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(2016) 01 GUJ CK 0032

In the Gujarat High Court

Case No : Tax Appeal No. 995 of 2015 and Civil Application (OJ) No. 828 of 2015 in Tax Appeal No. 995 of 2015

The Commissioner Central Excise, Ahmedabad-III — APPELLANT

Vs

Deora Wires N. Machines Pvt. Ltd. — RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Citation : (2016) 01 GUJ CK 0032

Hon'ble Judges : Akil Abdul Hamid Kureshi and Mohinder Pal, JJ.

Bench : Division Bench

Advocate : Amee Yajnik, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Akil Abdul Hamid Kureshi, J.—1. The adjudicating authority as well as the Commissioner (Appeals) relied almost entirely on confessional statements made by the assessee and other employees of the assessee in order to confirm the demand. The Tribunal by the impugned order reversed the orders on the ground that solely on the basis of confessional statement, duty demands could not have been confirmed.

2. Learned counsel Ms. Yajnik for the Revenue tried to contend that other than the confessional statements, other materials were also raised. We however, notice from the orders on record that sole reliance of Revenue authorities was on confessional statements which were within a couple of days retracted. In fact, the Commissioner (Appeals) put heavy burden on the assessee to disprove the case of the revenue as can be seen from the following discussions contained in the appellate order:

"14.4 From the above facts I find that Shri Suresh Chandulal Shah, Director of the appellant company has retracted his confessional statement but did not submitted any evidentiary reason for the said retraction. It is only at the time of defense before the lower adjudicating authority appellant has taken plea referred

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at para 14.3 above and argued that the evidences from the buyers end had to be proved. When appellant had argued before the lower adjudicating authority that invoices at page 34, 35, 52, 53, 54, 56, 58 were trading invoices they could have submitted the documentary proofs of their purchase of the said goods. From where they have purchased said goods, payment made by them to the suppliers of the said goods. Sales tax returns with regards to re-sale of those goods. Just stating that it was their trading invoices and if the buyers had not accounted in their records, they should not be penalized has no force. No such documentary proof to their arguments referred above was submitted by them. There is no corroboration to their retraction of the statements and defense put forth before the lower adjudicating authority. In absence of any documentary evidences as discussed above their confessional statements is clinching evidence in the context of the case. The denial of said purchases by M/s. L & T and M/s. Jyoti Engg. & Contractors corroborates their statements that they were preparing invoices in the name of these buyers but were dispatching goods to different small local contractors. It is only after the statement of Shri Dilip B. Waghela Production/Dispatch in-charge of the appellant company, investigation was extended to the end of M/s. L & T and M/s. Jyoti Engg. & Contractors. Statements of these parties are independent statements. Why should they tell lie as claimed by the appellant that ''if the buyers had not accounted in their records, they should not be penalized." All these facts clearly prove the mala fide intention of the appellants."

3. When in fact, the confirmation of duties and penalties were based on confessional statements which were promptly retracted and there was no other independent material on record, the Tribunal correctly reversed the orders of the authorities below. No question of law arises. Tax appeal is dismissed. Civil application also stands dismissed.

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