NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 13 of 2015

Commissioner, Central Excise Customs & Service Tax, Bilaspur.

---- Appellant

Versus

M/s. Lafarge India Pvt. Ltd. Sonadih Cement Plant, Raseda, Balodabazar, Chhattisgarh.

---- Respondent

For Appellant : Shri Maneesh Sharma, Advocate.

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

Judgment on Board

Per Navin Sinha, Chief Justice

13/08/2015

1. The present appeal arises from order dated 17.10.2014 in Appeal No. ST/327/2009-CU (DB) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter called 'the Tribunal').

2. Notice was issued by us on 15.6.2015 limited to the issue as to why the matter be not remanded to the Tribunal for having passed a non-speaking order hindering judicial review. No one appears on behalf of the Respondent despite valid service of notice.

3. The order under challenge does not spell out the facts of the case and nature of the controversy involved except observing that the issue related to payment of service tax on reverse charge basis through Cenvat Credit, referring to certain decisions and that the issue stood covered.

4. Any order amenable to challenge and/or consideration before a superior Forum has to be reasoned containing brief narration of essential facts, contentions of the parties and then the conclusion to facilitate judicial review for the manner in which the authority concerned may have applied its mind. Even if an appellate order of affirmance or relying on any other similar orders may not be as elaborate as an original order, but nonetheless it must contain a brief discussion to facilitate the superior Court or Forum to understand and appreciate the manner in which there has been application of mind.

5. In (2009) 4 SCC 240 (Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney), it was observed at paragraphs 5 and 7 as follows:

> "5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in (1995) 6 SCC 279 (Prabhu Dayal Grover case) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.
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> 7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind."

6. The order dated 17.10.2014 is set aside and the matter is remanded to the Tribunal to hear the parties afresh and pass a reasoned and speaking order.

7. The Tribunal shall also be at liberty to proceed *ex parte* against the Respondent if it does not appear after service of notice pursuant to the remand. In that event, the Tribunal shall also briefly record the reasons for proceeding *ex parte*.

8. The appeal is allowed.

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

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