

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

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Appeal No. : C/10609/2015, C/10938/2015
E/10467/2015

Application No. : E/others/10342/2016

Arising out of :

- 1) OIA-JMN-CUSTOM-000-APP-305-14-15 dt 7/01/2015 passed by the Commissioner of CUSTOMS-JAMNAGAR (Appeals)
- 2) OIA-KDL-CUSTOM-000-APP-481-482-14-15 dt 13.3.2015 passed by the Commissioner of CUSTOMS (Appeals) -KANDLA
- 3) OIA-VAD-EXCUS-001-APP-626-2014-15 dt 7.1.2015 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals) -VADODARA-I

1. M/s Asr Multimetals Pvt Ltd
2. M/s Gokul Refoils & Solvent Ltd
3. M/s Aci Industrial Organic Pvt Ltd - Appellant(s)

Vs

1. Commissioner of CUSTOMS-JAMNAGAR(Appeals)
2. Commissioner of CUSTOMS-KANDLA (Appeals) - Respondent(s)

3. Commissioner of Central Excise,
Customs and Service Tax(Appeals)
VADODARA-I

Represented by

For Assessee : None

For Revenue : Shri Satwani, Authorised Representative.

For approval and signature :

Dr. D.M. Misra, Hon'ble Member (Judicial)

Shri P M Saleem, Hon'ble Member (Technical)

1

Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

No

2

Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

Yes

3

Whether their Lordships wish to see the fair copy of the Order?

Seen

4

Whether Order is to be circulated to the Departmental authorities?

Yes

CORAM :

Dr. D.M. Misra, Hon'ble Member (Judicial)

Shri P M Saleem, Hon'ble Member (Technical)

Date of Hearing / Decision : 24/10/2016

ORDER No. A/11211-11213/2016 dt 24.10.2016

Per : Dr D.M. Misra:

None present for the Appellants, despite notice. Heard the Ld. A.R. for the Revenue.

2. These three appeals are filed against respective Orders-in- Appeal passed by the Commissioner(Appeals). All these appeals are listed in to-days cause list under the category mention mattersby the Registry as the appellants have not complied with the amended provision of Section 129E/35F of the Customs Act,1962/ Central Excise Act,1944, applicable to the respective appeals, by depositing the requisite amount of 10% of the duty/ penalty or duty and penalty, as the case may be at the time of filing the said Appeals. It is argued at the Bar that since the respective Appellants had deposited 7.5% at first appellate stage, before the Ld. Commissioner(Appeals), hence, they are required to deposit the balance 2.5% and not the entire 10% mentioned in clause (iii) of Sec.129E/35F of the said Act. The Ld. A.R for the Revenue vehemently argued that such an interpretation cannot be read into the said provision without inserting words not present therein. Before considering the rival submissions it is necessary to reproduce the said provisions brought into effect from 06.08.2014, which read as follows:

SECTION 129E -?Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty

is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs];

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against ; Provided that the amount required to be deposited under this section shall not exceed rupees ten crores, Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

Section 35F : Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner of Central Excise or Commissioner of Central Excise;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against Provided that the amount required to be deposited under this section shall not exceed rupees ten crores, Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

3. On plain reading of the afore said provisions, we find that the wordings employed there in is as clear as daylight. In clause (iii) it is unambiguously prescribed that any person aggrieved by a decision or order referred to Clause (b) of sub- Section (1) of Sec129A/35B of Customs Act/Central Excise Act, unless deposits 10% of the duty/penalty or duty and penalty, as the case may be, the appeal shall not be entertained. We do not find any reason to read the said provision in any other manner so as to come to

the conclusion that the Appellants are required to deposit 2.5% and not 10% as prescribed under the said provision in view of the settled principle of statutory interpretation. The Honble Bombay High Court in the case of Greatship(India) Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai-I 2015 (39) STR 754(Bom.) on the principle of interpretation of Taxing statutes observed as:

34. It would thus appear that it is settled position of law that in taxing statute, the Courts have to adhere to literal interpretation. At first instance, the Court is required to examine the language of the statute and make an attempt to derive its natural meaning. The Court interpreting the statute should not proceed to add the words which are not found in the statute. It is equally settled that if the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. It is further settled that an equitable construction, is not admissible in a taxing statute, where the Courts can simply adhere to the words of the statute. It is equally settled that a taxing statute is required to be strictly construed. Common sense approach, equity, logic, ethics and morality have no role to play while interpreting the taxing statute. It is equally settled that nothing is to be read in, nothing is to be implied and one is required to look fairly at the language used and nothing more and nothing less. No doubt, there are certain judgments of the Apex Court which also holds that resort to purposive construction would be permissible in certain situation. However, it has been held that the same can be done in the limited type of cases where the Court finds that the language used is so obscure which would give two different meanings, one leading to the workability of the Act and another to absurdity.

4. In view of the above, we do not find substance in the argument that the amount paid under clause(i) of Sec.129E/35F which was paid at the time of filing Appeal before the first Appellate Authority can be adjusted against the amount of deposit required to be made under clause(iii) while filing the Appeal before this forum. In the result, the appeals are not entertained. MA disposed off.

(Dictated and pronounced in the Court)

(P M Saleem)

Member (Technical)

(D.M. Misra)

Member (Judicial)

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