(2008) 09 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No''s. 3845, 3846 and 3847 of 2008

Ultratech Cement Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11AB
CENVAT (Credit) Rules, 2002 — Rule 12, 13(1), 2
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 235 ELT 411 : (2009) 13 STR 493

Hon'ble Judges : Rajesh H. Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : Gautam M. Gadhavi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—Since a common issue is involved in all these three writ petitions, the same are taken up for admission hearing together and

are disposed of by this common order.

2. All the three petitions were called out in the first session and also in the second session. The learned Advocate appearing for the petitioner in all

the three matters has not remained present in any of the two calls.

3. The petitioner has challenged the order of Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad dated 30th

May, 2007 in Application No. E/COD/56/07, E/S/55607, refusing to condone the delay of more than 800 days in preferring the appeal against

the order of the Commissioner (Appeals). Similarly, the petitioner has challenged other two orders of the Tribunal passed in other two appeals.

4. The brief facts of the case are that the petitioner is inter alia engaged in the

manufacturing of clinker and cement falling under Chapter 25 of the

Schedule to the Central Excise Tariff Act, 1985. The petitioner has availed credit of Rs. 11,38,719/- on explosives used in mines under Rule 2(g)

of the Cenvat Credit Rules, 2002. The petitioner was issued with show cause notice proposing to deny and recover credit of Rs. 11,38,719/- u/s

11A of the Central Excise Act, 1944 availed on the explosives used in mines. The show cause notice also proposed to impose penalty on the

petitioner under Rule 13(1) of the Cenvat Credit Rules, 2002 and proposed to recover interest from the petitioner under Rules 12 of the Cenvat

Credit Rules, 2002 read with Section 11AB of the Central Excise Act, 1944. The petitioner filed its reply to the show cause notice on 14-1-2003

and 19-5-2003. The show cause notices were adjudicated by the Joint Commissioner of Central Excise, Bhavnagar and the Joint Commissioner

vide his order dated 16-2-2004 denied the credit on explosives used in mines and confirmed the duty demand of Rs. 11,38,719/- against the

petitioner. The Joint Commissioner also imposed penalty of Rs. 1 lakh on the petitioner and also ordered recovery of interest. The Joint

Commissioner relied upon the decision of the Honourable Supreme Court in the case of Commissioner of Central Excise, Jaipur Vs. J.K. Udaipur

Udyog Ltd.,

5. Being aggrieved by the order of the Joint Commissioner dated 17-8-2004, the petitioner filed an appeal before the Commissioner of Central

Excise (Appeals), Rajkot. During the pendency of the appeal, on 27-11-2004, the petitioner reversed the credit taken on the explosives used in

mines following the binding precedent of the Honourable Supreme Court in the case of J.K. Udaipur Udyog (supra). The Commissioner disposed

of the appeal filed by the petitioner on 04-2-2005 reducing the penalty from Rs. 1 lakh to Rs. 10,000/-. Since the subject matter of the order

passed by the Commissioner (Appeals) was already decided by the Honourable Supreme Court in the case of M/s. J.K. Udaipur Udyog (supra),

filing of an appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT) would have been an empty formality and, therefore,

showing due respect to the law of land, the petitioner did not file an appeal against the order dated 4-2-2005 passed by the Commissioner

(Appeals).

6. The Honourable Supreme Court in the case of Vikram Cement Vs. Commissioner of Central Excise, Indore, did not agree with the decision of

the Honourable Supreme Court in the case of M/s. J.K. Udaipur Udyog (supra) and referred the issue to the Larger Bench on 24-8-2005. The

Larger Bench of the Honourable Supreme Court in the case of Vikram Cement Vs. Commnr. of Central Excise, Indore, held on 18-1-2006 that

credit is admissible on inputs used in mines. The Honourable Supreme Court overruled the decision in the case of M/s. J.K. Udaipur Udyog

(supra).

7. Having come to know about the decision of Honourable Supreme Court in the case of Vikram Cement Limited (supra), the petitioner decided

to file an appeal before CESTAT and accordingly, an appeal was filed on 15-5-2007 along with stay application and application for condonation

of delay of 817 days. The matter came up for hearing before the CESTAT on 30-5-2007 and the petitioner''s application for condonation of delay

was rejected by the CESTAT on the ground that the petitioner had not filed the appeal within the reasonable period. The CESTAT also held that

appeal related to short period and does not involve large amount considering the status of the petitioner. It is this order which is under challenge in

the present petition.

8. In the memo of petition a contention was raised that the order passed by the CESTAT, Commissioner (Appeals) and Joint Commissioner are

ex facie perverse, illegal and wholly incorrect in law and therefore, the same are liable to be set aside. It is further contended that the order passed

by the CESTAT dismissing the appeal on the technical grounds of limitation had resulted in failure of justice inasmuch as by doing so the CESTAT

has made the petitioner as victim of law on account of changing legal position. Technicalities of law cannot prevent any Court from doing

substantial justice. It is further contended that there was sufficient cause and CESTAT ought to have condoned the delay. Reliance was also placed

on the decision of the Andhra Pradesh High Court in the case of State of Andhra Pradesh Vs. Venkataramana Chuduva and Muramura Merchant

and Another, , wherein the decision of the Sales Tax Tribunal was upheld and the Tribunal condoned the delay of more than one year on the

ground that the subsequent decision of the Honourable Supreme Court constituted sufficient cause for not filing an appeal. It was, therefore,

contended that the subject matter of the petition is covered in favour of the petitioner by the decision of the Larger Bench of the Honourable

Supreme Court in the case of Vikram Cement Limited (supra).

9. We have perused the order of the Tribunal as well as the contentions raised in present petition. We are of the view that the Tribunal was justified

in rejecting the application for condonation of delay as the delay is of more than two years. The petitioner has filed the appeal before the Tribunal

only when the Honourable Supreme Court reversed finally its earlier decision and thereafter, for one year no action has been taken by the

petitioner. It was not explained as to why the petitioner has taken one year''s time in filing the appeal even after the Larger Bench decision of the

Honourable Supreme Court in the case of Vikram Cement Limited. While rejecting the application filed by the petitioner for condonation of delay,

the Tribunal has considered that the petitioner has accepted the order of the Commissioner (Appeals) and since the stake involved is very small,

the application for condonation of delay was rejected. The decision relied upon by the petitioner in the case decided by the Andhra Pradesh High

Court has no relevance as in the present case, there was no proper explanation of delay of one year after the Honourable Supreme Court''s

decision. Even otherwise the amount is very small as the Appeal is filed against the penalty retained by the Commissioner (Appeal) to the tune of

Rs. 10,000/- each in all the three cases.

10. Thus, taking over all view of the matter, we are of the view that the Tribunal has taken a just and appropriate decision having considered the

facts and circumstances of the case and there is no infirmity in the order passed by the Tribunal. We are, therefore, not inclined to exercise our

extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India by entertaining these petitions.

Hence all the three petitions are dismissed.

