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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CEA No.15 of 2018 (O&M)
Date of Decision: 24.09.2018

Commissioner of Central Goods and Service Tax (Earlier known as Commissioner of Central Excise & Service Tax), Faridabad

...... Appellant

Versus

M/s Delton Cables Ltd.

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tajender K. Joshi, Advocate
for the appellant.

Mr. Jagmohan Bansal, Advocate
for the respondent.

RAJESH BINDAL J.

The revenue is in appeal against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh (for short 'the Tribunal') dated 05.06.2017 in Appeal No.E/60555 of 2016, raising the following substantial questions of law:-

> "i) Whether the execution of a bond or letter of undertaking by the noticee is not the pre requisite condition for export without payment of duty?
>
> ii) Whether the impugned final order is sustainable in the eyes of law?"

Considering the fact that the Tribunal while rejecting the appeal filed by the revenue had placed reliance upon a judgment of the Karnataka High Court in '*Commissioner of Customs & Service Tax,* *Bangalore-II vs. Nash Industries*', 2017 (351) E.L.T. 259 (Kar.), we do not deem it necessary to give facts in much detail as it remained conceded on behalf of the revenue that against the judgment of Karnataka High Court in the aforesaid case, no appeal was preferred by the revenue.

Even the para from the Karnataka High Court judgment which has been referred to in the order of the Tribunal records that the department had not challenged earlier orders passed granting similar reliefs to the assessees except in one case which is pending from Hon'ble the Supreme Court, however, without any interim stay. Whereas in some cases, Special Leave Petitions were dismissed. The judgment of Karnataka High Court in Nash Industries (supra) as has been referred to in the order is as under:-

> "5. We may also record that similar question came to be considered by the High Court of Gujarat in the case of M/s Shilpa Copper Wire Industries reported in 2011 (269) ELT 77 (Guj.) and after considering the similar question at paragraph 14, 15 and 16 it was observed thus:-
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> 14. We have heard the learned counsel appearing for the parties and after considering their submissions, we are of the view that the issue raised by the Revenue in the present Tax Appeal is squarely covered by the decision of Amitex Silk Mills Pvt. Ltd. (Supra), Commissioner of Central Excise Vs. Ginni International Ltd. and Snaghi Textiles Ltd. Vs. Commissioner of Customs and Central Excise- 2006 (206) ELT 854 (Tri. Bang.). So far as the decision of the Tribunal in the case of Amitex Silk Mills Pvt. Ltd. (Supra) is concerned, it is true that the appeal is

admitted by the Apex Court, however, no stay was granted by the Apex Court. It is, however, more important to note that the decision of the Tribunal in the case of Ginni International Ltd. (Supra) was also challenged before the Apex Court and the Apex Court vide decision reported in 2007 (215) ELT A102 (SC) held while dismissing the Revenue's appeal against the Tribunal's order, that once development Commissioner giving permission to the appellant, a 100% EOU, to sell goods in DTA up to a specified value, Revenue cannot go beyond the permission and dispute it holding that for fixing the limit only physical exports and not deemed exports should have been taken into account. It is also important to note that the decision of the Tribunal in the case of Sanghi Textiles Ltd. vs. Commissioner of Customs & Central Excise (Supra) was also challenged by the Revenue before the Apex Court and the Apex Court vide order dated 16.08.2007 dismissed the Revenue's appeal. While dismissing the said appeal, Apex Court has referred to its decision in the case of Ginni International Ltd. (Supra) and reiterated that the Tribunal in its impugned order had held that once Development Commissioner giving permission to the appellant, a 100% EOU, to sell goods in DTA up to a specified value. Revenue cannot go beyond the permission and dispute it holding that for fixing the limit only physical exports and not deemed exports should have been taken into account.

15. In view of the above settled legal position and considering the fact that the issue is settled by the Apex Court by those very judgments on which the Tribunal has placed reliance while deciding the case of

the present respondent, we are of the view that no purpose will be served in keeping this matter pending, awaiting the outcome of the Apex Court's decision in the case of Amitex Silk Mills Pvt. Ltd. (supra), especially when in two other matters, the Apex Court has already dismissed the appeals filed by the Revenue.

16. In the above fact situation, we are of the view that no question of law much less any substantial question of law, arises out of the order of the Tribunal and even if it arises, the answer is very obvious and we, therefore, hold that the Tribunal is justified and has not committed any substantial error of law in dismissing the appeal of the Revenue and confirming the order of the learned commissioner (Appeals) holding that the clearances made by one 100% EOU to another 100% EOU which are deemed exports are to be treated as physical exports for the purpose of entitling refund of unutilised cenvat credit contemplated under the provisions of Rule 5 of the Cenvat Credit Rules, 2004.

6. The learned counsel for the respondent has brought to our notice that aforesaid decision of the High Court of Gujarat was carried by the Revenue before the Apex Court in SLP No. 19717/2010 and the Apex Court while dismissing the appeal vide order dated 06.01.2011 observed thus:-

In view of the decision of this Court in the case of Virlon Textile Mills Ltd. Vs. Commissioner of Central Excise, Mumbai, reported in 2007 (4) SCC (440) [2007 (211) E.L.T. 353 (S.C.), the special leave petition is dismissed."

As the revenue had accepted number of orders passed by the Tribunal granting relief to the assessees under similar circumstances where export of goods was not affected by the assessee himself but was through the merchant exporter or 100% export oriented unit, we do not find any substantial question of law arise in the present appeal.

The appeal stands dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

24.09.2018
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No