

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 654 of 2012

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COMMISSIONER - Appellant(s)

Versus

WELSPUN GUJARAT STHAL ROHREN LTD - Opponent(s)

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Appearance :

MR DARSHAN M PARIKH for Appellant

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date : 11/10/2012

ORAL ORDER

(Per : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. This is an appeal at the instance of the Department against the order dated 03.02.2012 passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"), wherein the following two questions have been proposed for consideration by this Court:

"[1] Whether the Tribunal was legal and correct in setting aside the penalties imposed under section 76, section 77 and section 78 of the Act, when the respondent did not prove any reasonable cause for their failure to comply with the provisions mentioned in section 80 of the Act. In the absence of any reasonable cause and when the case involves suppression of facts, whether waiver of aforesaid penalties by invoking section 80 of

the Act was legal and correct?

[2] Whether the order of the Tribunal is legally sustainable, in view of erroneous findings and misinterpretation of statutory provisions?"

2. The respondent-assessee, which is engaged in the manufacture of Hot Rolled Steel Plates and Coils, etc. imported various capital goods and raw materials like Plant and Machinery, HR Steel Coils and Steel Slabs etc. Along with the plant and machinery, it also imported drawings and designs from M/s VAI Industries (UK) Limited. The assessee classified the said drawings and designs as goods falling under Chapter Heading 49.06/49.11 of the Customs Tariff Act, 1975 and claimed benefit of Notification No.21/2002-Cus dated 01.03.2002. The customs authorities finalized the bills of entry accepting such declaration. The Department was of the view that the assessee had received taxable services under the category of "Intellectual Property Services". However, the assessee had not got itself registered in this regard with the Service Tax Department. According to the Department the purchase of the drawings and designs by the assessee was nothing but transfer of intellectual property rights to the assessee. After investigation and calling for the records from the assessee, a show cause notice dated 20.08.2008 came to be issued to the assessee demanding service tax under the category of "Intellectual Property Rights Services" under the provisions of section 73 of the Finance Act, 1994 (hereinafter referred to as "the Act"), interest and penalties under sections 76, 77 and 78 of the said Act.

3. The assessee contested the show cause notice. However, the Commissioner confirmed the demand of service tax to the tune of Rs.3,91,89,370/- under section 73(1) of the Act and also imposed penalties under sections 76, 77 and 78 thereof. The assessee carried the matter in appeal before the Tribunal. During the course of hearing, the learned counsel for the assessee stated that the assessee does not dispute the demand of service tax and interest. The Tribunal, after considering the submissions advanced by the respective parties, was of the view that the assessee had shown reasonable cause for the failure referred to under the said provisions as contemplated under section 80 of the Act and set aside the penalties.

4. Mr. Darshan Parikh, learned Senior Standing Counsel for the appellant, assailed the impugned order by submitting that the provisions of section 80 of the Act can be invoked only if the assessee proves that there was reasonable cause for such failure. In the present case the assessee had not disputed the service tax liability and interest in respect of the intellectual property services availed by it and had failed to show reasonable cause for not getting itself registered in this regard and in not paying the service tax payable on such services. Under the circumstances, the assessee had failed to discharge the onus that lay on it, viz. to make out reasonable cause for such failure. Therefore, the assessee was not entitled to the benefit of section 80 of the Act. It was submitted that the respondent-assessee is a large corporate establishment with a huge turnover and as such, it cannot be presumed that such a large establishment can have a bonafide belief which can be termed as a reasonable cause for failure to discharge their

service tax liability. It was, accordingly, urged that the Tribunal was not justified in holding that reasonable cause has been shown by the assessee for the purpose of setting aside the penalties.

5. As can be seen from the impugned order, the Tribunal has noted that the assessee has paid the entire amount of service tax liability along with interest prior to issuance of the show cause notice and has not disputed the liability to pay service tax and interest. The Tribunal on an appreciation of the material on record was of the view that the assessee held a *bona fide* belief that it was liable to pay customs duty on the drawings and designs imported by it as the same were goods. Under the circumstances, no *mala fide* intention could be attributed to it in not discharging the service tax liability under the category of "Intellectual Property Rights Services". It is in the light of the aforesaid observations that the Tribunal found the assessee had shown reasonable cause for failure to discharge its service tax liability and was therefore, entitled to relief under section 80 of the Act.

6. Thus, the Tribunal on a consideration of the overall facts of the case has found that reasonable cause as envisaged under section 80 of the Act has been shown by the assessee for failure to discharge its service tax liability. As to whether or not reasonable cause has been made out is a question of fact. The Tribunal on the facts of the case has found that sufficient cause has been made out. Such view of the Tribunal is a plausible view and cannot be stated to be perverse. It may be that, on the same set of facts, it may be possible to take another view. However that by itself would not give rise to any

question of law, much less, a substantial question of law, so as to warrant interference.

7. In the absence of any question of law, the appeal is dismissed.

[AKIL KURESHI, J.]

[HARSHA DEVANI, J.]

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