(2013) 12 GUJ CK 0019

In the Gujarat High Court

Case No : Tax Appeal No. 1128 of 2013 and Civil Application No. 720 of 2013

State of Gujarat APPELLANT

Vs

Veer Metal Industries (P.) Ltd. RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 43 GST 269

Hon'ble Judges : R.P. Dholaria, J;M.R. Shah, J

Bench : Division Bench

Advocate : Jaimin Gandhi, for the Appellant; Manish Kaji, for the Respondent

Judgement

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.08.2012 passed by the Gujarat Value Added Tax Tribunal (hereinafter referred to as "Tribunal") in Second Appeal No. 728 of 2011, the appellant-State has preferred the present appeal to consider the following proposed substantial question of law.

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

Heard Mr. Jaimin Gandhi, learned AGP appearing on behalf of the appellant-State and Mr. Manish K. Kaji, learned advocate, who has filed his appearance in Civil Application No. 650 of 2013 (delay condonation application) for the respondent and perused the impugned judgment and order passed by the learned Tribunal.

2. It is required to be noted that while passing the impugned order, the learned Tribunal has relied upon the decision of the very Tribunal in the case of Reliance Industries Ltd. v. State of Gujarat [Second Appeal Nos. 76 & 77 of 2011 decided on 26.04.2012]. It is reported that the decision of the learned Tribunal in Second Appeal Nos. 76 and 77 of 2011 was carried before this Court by way of filing Tax Appeal Nos. 934 and 935 of 2012. By detailed judgment and order dated 18.01.2013, which is now State of Gujarat Vs. Reliance Industries Ltd., , the Division Bench of this Court has dismissed the said appeals confirming the

judgment and order passed by the learned Tribunal in Second Appeal Nos. 76 and 77 of 2011. In the said decision, in the case of Reliance Industries Ltd. (supra), the Division Bench of this Court has held and observed as under:--

One of the indications that the Legislature has intended to limit such credit only once is available in the proviso contained in section 11(3)(b). Proviso provides that where the rate of tax of the taxable goods is less than four per cent, then the amount of tax credit in respect of such dealer shall be reduced by the amount of tax calculated at the rate of tax set out in the schedule on such goods. In other words, if the tax credit available to a dealer is less than four per cent, the reduction should be limited to such credit and not more. The Legislature, thus, envisaged that the reduction of tax credit u/s 11(3)(b) would in no case exceed four per cent. If the interpretation put forth by the State is accepted, a dealer who has availed of tax credit of four per cent would end up surrendering credit by 8 per cent or may be in a given case by 12 per cent. Surely, the Legislature could never have intended the reduction to exceed the tax credit itself. In the present case, this is precisely what would happen if the interpretation of the State is accepted. We have noticed that the furnace oil invites tax at the rate of four per cent. The tax credit thus available to the respondent as a dealer would be limited to such amount. If such tax credit available to the respondent is reduced by eight per cent, it would bring about a situation where credit available is four per cent and what is reduced is eight per cent. Surely, the Legislature never envisaged any such situation while framing section 11(3)(b) of the VAT Act.

3. Applying the aforesaid ratio laid down by the Division Bench of this Court in the aforesaid decision, it cannot be said that the learned Tribunal has committed any error and/or illegality while passing the impugned judgment and order which calls for any interference by this Court. In view of the aforesaid decision in the case of Reliance Industries Limited (supra), as such, no question of law much less any substantial question of law arises in the present appeal and hence, the present appeal deserves to be dismissed and accordingly is dismissed. In view of the observation made hereinabove and dismissal of main Tax Appeal, O.J.C.A. No. 720 of 2013 also deserves to be dismissed and is accordingly dismissed.