(2009) 12 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 536 of 2009

Viny Royal Plasticoates Private Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 258 ELT 339

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

Bench : Division Bench

Advocate : D.V. Parikh, for the Appellant; Y.N. Ravani, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—Rule : Mr. Y.N. Ravani, learned Standing Counsel appearing for the Revenue waives service of rule.

2. The Petitioner has filed this petition under Article-226 of the Constitution of India praying for direction to the Commissioner to adjudicate the issue as per the direction of the Tribunal vide its order dated 11-12-2006.

3. Heard Mr. Devang Parikh, learned advocate appearing for the Petitioner and Mr. Y.N. Ravani, learned Standing Counsel appearing for the Respondent. The Tribunal while disposing of the Appeal Nos. 2295/2003, 3090 and 3091 of 2004 on 11-12-2006 has observed as under:

We have heard both sides, we find that in the case of Raymond Ltd., the tribunal vide its Order No. A-459/WZB/05/C-1, dated 10-5-2005 answered the first issue in the affirmative, following the earlier decision in Reliance Industries Ltd., v. CCE 2002 (150) E.L.T. 479 (T), and Grasim Industries Ltd., v. CCE 2003 (54) RLT 288 (T), and hence set aside the demand of Additional Excise Duty. Following the ratios of the above decision in the case of same Assessee, we set aside demand of Additional Excise Duty of Rs. 75,78,131/-. As regards the second issue, we remand it for fresh decision to the Jurisdictional Commissioner in the light of

Tribunal''s earlier order cited supra wherein the issue of admissibility of additional excise duty paid under ADE (TTA) Act, for utilization towards payment of Basic Excise Duty has already been remanded. The issue of liability of the Appellants to penalty is left open for fresh decision by the Commissioner.

4. Despite the fact that the order was passed on 11-12-2006, the jurisdictional Commissioner has not adjudicated the issue as directed by the Tribunal. The Petitioner has filed the present petition seeking above referred direction. On behalf of the Respondent an affidavit-in-reply is filed on 15-4-2009. The main argument of Mr. Ravani is that against the order of the Tribunal the Revenue has preferred Tax Appeal, which is pending before this Court. Unless and until the Tax Appeal is decided it is not possible for the revenue to give effect to Tribunal''s order. He has, therefore, submitted that either the Tax Appeal be fixed for final hearing or the present petition be ordered to be heard alongwith the Tax Appeal.

5. We have considered the rival submissions made by the parties. We are of the view that once the Tribunal has decided the Appeal giving certain directions to the lower authorities, the lower authorities are bound to follow those directions unless the order of the Tribunal is reversed by the High Court or any stay is granted by the High Court against implementation of the said order. As on today, neither the order of the Tribunal is reversed nor any stay is granted by the High Court in the Tax Appeal.

6. In the above view of the matter, there is no need to keep the present petition pending or there is no need to wait for the High Court''s decision in the pending Tax Appeal. The jurisdictional Commissioner is bound to adjudicate the issue as per the direction of the Tribunal. We, therefore, allow this petition. The view which we are taking in the present petition is duly supported by the decision of the Apex Court. In the case of Ghaziabad Development Authority Vs. Balbir Singh, , it is clarified that unless there is a stay obtained from the higher forum, the mere fact of filing of an Appeal/Revision will not entitle the authority to not comply with the Order of the Forum. Even though the authority may have filed an Appeal/Revision. If no stay is obtained or if stay is refused the Order must be complied with. In such cases the higher forum should, before entertaining the Appeal/Revision, ensure that the order is first complied with.

7. In the above view of the matter, we direct the jurisdictional Commissioner, Central Excise to adjudicate the issue as per the directions given by the Tribunal after hearing the Petitioner and after considering the explanation that may be rendered by the Petitioner in this regard. The jurisdictional Commissioner shall pass a final adjudication order as expeditiously as possible, preferably within the period of three months from the date of receipt of order or from the date of receipt of certified copy of order, whichever is earlier.