Whether the learned Tribunal has erred in holding that the dealer is entitled to interest under Section 54(1)(aa) of the Gujarat Sales Tax Act on refund arising from the appellate order is concerned, the said issue is now concluded and decided against the revenue in view of the decision of the Division Bench of this Court in the case of State of Gujarat v. Doshi Printing Press reported in Tax Appeal No. 87/2015 and allied Tax Appeals. In the case of Doshi Printing Press (Supra) after considering the decisions of the Hon''ble Supreme Court in the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, AIR 2006 SC 1223 : (2006) 1 CTC 741 : (2006) 200 CTR 505 : (2006) 196 ELT 257 : (2006) 280 ITR 643 : (2006) 2 JT 7 : (2006) 1 SCALE 569 : (2006) 2 SCC 508 : (2006) 1 SCR 811 : (2007) 8 STR 193 : (2006) 150 TAXMAN 591 : (2006) AIRSCW 468 : (2006) 1 Supreme 608 ; Commissioner of Income Tax, Gujarat Vs. Gujarat Fluro Chemicals, (2013) 262 CTR 269 : (2013) 296 ELT 433 : (2013) 358 ITR 291 : (2013) 12 SCALE 281 : (2014) 1 SCC 126 : (2014) 222 TAXMAN 349 as well as the subsequent decision of the Division Bench of this Court in the case of Gujarat Flouro Chemicals Ltd. v. Commissioner of Income Tax and Ors dated 30/01/2015 in Special Civil Application No. 12855/1994, the Division Bench of this Court has confirmed the order passed by the learned Tribunal in holding that the dealer is entitled to interest under Section 54(1)(aa) of the Gujarat Sales Tax Act on refund arising from the appellate order and consequently the Division Bench has dismissed the Appeals preferred by the State raising the same question of law. Following the decision of Division Bench of this Court in the case of Doshi Printers Press (Supra), we dismiss the present Tax Appeal qua question No. (A).

4.0 Now so far as proposed question No. (B) i.e. whether the learned Tribunal has erred in deleting levy of penalty under Section 45(2)(c) of the Act is concerned, even the said issue is also held against the revenue in view of the binding decision of the Division Bench of this Court in the case of Banu Hasim v. State of Gujarat reported in Tax Appeal No. 1842/2010. Following the decision of the Division Bench of this Court in the case of Banu Hasim (Supra), the present Tax Appeal qua question No. (B) also deserves to be dismissed.

5.0 In view of the above and for the reasons stated hereinabove, no question of law, much less substantial question of law arises in the present Tax Appeal. Under the circumstances, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.

Civil Application No. 291/2015

In view of disposal of the main Tax Appeal, no order in the Civil Application and the same stands disposed of.

