(2010) 12 GUJ CK 0108

In the Gujarat High Court

Case No : Special Civil Application No. 14155 of 2010

Suzlon Structures Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex. and Cus. RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 75A
Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 7(1)

Citation : (2011) 264 ELT 209

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : Navin Pahwa and Amit K. Dave, for the Appellant; Kalpesh N. Shastri, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J.—Considering the controversy involved in the present case which lies in a very narrow compass, the matter is taken up for hearing today.

2. Rule. Mr. Kalpesh N. Shastri, learned Standing Counsel waives service of rule on behalf of the Respondent.

3. By this petition under Article 226 of the Constitution of India, the Petitioner has prayed for a direction against the Respondent to forthwith implement the order dated 1st December 2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad [Annexure ''A'' to the petition].

4. The Petitioner, a Company, had made in all six applications for fixation of brand rate of duty drawback under Rule 7(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 [the Rules] before the Commissioner of Central Excise and Customs, Rajkot in respect of exports made by the Petitioner in six consignments. Since there was some delay in filing the applications, the Petitioner had also moved an application for condonation of the

delay that had occasioned in filing the claim. Vide order dated 16th February 2009, the Commissioner, Central Excise and Customs, Rajkot rejected all the applications for condonation of delay.

5. Being aggrieved, the Petitioner preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad, [the Tribunal] being Appeal No. E-793/2009. Vide order dated 1st December 2009, the Tribunal set aside the order of the Commissioner and directed the Commissioner to consider the applications for fixation of brand rate of duty drawback by condoning the delay. Vide letter dated 2nd August, 2010 which came to be received by the Respondent on 6th August, 2010 the Petitioner enclosed a copy of the order of the Tribunal and requested the Respondent to process its six applications at the earliest. However, despite the fact that a considerable period of time has elapsed since the date of the order of the Tribunal, the applications made by the Petitioner have still not been decided by the Respondent. It is in these circumstances, that the Petitioner has moved the present petition seeking the relief noted hereinabove.

6. Notice was issued on the petition on 27th October 2010 which was made returnable on 18th November 2010. On 1st December, 2010 when the matter was taken up for hearing, on behalf of the Respondent it was submitted that in view of the fact that against the order of the Tribunal, the revenue has preferred a tax appeal before this Court being Tax Appeal No. 975 of 2010, which is still pending, the applications made by the Petitioner have not been decided. The Court had, therefore, vide order dated 1st December 2010, directed that the tax appeal be listed along with the petition on 8-12-2010. The appeal subsequently came to be adjourned to 9-12-2010. The appeal came to be heard on 9-12-2010 and vide order of even date came to be dismissed by this Court.

7. Heard the learned advocates for the respective parties.

8. It is settled legal position that in the absence of any order of a higher forum staying an order made by a quasi-judicial authority or judicial authority, as the case may be, such order is required to be complied with by the concerned authority. In the absence of any order of a higher forum staying such order, the authority, which is required to comply with the said order, cannot refuse to comply with the same merely because it has challenged the said order. However, even that difficulty has been obviated in the present case, as the appeal preferred by the revenue has been heard and decided and as such the Respondent has no cause or reason for not complying with the order of the Tribunal. The Respondent is, therefore, duty bound to comply with the directions issued by the Tribunal. Moreover, as rightly pointed out by the learned advocate for the Petitioner, delay in deciding such applications, results in an additional burden on the public exchequer, inasmuch as the claimant becomes entitled to payment of interest u/s 75A of the Customs Act, 1962.

9. In the circumstances, the petition deserves to be allowed with a direction to

the Respondent to decide the applications within a suitable time frame. In this regard, the learned advocate appearing on behalf of the Petitioner has invited the attention of this Court to a circular dated 30th March 2000 issued by the Central Board of Excise and Customs, New Delhi whereby the Commissioners have been directed that on Electronic Data Interchange (EDI) system, the drawback claims should be cleared within 3 working days and in manual cases, within 5 days. It was accordingly submitted that the Commissioner be directed to decide the claim within the said time frame.

10. In the light of the aforesaid discussion, the petition is allowed. The Respondent is hereby directed to implement the order date 1st December, 2009 passed by the Tribunal in Appeal No. E/793/09 within a period of 2 weeks from the date of receipt of a copy of this order.

11. Rule made absolute accordingly. No order as to costs.

12. Direct Service is permitted.