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(2014) 11 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 15670 of 2014

Vijay Singh Jabbarsingh Gohil APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Customs Act, 1962 — Section 114(i)

Citation : (2015) 315 ELT 591

Hon'ble Judges : V.M. Pancholi, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Hasit Dilip Dave, Advocates for the Appellant

Judgement

Akil Abdul Hamid Kureshi, J.—Petitioner has challenged an order dated 21-8-2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (''the Tribunal'' for short) imposing condition of pre-deposit of Rs. 10 lacs to enable the petitioner to pursue his appeal before the Tribunal on merits and to avoid recovery of the penalties imposed by the Commissioner under his Order-in-Original against the petitioner. The issue arises under the Customs Act. A consolidated show cause notice dated 3rd July 2012 was issued against the petitioner and several other persons alleging suppression of FOB value of the exported goods and thereby evading the customs duty. The petitioner was admittedly a transporter of the goods. The allegations against him included those of being part of a syndicate which formed a chain of conspiracy. He not only provided transportation and also arranged for a godown. It was alleged that he used the name of fictitious non-existing transportation firms to show the transport of the goods. The Commissioner of Customs under his order dated 27-9-2013 confirmed the duty demand on the principal exporter. He also imposed various personal penalties. Against the petitioner, he imposed penalty of Rs. 5.46 crores (rounded off) under Section 114(i) and similar amount under Section 114AA of the Customs Act. The petitioner preferred appeal against such order before the Tribunal. Along with the appeal, the petitioner also prayed for waiver of pre-deposit and stay against the recoveries. On such application, the Tribunal passed the impugned order requiring the petitioner to deposit a sum of Rs. 10 lacs upon which, deposit of rest of the amount would be waived and there shall be stay against recoveries pending the appeals. It is this order which the petitioner has challenged in this petition. Learned advocate Shri H.D. Dave for the petitioner vehemently contended that the Tribunal imposed a condition which was too onerous for the petitioner to carry out. The petitioner was served with three separate show cause notices for different periods containing similar allegations. In the first case, when the Commissioner imposed penalties, the Tribunal imposed the condition of pre-deposit of Rs. 1 lac. In the present case, the Tribunal, therefore, ought to have adopted similar standard. He further submitted that the order of the Commissioner is not sustainable since it is based solely on the retracted confessional statements of the petitioner. No reasons have been assigned for imposing such a heavy penalty on a person who himself is not an exporter but merely a transporter.

2. In our opinion, the Tribunal has committed no error. Firstly, against the total penalty demand of more than Rs. 10 crores, the Tribunal imposed condition of pre-deposit of merely Rs. 10 lacs which comes to just about one per cent of the amount. Secondly, in the earlier case, the penalty imposed was Rs. 25 lacs against which the Tribunal imposed the condition of pre-deposit of Rs. 1 lac. Merely because the allegations are common, the Tribunal is not bound to adopt the same figure irrespective of the quantum involved in each case. The condition of pre-deposit has some rational relation to the total demand confirmed by the adjudicating authority. Lastly, at this stage, it is not necessary for us in a writ petition to delve into the details of the nature of the order passed by the adjudicating authorities. Such issues are before the Tribunal in the Tax Appeal and would be gone into at the time of final hearing and disposal, of course, provided the petitioner fulfills the pre-deposit condition. In view of the above discussion, the petition is dismissed.

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