NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 17 of 2015

Commissioner, Central Excise, Customs & Service Tax, Bilaspur.

---- Appellant

Versus

M/s. Ultratech Cement Ltd. Hirmi Cement Works, Hirmi, District Baloda Bazar, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate.
For Respondent	:	Shri Raja Sharma, Advocate.

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

Judgment on Board

Per Navin Sinha, Chief Justice

25/08/2015

1. The present appeal has been preferred against the final order No. A/54600/2014-EX (DB) dated 27.11.2014 in Appeal No. E/53614/2014-EX (DB) passed by the Customs, Excise, Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'the CESTAT').1

2. We have heard Learned Counsel for the parties.

3. The order under appeal simply states that the issue stands covered by plethora of earlier decisions on the point of limitation. The demand stands confirmed on the ground that various iron and steel items have been used as structurals in which case Cenvat Credit would not be available in terms of Larger Bench decision in Vandana Global Limited - 2010 (253) ELT 440 (Larger Bench). It then decides that the Appellant had taken a categorical stand that most of the items were used for fabrication of capital goods in which case Cenvat Credit cannot be denied. It then abruptly concludes that the Tribunal in the list of cases mentioned has held that longer period of limitation cannot be applied. Since the issue stood decided in favour of the Assessee prior to declaration of law by the Larger Bench, the demand was time barred and was set aside without going into merits of the case.

4. In Tax Case No. 48 of 2012 (Union of India v. M/s. Harshad Thermic Industries Pvt. Ltd) a Division Bench had observed that any order of the Court or Tribunal amenable to appeal or revision and scrutiny by a superior Court was required to contain the necessary facts involved in the case, stand taken by both the parties, the submission made in support of their respective contentions, law applicable to the issues and lastly, the reasons in support of the conclusion. It was observed at paragraph 10 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."

5. The matter was therefore remanded for deciding afresh. Recently, in Tax Case No. 13 of 2015 (Commissioner, Central Excise Customs & Service Tax, Bilaspur v. M/s. Lafarge India Pvt. Ltd.) we were also constrained to pass a similar order for like reasons remanding the matter to the Tribunal.

6. The order dated 27.11.2014 is set aside and the matter is remanded to the Tribunal to hear the parties afresh and pass a reasoned and speaking order.

7. 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.

8. The Tribunal shall also be at liberty to proceed *ex parte* against the defaulting party, if it does not enter appearance for just and valid reasons but after briefly recording the reasons for proceeding *ex parte*.

9. The appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

Subbu