NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No.18 of 2016

Commissioner, Customs, Central Excise & Service Tax, Raipur

---- Appellant

versus

M/s Sarda Energy & Minerals Ltd. (Formerly known as Chhattisgarh Electricity Company Ltd.) Industrial Growth Centre, Siltara, Raipur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate
For Respondent	:	Shri Vinay Kumar Jain, Advocate

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

Judgment on Board

Per Navin Sinha, Chief Justice

3/3/2016

1. The present appeal under Section 35G of the Central Excise Act, 1944 (hereinafter referred to as "the Excise Act") arises from order dated 26.6.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, Principal Bench, Court No.II in Appeal No.E/60308/2013-EX(SM) preferred by the Appellant.

2. The Tribunal has held that without going into the merits of the case it was satisfied that the Respondent had a good case on limitation as show cause notice was issued by invoking extended period of limitation which was not sustainable in the eyes of law.

3. A Division Bench of this Court as far back as 22.11.2012 observed after referring to precedents as follows:

> "8. Time and again their Lordships have emphasised the need to assign the reasons in support of the conclusions in the judgment/order. In other words it is emphasised that every order which is amenable to Revision or appeal to higher forum must contain the necessary facts involved in the case, stand taken by both the parties against each other, the submissions made in support of the respective contentions by both the parties, law applicable to the issues

> and lastly the reasons in support of the conclusions as to why the issue is decided in favour of the one party and why against the other. Needless to say the reasons must be supported by the decisions of the Supreme Court and High Court, if holding the field on the issue in question.
>
> 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."

4. More recently in Tax Case No.13 of 2015, it was observed in paragraph 4 as follows:

> "4. Any order amenable to challenge and/or consideration before a superior Forum has to be reasoned containing brief narration of essential facts, contentions of the parties and then the conclusion to facilitate judicial review for the manner in which the authority concerned may have applied its mind. Even if an appellate order of affirmance or relying on any other similar orders may not be as elaborate as an original order, but nonetheless it must contain a brief discussion to facilitate the superior Court or Forum to understand and appreciate the manner in which there has been application of mind."

5. In the present case also, the Tribunal has only mentioned that the Revenue has sought to deny CENVAT credit on various steel items which are used for fabricating supporting structure. A show cause notice was issued invoking the extended period of limitation. There were various decisions in favour of the Respondent holding that on steel items used for fabricating supporting structure entitlement was there for CENVAT credit but there was no reference to the "various decisions" mentioned by the Tribunal. The Tribunal then opined that regular ER-I returns had been filed but no objection was raised by the Revenue without mentioning even the date of the return, or date of the show cause notice etc. before it came to the conclusion that the extended period of limitation could not be invoked.

6. If the questions involved with regard to limitation under Section 11A of the Excise Act which normally is one year but under specified circumstances it was extendable to five years, there should have been a minimum of discussion not only with regard to the dates but at least why the grounds specified for permissible extended period of limitation were not applicable.

7. In the nature of the order passed by the Tribunal especially when it was amenable to appeal before a higher forum, we are unable to sustain it in its present form for reasons discussed hereinabove. The order dated 26.6.2015 is set aside.

8. The appeal is allowed and the matter is remanded to the Appellate Tribunal for passing a fresh reasoned and speaking order in accordance with law as the order is appealable.

9. The Tribunal shall also be at liberty to proceed *ex parte* against the Respondent if it does not appear after service of notice pursuant to the remand. In that event, the Tribunal shall also briefly record the reasons for proceeding *ex parte.*

10. The appeal is allowed.

Sd/-
(**Navin Sinha**)
CHIEF JUSTICE

Sd/-
(**P. Sam Koshy**)
JUDGE

Gopal