Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Misc. Application (ORS) No. 10225 of 2019
(On behalf of Appellant)
in
Excise Appeal No.1224 of 2011

(Arising out of OIA-RKA-211-213-SRT-I-2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

M/s. Swagat Synthetics **........Appellant**
C-1-B-568, Gidc, Pandesara,
Surat, Gujarat-394221.

VERSUS

C.C.E. & S.T.-Surat-i **.......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

WITH

Excise Appeal No.1225 of 2011

(Arising out of OIA-RKA-211-213-SRT-I-2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Sh. Nareshbhai Natwarlal Madhwani **........Appellant**
Partner, Swagat Synthetics, C-1-B-568, Gidc, Pandesara,
Surat, Gujarat-394221.

VERSUS

C.C.E. & S.T.-Surat-i **.......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

AND

Excise Appeal No.1226 of 2011

(Arising out of OIA-RKA-211-213-SRT-I-2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Sh. Mani Kumar Jain **........Appellant**
Partner, Swagat Synthetics, C-1-B-568, Gidc, Pandesara,
Surat, Gujarat-394221.

VERSUS

C.C.E. & S.T.-Surat-i **…….Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Sh. Willingdon Christian, Advocate for the Appellant
Sh. G. Jha, Authorised Representative for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11481-11483 /2019

DATE OF HEARING: 09/11.04.2019
DATE OF DECISION:06.08.2019

RAMESH NAIR

The brief facts of the case are that preventive checks were conducted at the manufacturing unit (100% EOUs) of the appellant firm. During the check some short age of gray fabric admeasuring 1,74,195 L.M. of value Rs. 24,38,730/- (procured by the appellant in CT-3 from an EOU) were found when compared to stock in statutory records. In follow up action further evidence was gathered in the form of statement of partners of the appellant firm and also allegation by the appellant namely M/s. Seema Textiles, Surat. The investigation culminated in the show cause notice dated 26.07.2004 containing proposal, inter-alia (a) to demand duty of Rs. 23,71,731/- being the Central Excise Duty equal to aggregate duties of customs chargeable on goods manufactured in an EOU under proviso to sub-section (1) of the section 3 of Central Excise Act, 1944 (b) interest under section 11AB of the act, ibid and (c) penalty Under Section 11AC of the ibid and (d) penalties of partners. The show cause notice was confirmed by the additional Commissioner of Excise vide order dated 31.05.2005. On appeals by the aggrieved parties, the Commissioner (appeals) allowed the appeal partly under order dated 30.06.2005 and reduced the duty demand to Rs. 3,90,200/- with direction that only revised Excise Duty is chargeable and also reduced penalties. Aggrieved with the said order dated 30.06.2005 passed by the Commissioner (appeals), the department filed appeal before the CESTAT, the Hon'ble CESTAT has remanded the matter to the original adjudicating authority with certain observations. In the remand proceedings the adjudicating authority passed order in original dated 30.08.2010. In the second round of litigation, confirmed the demand of duty amounting to Rs.

23,71,731/-, interest under section 11AB, imposed penalty of Rs. 23,71,731/- on M/s. Swagat Synthetic, imposed personal penalty of Rs. 2,50,000/- each on shri. Nareshbhai Natwarlal Madhvani and shri. Manikumar Jain partners of Swagat Synthetics under Rule 26 of the Central Excise Rules 2002 and also imposed penalty of Rs. 2,50,000/- on M/s. Seema Textiles, Surat under rule 26 of Central Excise Rule, 2002. The said order dated 30.08.2010 was challenged by M/s. Swagat Synthetic and its both partners before the Commissioner (Appeals). The Ld. Commissioner (Appeals) rejected all the appeals and upheld the order in original, therefore the present appeals.

2. Shri. Willingdon Christian, Ld. Counsel appearing on behalf of the appellants at the outset submits that he is not arguing case on the facts and the merit which the lower authority has passed the order but he raised all together a new legal issue that the appellant was a Partnership Firm and the same was dissolved by Dissolution Deed dated 09.03.2007, accordingly no proceeding could have been continued against the dissolved Partnership Firm. Therefore, the Order-In-Original as well as Order-In-Appeal passed by the authorities is illegal and incorrect. In support of this submission he placed reliance on the following Judgments:-

- The State of Punjab Vs. Jullundur Vegetable Syndicate- AIR 1966 SC 1295
- Shabina Abraham Vs. C.C.E.- 2017 (50) STR 241 (SC)

3. Shri. G. Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. As regard the new ground raised by the Ld. Counsel that in the event of dissolution of Partnership Firm, the demand cannot be made, he submits that at the time of cause of action i.e. illicit transaction of duty by the 100% EOU, the Partnership Firm was very much existing, even the show cause notice was issued on 26.04.2004 and the same was first time adjudicated on 31.05.2005. Even the order of Commissioner (Appeals) was also passed on 30.06.2005, therefore, all the proceedings have already been initiated before dissolution of the Partnership Firm. Therefore, even though subsequently the Partnership Firm was dissolved the liability shall lie on both the partners of the Partnership Firm.

4. Subsequent to the hearing of the appeal the appellant has also filed a Misc. Application to incorporate the new grounds of the appeal which has also taken on record.

4. We have carefully considered the submissions made by both the sides, the new grounds of appeal raised in the Misc. Application and perused the records. We find that the fresh issue raised by the Ld. Counsel is indeed a question of law which can be raised at any stage of litigation. However, we find that the question of law raised by the appellant is mixed question of law and facts and particularly this issue has not been raised by the appellant before lower authorities nor has been considered the same. We are of the view that since, the question of law is mixed of the facts and law the same needs to be considered by the lower authority. Accordingly, we remand the matter to the adjudicating authority to pass a fresh order after considering the new defense raised by the appellant. The appellant is directed to produce all the records, in this regard to the adjudicating authority. After considering the same a fresh order may be passed preferably within a period of three months from the date of this order.

5. Appeals are disposed of by way of remand to the adjudicating authority and Miscellaneous Application are also has been disposed of, accordingly.

(Order pronounced in the open court on 06.08.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Kamakshi