(2015) 10 GUJ CK 0007

In the Gujarat High Court

Case No : Tax Appeal No. 508 of 2008

The Commissioner, Central Excise & Customs — APPELLANT

Vs

Rishiroop Rubber (I) Ltd. — RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2015) 10 GUJ CK 0007

Hon'ble Judges : Harsha Devani and Abdullah Gulamahmed Uraizee, JJ.

Bench : Division Bench

Advocate : R.J. Oza, Advocate, for the Appellant; Navin K. Pahwa and Sangeeta N. Pahwa, Advocates, for the Respondent

Judgement

Harsha Devani, J.—Mr. R.J. Oza, learned Senior Standing Counsel for the appellant has tendered a draft amendment. The amendment is allowed in terms of the draft. The same shall be carried out forthwith.

2. The appellant, Commissioner of Central Excise and Customs has challenged the order dated 31st August, 2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai (hereinafter referred to as the Tribunal) in Appeal E/2467 of 2003.

3. By an order dated 03.03.2009, this appeal under section 35G of the Central Excise Act, 1944 has been admitted on the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was justified in negating the penalty on the respondent, Managing Director of the unit despite there was specific malafide role attributed to him?"

4. Mr. R.J. Oza, learned Senior Standing Counsel for the appellant has drawn the attention of the court to the fact that the question had wrongly been formulated at the time of admission of the appeal. Under the circumstances, the question is reformulated as follows:

"Whether on the facts and in the circumstances of the case, the CESTAT, West Zonal Bench, Mumbai was justified in allowing appeal of respondent by placing sole reliance in the case of Jayant Agro Organics Ltd., , 2003 (157) ELT 684 ?"

5. Heard Mr. R.J. Oza, learned Senior Standing Counsel for the appellant and Mr. N.K. Pahwa, learned advocate for the respondent.

6. A perusal of the impugned order passed by the Tribunal reveals that the Tribunal has recorded that it is an admitted position as agreed by both the sides that the very same issues are covered on merits in favour of the assessee by the decision of the Tribunal in the case of M/s. Jayant Agro Organics Limited, , 2003 (157) ELT 684 . Accordingly, following the said decision, the Tribunal has allowed the assessee''s appeal on merits and the revenue''s appeals have been found to be infructuous and have been dismissed.

7. Mr. N.K. Pahwa, learned advocate for the respondent has drawn the attention of the Court to the order passed by the Supreme Court in Civil Appeal No. 1173 of 2004 wherein the decision of the Tribunal in the case of M/s. Jayant Agro Organics Limited (supra) was subject matter of challenge, to point out that the appeals preferred by the revenue have been dismissed and consequently the order passed by the Tribunal has been confirmed.

8. Having regard to the fact that the decision of the Tribunal in the case of M/s. Jayant Agro Organics Limited (supra) has been confirmed by the Supreme Court, no infirmity can be found in the impugned order passed by the Tribunal whereby its earlier decision in the case of Jayant Agro Organics Limited (supra) has merely been applied to the facts of the present case.

9. Under the circumstances, the appeal does not give rise to a question of law, much less, a substantial question of law so as to warrant interference. The appeal, therefore, fails and is accordingly dismissed.