NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 6 of 2015

Commissioner, Central Excise and Customs Raipur, Central Excise Building, Tikrapara, Dhamtari Road, Raipur, Chhattisgarh

---- Appellant

versus

M/s Surya Wires Pvt. Ltd., Bhanpuri, Raipur, Chhattisgarh

---- **Respondent**

For Appellant	:	Shri Maneesh Sharma, Advocate
For Respondent	:	Shri K.M.K. Menan, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

19/11/2015

1. The duty to pass reasoned and speaking orders showing application of mind applies not only to administrative authorities but with equal force to quasi judicial bodies, Tribunals and Courts. It is all the more necessary when the order is amenable to challenge before a superior Court or forum.

2. The present appeal has been filed under Section 35G of the Central Excise Act. Appeal lies to this Court only on questions of law. Only yesterday, in Tax Case No.15 of 2015, by a reasoned order we have held that this Court cannot be converted into just another appellate forum of litigation against the order of the Tribunal. Our attention has also been invited to another order in Tax Case No.17 of 2015 quoting an extract from Tax Case No.48 of 2012 (Union of India v. M/s. Harshad Thermic Industries Private Ltd.) observing as follows:

> "10. Coming now to the facts of the case, we find that learned Member of the Tribunal did not advert to any of these well settled principles while passing the impugned order because (1) it did not mention the facts of the case (2) how the issue was decided by the adjudicating authority in the first instance, (3) what was decided by the first appellate authority, (4) what were the argument of appellant/respondent on their respective contentions, (5) what was the law applicable to the facts of the case and (6) why the issue is decided in a particular manner in favour of one party and against other by the Tribunal and lastly the Tribunal did not assign any reason and nor any decision of Apex Court or High Court was relied on in support of its conclusion. These infirmities, in our opinion, renders the impugned order totally unsustainable in law and hence it deserves to be set aside."

3. The aforesaid error was again noticed in Tax Case No.17 of 2015 and Tax Case No.13 of 2015 (Commissioner, Central Excise Customs & Service Tax, Bilaspur v. M/s. Lafarge India Pvt. Ltd.) which suffered from similar defect of a non-speaking order and had to be remanded by us to the Tribunal.

4. The present is yet another such case. Learned Counsel for the parties sought to persuade us on merits of the matter, but we find that the Tribunal has passed a cryptic and non-speaking order as follows:

> "4. In view of the reasoning given by the above circular and elaborate argument of respondent supported by evidence, Revenue appeal is dismissed."

The rest of the order is the submission of the parties only. We are not persuaded to assume the jurisdiction of the Tribunal all over again contrary to Section 35G of the Act.

5. The order dated 1.8.2014 in its present form is held to be unsustainable as non-speaking and cryptic. It is set aside and the matter is remanded to the Tribunal for passing a reasoned and speaking order displaying complete application of mind to the facts, issues involved, the findings of the previous authorities alongwith the reasoned conclusions of the Tribunal preferably within a maximum period of three months from the date of receipt and/or production of a copy of this order before it, provided the parties themselves cooperate. Nothing in the present order can be deemed or construed as any opinion or observation on merits of the matter with regard to either of the parties as we have remanded the matter limited on the question of Tribunal having passed a completely non-speaking order displaying non-application of mind hindering judicial review to even ascertain that a law of question was involved.

6. Since the order for remand is being passed in presence of Counsel for the Parties, it shall be in their interest to appear before the Registrar of the Tribunal at the earliest alongwith a copy of the present order so that they may be informed the next date of hearing fixed in the matter by the Tribunal.

7. The Tribunal shall also be at liberty to proceed ex parte against the defaulting party, if it does not enter appearance without just and valid reasons, but after briefly recording the reasons for proceeding ex parte.

8. The appeal is allowed.

Sd/-	Sd/-
(**Navin Sinha**)	(**P. Sam Koshy**)
CHIEF JUSTICE	**JUDGE**

Subbu