(2015) 10 GUJ CK 0041

In the Gujarat High Court

Case No : Tax Appeal No. 498 of 2008

The Commissioner of Central Excise APPELLANT

Vs

Arvind M. Kapoor RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2016) 332 ELT 253

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.—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 is justified in negating the penalty imposed on Shri Arvind Kapoor, Managing Director of the Unit, in view of the specific malafide role attributed to him?"

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

3. As can be seen from the impugned order dated 31.08.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal in Appeal No. E/2467/03, which is subject matter of challenge in this appeal, the Tribunal took note of the fact that the revenue is against the impugned order of the Commissioner whereby, he had dropped penalty proceedings against the respondent, Managing Director of one M/s. Rishiroop Rubber (I) Ltd. against whom demand duty of Rs. 14,734/- stood confirmed. The Tribunal has further noted that M/s. Rishiroop Rubber (I) Ltd. had also challenged the said order and the Tribunal by its order dated 07.01.2004, allowed the appellant''s plea and set aside the impugned

order. Having regard to the fact that the main appeal stood allowed, the Tribunal held that the revenue''s plea for imposition of penalty on the Managing Director cannot be accepted.

4. Against the order of the Tribunal in the case of M/s. Rishiroop Rubber (I) Ltd., the revenue had preferred an appeal before this court being Tax Appeal No. 508 of 2008. By an order of even date, the said appeal has been dismissed. Under the circumstances, when the main appeal has been dismissed, there is no question of interfering with the impugned order passed by the Tribunal on the question of penalty on the Managing Director.

5. The appeal, therefore, fails and is, accordingly, dismissed.

