IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

*****

CWP No. 12952 of 2015
Date of decision : 3.9.2015

Himalaya Construction Pvt. Ltd., New Delhi **......... Petitioner**

v.

Union of India and others **...... Respondents**

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. Suman Jain, Advocate, for the petitioner

Mr. Sukhdev Sharma, Advocate, for the respondents

Ramendra Jain, J.

1. The petitioner prays for a direction to set aside the order dated 9.4.2015, Annexure P.2 passed by the Principal Commissioner, Central Excise and Service Tax, Panchkula, respondent No.3 and remand the matter to the original adjudicating authority. Prayer has also been made for directing the Chief Commissioner, Delhi Zone to assign the adjudication of all the show cause notices issued to the petitioner to the Commissioner of Service Tax, Delhi. In the alternative, prayer for waiving off the payment of pre-deposit under Section 35F of the Central Excise Act, 1944 (in short, “the Act”) for filing appeal before the Tribunal has been made.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a company registered under the Companies Act, 1956 by the name and title of

M/s Himalaya Construction Company (P) Limited located at New Delhi. Respondent No.2 is the Chief Commissioner of Central Excise, Delhi Zone who has jurisdiction over the Commissionerate of Central Excise and Service Tax, Panchkula. Respondent No.3 is the Principal Commissioner of Central Excise and Service Tax Panchkula. The petitioner is engaged in providing construction services to different projects. The dispute arose in respect of project namely the Parbati Hydro Electric Project Stage III of the Central Government. The petitioner served as a sub contractor to M/s Larsen and Toubro Limited with the specific responsibility of constructing tunnels. Respondent No.3 vide order dated 8.4.2015, Annexure P.2 ordered recovery of ₹ 2,40,12,098/- as service tax, ₹ 4,80,241 as education cess plus ₹ 240,095/- as SHE cess and penalty of ₹ 2,47,32,434 arising out of the show cause notices dated 15.10.2012, Annexure P.3. According to the petitioner, the order had been passed ex parte and without considering its reply. As per provisions of the Act, the petitioner had right to file appeal to the Tribunal. However, by amendment to section 35F of the Finance Act, 2014, the power of the Tribunal to stay recovery of pre-deposit of an amount equal to 7.5% of the duty demanded has been taken away. The show cause notice mentioned above as well as another show cause notice dated 21.10.2013 issued to the petitioner for the recovery of service tax amount of ₹ 12,80,92,531/- were made answerable to the Commissioner of Service Tax Delhi. The office of the Principal Commissioner of Central Excise and Service Tax, Panchkula vide letter dated 23.9.2014 informed the petitioner that the Chief Commissioner through his order dated 14.8.2014 had transferred the said two cases to the Commissionerate of Central Excise and

Service Tax Panchkula and thus the jurisdiction for adjudication of the case had been taken away from the Commissioner of Service Tax, Delhi. The third and fourth show cause notices for ₹ 98,95,590/- and ₹ 3,96,14,945/- to the petitioner dated 22.5.2014 and 28.5.2015 were issued being answerable to the Commissioner of Service Tax, Delhi II. According to the petitioner, two show cause notices had been kept answerable to the Principal Commissioner of Central Excise and Service Tax Panchkula and other two show cause notices to the Commissioner of Service Tax, Delhi II. Consequently, the petitioner requested the Chief Commissioner, Central Excise Delhi vide letter dated 24.2.2015 to assign all the cases to the Commissioner of Service Tax, Delhi. Having received no response, the petitioner is before this court through the instant writ petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioner submitted that respondent No.3 passed the impugned order dated 8.4.2015, Annexure P-2, without considering the material on record and giving full opportunity of hearing to the petitioner.

5. Learned counsel for the respondents on the other hand supported the impugned order.

6. A perusal of the impugned order shows that it has been passed by respondent No.3 without considering the overall material on record including the reply to the show cause notice submitted by the petitioner. No detailed reasons have been given on the issues regarding the jurisdiction of the adjudicating authority and whether the service provided by the petitioner was labile to service tax. Thus, there was violation of principles

of natural justice.

7. The Hon'ble Apex Court in ***Kranti Associates P. Limited and another vs. Masood Ahmed Khan and others,*** (2010) 9 SCC 496 which statutorily requires recording of reasons and requirement of passing a reasoned order by an authority whether administrative, quasi judicial or judicial, had laid down as under:-

> "51. Summarizing the above discussion, this Court holds:
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> a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> b. A quasi-judicial authority must record reasons in support of its conclusions.
>
> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
>
> f. Reasons have virtually become as indispensable component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
>
> g. Reasons facilitate the process of judicial review by superior Courts.
>
> h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making

justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

8. In view of the above, the impugned order dated 8.4.2015 (Annexure P-2) is hereby set aside with the direction to respondent No.3 to decide the matter afresh, after affording full opportunity to the petitioner and considering the reply filed by it against the original notice Annexure P-3 before the Commissioner of Service Tax, New Delhi, by calling the complete record from there, within three months from the date of receipt of certified copy of this order. Disposed of accordingly.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

3.9.2015
Ashwani/gs