आयकरअपीलीयअधिकरणसूरतन्यायपीठ,सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL,SURAT BENCH,SURAT

श्रीसी एमगर्ग, **न्यायिक सदस्य एवंश्री**ओपीमीना, **लेखा सदस्य केसमक्ष**
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.3220/Ahd/2015/SRT
निर्धारणवर्ष/ Assessment Year: 2012-13

Asst. Commissioner of Income Tax, Circle-1(2), Surat.	**Vs.**	M/s. Shiv Krishna Exports, Unit No.166, Plot No.266, Surat Special Economic Zone, Sachin, Surat – 394 230. **[PAN:ABVFS 3111L]**
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

अपीलार्थीकीओरसे/ Assessee by	:	Shri Sanjay Choksi, C.A
प्रत्यर्थीकीओरसे /Revenue by	:	Shri Dileep Kumar, Sr. D.R
सुनवाईकीतारीख/Date of Hearing	:	05-07-2018
घोषणाकीतारीख /Date of Pronouncement	:	31-07-2018

आदेश/ORDER

PERC.M.GARG, JUDICIAL MEMBER:

Thisappeal has been filed by the Revenue directed against theorder of Commissioner of Income Tax (Appeals)-II, Surat ('CIT(A)' for short) dated 18.08.2015 for the Assessment Year (A.Y) 2012-13.

2. The grounds raised by the Revenue read as follows:

1. *On the fact and circumstances of the case and in law, the learned CIT(A)-II, Surat has erred in considering the trading turnover in the form of import of goods for the purpose of re-export to the tune of Rs. 46,97,22,004/-.*

2. *On the fact and circumstances of the case and in law, the learned CIT(A)-II, Surat has erred in allowing deduction claimed u/s 10AA (shown in form no. 56F) on the profit made on the trading turnover in the form of import for the purpose of re-export to the tune of Rs. 1,35,57,478/-.*

3. *On the fact and circumstances of the case and in law, the learned CIT(A)-II, Surat has erred in defining the term "Services" u/s. 2(Z) of the SEZ Act by considering trading as one of the services.*

4. *On the fact and circumstances of the case and in law, the learned CIT(A)-II, Surat has erred in considering Section 51 of the SEZ Act and the Instruction No. 4/2006 dated 24th May, 2006 issued by the Minister of Commerce & Industry.*

5. *On the facts and in the circumstance of the case, the Ld. CIT (A) ought to have upheld the order of the Assessing Officer.*

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal.The ld. Departmental Representative (DR) submitted that the word “provide any services” as is existing in the 10AA of the Income Tax Act, 1961 (in short 'the Act') does not over themerchandise trade of precious stones/diamond trading in the case of the assessee over which deduction u/s. 10AA of the Act is being claimed in the case of the assessee. He further submitted that diamonds not being covered by the same, assessee cannot stake claim for the deduction u/s. 10AA of the Act on the basis of the rules. The ld. DR also submitted that the ld. CIT(A) has granted relief to the assessee by holding that the SEZ rules overrides the provision of the Act and Rules made thereunder and also the other acts but in fact SEZ Act does not override the provisions of the Act and the Rules made thereunder.

4. The ld. DR further submitted that from relevant part of the assessment order at last two pages and paras 6.1.3 to 6.1.5 of the first appellate order shows that the words provide any services as mentioned in s. 10AA of the Act does not cover the activity of trading or merchandise trade of precious stones or diamonds therefore, the assessment order may kindly be upheld by dismissing the finding arriving by the ld. CIT(A).

5. Replying to the above, the ld. Assessee's Representative (AR) drew our attention towards relevant paras of first appellate order and written submissions of the assessee and submitted that as per instruction No.4/2006 dated 24.05.2006 of Ministry of Commerce &Industry, it has been decided by the Govt. of India that while units in the Special Economic Zone who hold approval to do trading activities will be allowed to carry out all forms of trading activity, the benefits u/s. 10AA of the Act will exclude trading other than trading in the nature re-export of imported goods.The ld. AR further submitted that as per decision of Hon'ble Supreme Court in the case of *Bajaj Tempo ltd. Vs. CIT 196 ITR 168 (SC)*the provision related to incentive for growth and development should be liberally interpreted.

6. Further placing reliance on the order of ITAT, Jaipur 'B' Bench in the case of *DCIT v. Goenka Diamond &Jewellers Ltd. dated 31.01.2012*, the ld. AR submitted that, referring to the decision of Hon'ble Kerala High

Court in the case of *Girnar Industires vs. CIT 230 CTR 401* (Kerala) in para 2.17 held that as per instruction No.4/2006 (supra) a reference has been made to s. 10AA of the Act therein and it is made clear to the entrepreneur having units in SEZ that benefit u/s. 10AA of the Act will exclude other trading except in the nature of re-export of imported goods. Thus, there is a promissory estoppel by the Govt. to the entrepreneur putting up the units in theSEZ that benefit u/s. 10AA of the Act will be available on trading in the nature of re-export of imported goods. The Hon'ble Apex Court in the case of *Union of India and others vs. Godfrey Philips India Ltd. 158 ITR 574 (SC)* also upheld the applicability of promissory of estoppel in favour of the assessee.

7. Refereeing paras 2.17 to 2.20 of the Tribunal order in the case or Goenka Diamond & Jewellers Ltd. (supra), the ld. AR submitted that the trading is included in the services provided the trading and re-export of imported goods under the SEZ Act and the same is eligible for exemption u/s. 10AA of the Act therefore, first appellate order may kindly be upheld by dismissing the appeal of the assessee. The ld. AR also placed reliance on the decision of ITAT 'G' Bench, Mumbai in the case of *Gitanjali Export vs. ADCIT* dated 08.05.2013 in ITA No.6947 & 6948/Mum/2011 for AY 2006-07 & 2007-08 and subsequent order in the case of same assessee dated 31.03.2016 reported as 178 TTJ 0529 (Mum-Trib.) and submitted

that the exemption u/s. 10AA of the Act in respect of trading activities is available to the assessee and no exception can be taken to the view expressed by the ld. CIT(A) in the impugned order.

8. On careful consideration of above rival submissions, we are of the view that the proposition rendered by various decisions of Hon'ble High Court and co-ordinate benches of the Tribunal including decision of Hon'ble Kerala High Court in the case of *Girnar Industries vs. CIT* (supra) not only manufacturing but blending of tea is manufacturing activities which entitled the assessee for exemption u/s. 10AA of the Act. Further, as per instruction No.4/2016 (supra) of Ministry of Commerce & Industry, it has been decided by the Govt. of India that the benefits u/s. 10AA of the Act will exclude trading other than trading in the nature of re-export of imported goods. As per this instruction which were issued on 24.05.2006 the activity of re-export of imported goods was eligible for exemption u/s. 10AA of the Act. In this situation, the tax authorities are bound with the doctrine of promissory estoppel as per decision of Hon'ble Apex court in the case of *Godfrey Philips India Ltd.* (supra).

9. In the present case also the ld. CIT(A) held that the appellant has filed a schedule to SEZ which clears the case with modification to the Income Tax Act, 1961 for inserting s. 10AA of the Act. Instruction No.4/200 also clears the claim of deduction u/s. 10AA of the Act to the

units carried out for trading in the nature of re-export from the SEZ Act. So it is very clear from the SEZ Act that services includes trading also and appellant has done trading from SEZ Act of the imported goods which have been re-exported after processing. This proposition has also been rendered by ITAT, Mumbai in the case of *M/s. Geetanjali Export* (supra).

10. Finally, we are also in agreement with the conclusion drawn by the ld. CIT(A) that u/s. 51 of the SEZ Act it is provided that the provisions of SEZ Act will override the provision of any other Act including Income Tax Act and hence, the circular issued by the Govt. of India Ministry of Commerce & Industry dated 24.05.2006 (supra) and the provision of s. 51 of the Act, which overrides the provision of the Income tax Act, provides that the trading done by the assessee is a service and deduction u/s. 10AA of the Act is allowable on re-export of imported goods.Hence, we decline to accept contention of the ld. AO that the assessee is not entitled toclaim deduction u/s. 10AA of the Act on the trading activity of re-export of imported goods and the conclusion drawn by the ld. CIT(A) is correct, justified and sustainable and we hold so. We are unable to see any valid reason to interfere with the first appellate order and thus, we uphold the same. Accordingly, grounds of Revenue having sole issue are dismissed.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this day of31st July, 2018.

Sd/-	**Sd/-**
(ओपीमीना**)**	**(**सीएमगर्ग**)**
(O.P.MEENA)	**(C.M.GARG)**
लेखासदस्यAccountant Member/	**न्यायिकसदस्यJudicial Member/**

सूरत/Surat; दिनांकDated :31st July, 2018

EDN

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी/The Appellant; 2.प्रत्यर्थी/The Respondent; 3.आयकरआयुक्त(अपील) /The CIT(A)-II, Surat; 4. Prl. CIT-I, Surat; 5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,सूरत/ DR, ITAT, Surat; 6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

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सहायकपन्जीकर / **Assistant Registrar**
आयकरअपीलीयअधिकरण,सूरत / ITAT, Surat