

TaxHelpline 2013/211

APPELLATE TRIBUNAL

STA No. 181/LB of 2012, decided on 26th March, 2012.

Syed Nadeem Saqlain, Chairman & Miss Tabaria Sajjad Naseer, Accountant Member

Tariq Najib for Appellant. Yasir Pirzada, D.R. for Respondent

Messrs GUJRAT PRE-CASTING INDUSTRIES, GUJRAT

Vs

C.I.R. (ZONE-II), RTO., SIALKOT

ORDER

SYED NADEEM SAQLAIN, CHAIRMAN.---Through the titled appeal, the appellant has agitated against the Sales Tax Order-in-Appeal No.346 of 2011, dated 27-1-2012, passed by the Commissioner Inland Revenue (Appeals), Gujranwala.

2. The brief facts of the case are that on credible information to the effect that the appellant is making taxable supplies of pre-casting goods without getting themselves registered with sales tax authorities and without paying sales tax and special federal excise duty, the Deputy Director Intelligence and Investigation went to the factory premises of the appellant on 16-6-2010 and took into custody the record of purchases and sales for the period July 2007 to June 2010 and submitted contravention report to the officer Inland Revenue Audit Unit-05, Zone-II, Regional Office, Sialkot. The case was adjudicated at the original stage and then at the level of Commissioner (Appeals) but being aggrieved by the decisions of the lower forums the appellants have now preferred this appeal before this Tribunal.

3. The AR on behalf of the appellant argued in length. Some of them are as under:--

(1) That the appellant never produced and sold pre-casting goods, rather pre casting goods are the raw material which they purchased to produce Building blocks of cement which were exempt from the levy of Sales Tax and Special Excise Duty as such they were neither required to be registered nor to pay Sales Tax and Special Excise Duty.

(2) That the lower authorities while passing orders went beyond the scope of the show cause notice as much as it did not restrict to the specific allegation stated in the show cause notice rather took a new stand which was not incorporated in show cause notice which is not lawful.

That there was no concealment of any sales and purchases. The record was taken into possession from the factory premises. Hence no provision of tax fraud is applicable in this case.

4. On the other hand DR denied the contentions of the appellant and stated that girders, beams and building wall columns are not building blocks and as such were not exempt as these are falling under heading No. 6810.9100.

5. We have heard the arguments advanced by both the representatives and carefully gone through the available record and relevant provisions of the law.

6. Taking first argument, under section 13(1) of the Sales Tax Act, 1990 Cement Blocks appearing at serial No. 35 of the 6th Schedule to the Act were exempt from the levy of Sales Tax by Finance Act, 2007. Building Blocks of cement falling under heading 6810.1100 were declared exempt from Sales Tax. By Finance Act, 2008 Building Blocks of cement including ready mix concrete blocks falling under heading 6810.1100 were exempt from sales tax Special Excise Duty is also not applicable vide S. No. 32 of the table of S.R.O. No. 655(I)/2007. It is alleged by the department after issuance of show cause notice that the appellants were manufacturing girders, slabs and boundary wall columns of different sizes.

7. A careful study of heading Nos. 6810.1100 and 6810 9100 shows that those articles which are used in the erection of building falls under heading 6810.1100 and articles falling under heading 6810.9100 are used after the erection of building. Girders slabs and boundary wall columns are used in the erection of building.

The Words "Block" and "Building Blocks" are not defined in the Act. Dictionary meanings of the above words are as under:---

As per Collins Concise Dictionary of The English Language

"Block means a mass of solid wood or stone or other material having usually one face plane."

As per. Chambers Combined Dictionary Thesaurus

"Building Blocks means Blocks out of which building is erected or the component parts out of which something is built."

8. Keeping in view the dictionary meanings of the above words, it is crystal clear that the Girders, slabs, boundary wall columns etc. are building blocks out of which building is erected and correctly falls under heading 6810.1100 and were exempt from Sales Tax and Special Excise Duty.

9. Coming to the next argument, that the case against the appellant in the show cause notice was supply of pre-casting goods. This stands disproved by the later allegations in the proceedings alleging manufacturing of girders, slabs and boundary walls. The show cause notice alleged as having supplied pre-casting goods but later on the Department changed their stance and alleged that the appellant supplied girders, beams and building wall columns Adjudicating authority went beyond the scope of the show cause notice as much as it they did not restrict to the specific allegation stated in the show cause notice rather took a new stand which was not incorporated in show cause notice which is not lawful, in this context, the case-law relied upon by the learned counsel has also been considered and the ratio settled in 1987 SCMR 1840 is reproduced as under:--

"However, we are of the opinion that it is not necessary to determine this question of law in the fact of the present case as this petition can be disposed of on the short ground that the order of adjudication being ultimately based on a ground which was not mentioned in the show cause notice, the order was palpably illegal and void on the face of it. We have carefully examined the show cause notice and find no reference whatsoever or necessary facts relating to the ground that the alleged contraband goods were imported into Pakistan from an unauthorized route. In view of this palpable legal infirmity, we do not consider it necessary to examine the other contentions raised by the learned counsel."

10. From the ratio settled in the above mentioned reported judgments, it is crystal clear that order-in-original was passed on a ground, which was not mentioned in the show cause notice is illegal and void.

11. Coming to the argument, about the concealment of sales the record pertaining to period July 2007 to June 2010 was taken into possession by the department on

16-6-2010 from the premises of M/s. Gujrat Pre-Casting Industries, G.T. Road Gjurat but despite that it was alleged that the appellant intentionally and deliberately concealed the purchases and sales. This allegation stands disproved by the facts of the case. There is no concealment and there is no proof of tax fraud.

12. The upshot of above discussion is that the appeal is accepted and both orders below, order-in-appeal and order in original are set aside.



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