

Gujarat High Court

Commissioner vs Appearance on 6 April, 2011

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TAXAP/1623/2010 3/ 3 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX
APPEAL No. 1623 of
2010

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COMMISSIONER
OF CENTRAL EXCISE - Appellant(s)

Versus

M/S
JAY AMBE TEXTILE - Opponent(s)

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Appearance
:
MR
YN RAVANI
for
Appellant
None for
Opponent

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CORAM

:

HONOURABLE

MR.JUSTICE AKIL KURESHI

and

HONOURABLE

MS JUSTICE SONIA GOKANI 24th March 2011

ORAL
ORDER

(Per : HONOURABLE Ms. JUSTICE SONIA GOKANI) Revenue, in the present Appeal, has proposed following question of law for our consideration :-

"Whether the CESTAT is justified in giving the option of reduced penalty under proviso to Section 11AC of the Central Excise Act, 1944 ?"

"Whether CESTAT has power to give option to the party to pay reduced penalty of 25% of the duty within 30 days from receipt of the CESTAT order, when the CESTAT has not re-determined the quantum of duty ?"

On the basis of an intelligence, the Preventive Officers of the Central Excise Department visited the factory premises of the assessee-M/s. Jay Ambe Textiles and after search, on account of shortage of man-made fabrics, levied duty. A show cause notice was issued to the assessee for confirmation of duty under Section 11A of the Central Excise Act, 1944. The Adjudicating Officer directed recovery of duty, interest and penalty.

Being aggrieved with the order-in-original dated 21st January 2000, the Commissioner [Appeals], Central Excise, Ahmedabad was approached who reduced penalty as the confirmation of duty demand was not challenged and the duty was already paid prior to show cause notice.

Against that view of the Commissioner [Appeals], the Department preferred Appeal before the CESTAT where it rejected the appeal of the Revenue confirming the order of the Commissioner [Appeals]. Against this order of CESTAT dated 21st July 2005, Tax Appeal No. 448 of 2006 was preferred by the Department before this Court for enhancement of penalty equal to the duty evaded under Section 11AC of the Central Excise Act, 1944. This Court vide Order dated 1st July 2009

remanded the matter back to the Tribunal for reconsideration of the question on applicability of Section 11AC of the Central Excise Act, in light of the decision of the Apex Court in the case of Union of India v. Dharmendra Textile Processors, reported in 2008 (231) ELT p-3, and the one, as given in the case of Union of India v. Rajasthan Spinning & Weaving Mills & Anr., reported in 2009 (92) RLT 691 (SC).

This issue was once again decided by CESTAT, Ahmedabad on 4th February 2010 wherein it has noted that the Revenue has not disputed payment of duty prior to issuance of show cause notice and considering the ratio in this respect, it has held that, "...I give option to the appellants to deposit duty, interest and 25% of the duty amount towards penalty, within 30 days from receipt of this order. It is made clear that failure to pay either duty or interest in full and 25% of duty towards penalty within 30 days of receipt of this Order, respondents shall be liable to pay 100% of duty demand towards penalty.."

The Division Bench of this Court in the case of Commissioner of Customs & Excise, Ahmedabad-I v. Akash Fashion Prints Private Limited, reported in 2009 (239) E.L.T 439 (Guj) has held that, "...Section 11AC of the Act provides for levy of penalty in case of short levy or non-levy of duty in certain cases. The first proviso thereunder provides for exception to the main provision by stipulating that where the duty and the interest are paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid under Section 11AC of the Act shall be 25% of the duty so determined; and under second proviso, it is provided that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within a period of thirty days referred to in the first proviso."

This Bench also, in Tax Appeal No. 830 of 2010, considering the decision in the case of Akash Fashion Prints Private Limited [Supra], has dismissed the Appeal. Since there is no reason to interfere with the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad, which is in consonance with the ratio laid down by this Court, we see no merit in the present Appeal. Accordingly, the Appeal is dismissed. No costs.

{Akil Kureshi, J.} {Ms.

Sonia Gokani, J.} Prakash* Top