

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9404 OF 2014

Sarto Electro Equipments Pvt. Ltd. }		
and Anr. }		Petitioners
versus		
The Union of India and Ors. }		Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi and
Ms. Niyati Hakani i/b. M/s. PDS Legal for the
Petitioner.

Mr. Pradeep S. Jetly for the Respondents.

**CORAM :- S. C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.**

DATED :- MARCH 12, 2015

P.C. :-

We have heard both sides at great length. We have perused the order on the main Appeal, which has been delivered by the Member (Judicial) and Member (Technical). We have also noted the points of difference and which have been referred by them to the third Member for resolution. These are enumerated at pages 300 and 300A of the paper book. Curiously, thereafter, there was a rectification of mistakes application and which was considered by the same Bench at length. In dealing with that application as well, the Members differed. One of them found that there is a need to rectify certain mistakes in the order,

which is dated 20th February, 2014 but pronounced on 12th June, 2014, while the other was of the view that there is no scope for entertaining the application of this nature. That conclusion has also been perused by us. Thus, what we find is a very unhappy but at the same time avoidable situation. There was a main order and which was fairly lengthy and elaborate. However, while noting the factual aspects as well, there was difference of opinion between the Members. Mr. P. K. Jain-Member (Technical) was of the view that the rectification application deserves to be dismissed, but for his additions which have been made in the main order. The order passed on the (ROM) Rectification of Mistakes Application by this Member runs into 23 pages.

2) The Member (Judicial) thought that even on the rectification of mistakes application, he should pass a separate order and he has passed a separate order, copy of which is to be found from page 353 to 355 of the paper book. He allowed the application, but not for the reasons that have been recorded by his colleague. The Member (Judicial) found that in case where no consideration was given to the issues raised by the litigants during the course of final hearing of the Appeal, it would be appropriate to give an opportunity to the litigants on the said issues. Then, he found that in the order passed by his brother, namely Member (Technical), the mistakes pointed out have

been termed as apparent on record, but during the course of said rectification, the Judicial Member was of the opinion that his brother - Member (Technical) gave findings which may be in addition to the initial order. Rather they add to the final order and something on which, in his opinion, the parties were not heard adequately. Therefore, on such an application as well, they differed in their views and drew up issues for resolution by a third Member.

3) After having noted the course of events and finding that the third Member has also not rendered any final opinion till date that we are of the view that without expressing any opinion on the rival contentions, interest of justice would be served if both the impugned orders are quashed and set aside and it is directed that the main Appeal shall be re-heard by the West Zonal Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). In arriving at the above conclusion, we have noted that the Appeal of the Appellant was directed against the order passed by the Commissioner of Customs dated 6th May, 2010. There was a difference of opinion while deciding the said Appeal as noted in the final order dated 20th February, 2014. However, the final order could not be pronounced for a good four months thereafter, as the differing opinion was not available till then. Thereafter, the difference of opinion was referred to a third Member on

27th June, 2014. Though there were several hearings, the final orders could not be passed by the third Member. The reason for the same is also pendency of this Writ Petition and the liberty granted by this Court to amend the same. Later on, we found that the application for rectification of mistakes was dealt with on 3rd September, 2014, 19th September, 2014, 7th October, 2014 and finally on 31st October, 2014. The decision on this application also was not unanimous, but there was a difference of opinion. The order in that regard was pronounced on 9th December, 2014. However, it took time to make available to the parties a copy of the same.

4) In these circumstances and going by this enormous time gap, we are of the view that the above direction will subserve the ends of justice. All though we are reluctant to chart this course, but finding that both, the main Appeal as also the rectification application have not been dealt with satisfactorily and there was extensive difference of opinion that we direct a re-hearing of this Appeal. We once again emphasise the need for harmony, coordination and co-operation between the Members of the Bench, particularly in dealing with revenue matters. We expect that hereinafter, the differences of opinion would be minimal. They ought to be on issues and essentially on construction of legal provisions and interpretation of law. With regard to recording

of facts and matters in connection therewith, we do not see how Members can repeatedly differ. If the facts are undisputed and agreed upon by parties and they present legal issues for resolution of the Tribunal, then, those deserve prominence. We are also not impressed by the attitude of one Member finding fault with the other while dealing with the contentions of the parties and essentially on facts.

5) As a result of the above, this Writ Petition succeeds. Both the impugned orders are quashed and set aside. The Appeal shall now be re-heard by the West Zonal Bench. In order to put an end to the dispute expeditiously, we expect that the Appeal shall be assigned by the learned President to the Members who had not originally heard the subject Appeal. This order and direction also is passed in peculiar facts and circumstances of this case. This order shall not be treated as a precedent in any of the future cases. We clarify that none of the contentions and raised by parties have been dealt with by us. Each one of them are kept open for being raised during re-hearing of the Appeal. The Appeal shall be decided in accordance with law. We clarify that our order and direction passed shall not be construed as any departure from the views expressed in the case of *Zenith Computers Ltd. vs. Commissioner of Central Excise* reported in **2014 (303) ELT 336**. This Judgment and order of a Division Bench of this Court, to which, one of

us (S. C. Dharmadhikari, J.) was a party, impressed upon the Tribunal to avoid any friction and unnecessary difference of opinion on trivial issues. We follow this very principle, but have made the above departure only in the light of the peculiar factual situation.

(SUNIL P. DESHMUKH, J.)

(S.C.DHARMADHIKARI, J.)