NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 31 of 2015

Commissioner, Central Excise Customs and Service Tax, Bilaspur.

---- Appellant

Versus

M/s. Arjuna Carriers Pvt. Ltd. Korba, Gevera Project C/o GTP Gevera, Korba, WCL Gevera Project, Post Gevera Korba, Chhattisgarh.

---- Respondents

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

28/08/2015

1. The present appeal is barred by delay of 22 days. Considering the duration and the nature of order proposed to be passed, it is condoned.

2. The Appellant assails the order dated 20.11.2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. ST/59013/2013-CU (DB) holding that the services rendered by the Respondent did not classify as a Cargo Handling Service setting aside the service tax demand for the period 1.6.2007 to 31.3.2012 alongwith interest and penalty.

3. Learned Counsel for the Appellant submits that the order of the Tribunal is not sustainable and sought to persuade us to enter into the merits as a regular first appellate Court.

4. Under Section 35G of the Central Excise Act, an appeal lies to this Court from an order of the Tribunal in which a substantial question of law may arise for determination. This jurisdiction cannot be converted into a regular first appeal.

5. The Respondent contended unsustainability of the demands against it relying upon certain other orders of the Commissioner himself and precedents of the Tribunal as discussed in the order. The Tribunal accepted these contentions and allowed the appeal.

6. The order sheet of the Tribunal reflects that the departmental representative did not make any submissions opposing the contentions of the Respondent that the unsustainability of the claims was covered by earlier orders of the Commissioner and precedents of the Tribunal itself. The departmental representative simply supported the impugned order of the Commissioner.

7. In our opinion, the departmental representative was required to meet the submissions on behalf of the Respondent with regard to the earlier orders of the Commissioner sought to be relied upon and the precedents referred to by the Respondent. The departmental representative was answerable and accountable in discharge of his duties to protect the interest of the department and the revenue which apparently, from the order sheet of the Tribunal, he failed to do.

8. Learned Counsel for the Appellant sought to persuade us from paragraph (ix) that the arguments of the departmental representative has not been considered and which reads as follows:

> "(ix) That the Hon'ble Tribunal has not passed speaking order as the arguments advanced by the departmental representative are neither mentioned in the order nor has been dealt by the Tribunal in the impugned order..."

9. What may or may not have transpired before the Tribunal is best known to the members of the Tribunal itself. The pleadings in the appeal extracted above are delightfully vague and cannot be construed as non-consideration of the argument of the departmental representative. Recitals in the order sheet are sacrosanct so far as the superior Court is concerned with regard to what may or may not have transpired before the Tribunal. If the Appellant is of the opinion that its arguments and contentions have not been considered, the proper remedy for the Appellant is to first move before the Tribunal itself inviting its attention to the same.

10. Reference in this regard may be made to (1982) 2 SCC 463 (State of Maharashtra v. Ramdas Shrinivas Nayak) holding as follows:

> "4...We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of Judges recorded in their judgment, as to what transpired in the court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statement of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in the court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there..."

11. We are therefore not inclined to entertain this appeal in its present form. The appeal is dismissed.

Sd/- Sd/-

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

Amit