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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 39 of 2015

Sri Kailash Agrawal, Proprietor M/s Kailash Traders, Mittal Complex, Ganjpara, Raipur (Chhattisgarh)

---- Appellant

Versus

The Commissioner (Appeals-I), Central Excise & Customs (Appeals-I) Raipur Commissionerate, Central Excise Building Dhamtari Road, Tikrapara, Raipur-492 001, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Dharmesh Shrivastava, Advocate.
For Respondent	:	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

02/11/2015

1. We have heard Learned Counsel for the Appellant and the Respondent.

2. The present appeal under Section 35G of the Central Excise Act, 1944 (hereinafter called 'the Act') assails Final Order dated 5.5.2015 dismissing the substantive Appeal No. E/52889/2014 for failure to deposit the penalty amount of Rs. 27,000/- as ordered under Section 35F of the Act on 3.9.2014.

3. Learned Counsel for the Appellant submitted that a search was carried out at the premises of M/s. Shubh Labh Ispat Private Limited, Raipur. On basis of the papers seized and statements recorded, on a prima facie opinion for clandestine removal of 97.160 MT MS Ingot during the period of April 2005 to December 2006, apart from the Company, show cause notice was issued to the Appellant also for abetting in the clandestine activities as a co-noticee under Rule 26 of the Central Excise Rules. After considering the cause shown, the Additional Commissioner imposed penalty of Rs. 27,000/- on the Appellant. In the stay application preferred in Appeal before the Commissioner (Appeals-I) prayer was made for waiver which was rejected on 29.1.2014 without appreciating the fact that the demand against main noticee M/s. Shubh Labh Ispat Private Limited, Raipur had itself been dropped on 16.12.2013 in Appeal No. 406-409/RPR-I/2013. Aggrieved, the Appellant carried the matter in appeal to the Tribunal under Section 35B of the Act which ordered deposit of entire penalty of Rs. 27,000/- on 3.9.2014 without again appreciating that the demand against original assessee itself had been dropped.

4. The Appellant, in the circumstances filed a miscellaneous application before the Tribunal on 10.10.2014 mentioning the fact that the proceedings against the original assessee had already been dropped and without considering it, the impugned order has been passed.

5. Learned Counsel for the Respondent submits that neither before the Commissioner (Appeals-I) nor before the Tribunal, the Appellant took the stand that the proceedings against the original assessee had been dropped on 16.12.2013. This fact was mentioned in Miscellaneous Application for the first time. The Appellant was not careful and vigilant for protection of its own interests as no body appeared on its behalf on 5.5.2015. The Court may not test the order of the authority including the Tribunal on grounds not urged before them. Even the final order of the Tribunal cannot be said to suffer any deficiency if a party does not appear and plead its case properly.

6. We have considered the submissions on behalf of the parties and are in partial agreement with the submissions on behalf of the Respondent. The Appellant does not appear to have brought to the attention of the authorities at earlier stage the dropping of the proceedings against the original assessee on 16.12.2013. The fact was mentioned for the first time in the Miscellaneous Application. The earlier interim order of the Tribunal dated 3.9.2014 directing deposit of entire penalty amount of Rs.27,000/-. Therefore could not be faulted with.

7. But if a Miscellaneous Application was then filed referring to order dated 16.12.2013, dropping the proceedings against the original assessee and that therefore the order for deposit of penalty passed against the Appellant was not sustainable, the Tribunal while dismissing the modification application, on 16.10.2014, was albeit, required to deal with the issue even briefly by recording its satisfaction alongwith reasons. It has repeatedly been held that reasons are part of the principles of natural justice which apply with equal force to Courts and Tribunals. It is trite law that justice must not only be done but it must appear to be done. A litigant approaching the Court with a perceived grievance according to his understanding has a right to be told why his perception was not correct. He cannot be confronted with the conclusions without telling him the reasons.

9. We are therefore unable to sustain the orders dated 16.10.2014 and 5.5.2015 in their present form and accordingly they are set aside. The modification application i.e. Excise Miscellaneous Application No. E/M/55744/2014 in Excise Appeal No 52889 of 2014 (SM) is restored to file for fresh disposal on merits in accordance with law.

10. The appeal is allowed.

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

Subbu