IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 57 of 2015

Date of Decision: 29.2.2016

Commissioner of Central Excise, Delhi-III

....Appellant.

Versus

M/s Maruti Suzuki India Ltd., Gurgaon

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARI PAL VERMA.

PRESENT: Mr. Kamal Sehgal, Advocate for the appellant.

Mr. M.P. Devnath, Advocate with
Mr. Amar Pratap Singh, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 15.1.2015 (Annexure A-3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

(i) Whether the respondent can avail CENVAT credit in respect of Capital Goods used exclusively for the purpose of Research and

Development of New Model, localization of CKD parts, localization of inner parts of suppliers, quality and warranty analysis and counter measure and components and vehicle level testing, as the machines/equipments/apparatus/ capital goods in question are not used for the manufacture of goods but are solely used for the purpose of Research and Development?

(ii) Whether a place separate from manufacture/ manufacturing process located in the unit where only R&D is carried out for the New Model, localization of CKD parts, localization of inner parts of suppliers, quality and warranty analysis and counter measure and components and vehicle level testing, can be termed as factory under CEA 1944?

(iii) Whether a place located in the unit (registered premises) where no goods are manufactured nor any manufacturing process is carried out for the manufacture of goods can be termed as factory in terms of CEA 1944?

(iv) Whether the CENVAT credit of ₹ 9,97,38,882.00 availed by the respondent is liable to be recovered from them under Rule 14 of the CCR-2004 read with proviso to Section 11A(1) of the Central Excise Act, 1944 by invoking the extended period?

(v) Whether the respondent has rendered themselves liable to penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002?

(vi) Whether interest leviable at the appropriate rate is also recoverable from them on the inadmissible CENVAT credit of ₹ 9,97,38,882/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944?

2. The facts, in short, necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the manufacture and clearance of motor vehicles and parts thereof. During the course of internal audit conducted by the officers of the Audit Branch of Central Excise Commissionerate, Delhi-III from 20th to 23rd, 26th, 27th and 29th November, 2012, on test check of records for the year 2011-12, it was found that they had availed CENVAT credit qua machines/equipment/apparatus installed in Engineering Research Design and Development building and lab located separately from the production area used exclusively for R&D for new models development, localization of CKD parts, localization of inner parts of suppliers quality and warranty analysis and countermeasures and component and vehicles testing purpose amounting to ₹ 10,38,87,794/- for the period from November 2007 to October, 2012. The CENVAT Credit so availed appeared to be inadmissible as the machines/equipment/apparatus in question were not used for the manufacture of goods but were solely

used for the purpose of research and development. Accordingly, a show cause notice dated 20.3.2013 (Annexure A-1) was issued to the assessee for recovery of ₹ 9,97,38,882/- along with interest and penalty for wrongly availing and utilizing Cenvat Credit. The Adjudicating Authority vide order dated 17.12.2013 (Annexure A-2) confirmed the said demand along with interest and also imposed penalty of equal amount, i.e., ₹ 9,97,38,882/-. Feeling aggrieved, the assessee filed an appeal before the Tribunal who vide order dated 15.1.2015 (Annexure A-3) allowed the appeal and set aside the order, Annexure A-2. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue submitted that the Tribunal has wrongly rejected the appeal of the revenue without considering the arguments raised by the department and relevant provisions of law. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and was, thus, liable to be quashed.

5. On the other hand, the impugned order was supported by learned counsel for the respondent.

6. The Hon'ble Apex Court in **M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496** while dealing with the requirement of passing a reasoned order by an authority whether administrative, quasi judicial or judicial, had laid down as under:-

> "17. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with

errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

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51. Summarizing the above discussion, this Court holds:

(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".

7. A show cause notice dated 20.3.2013 (Annexure A-1) was issued to the assessee for recovery of ₹ 9,97,38,882/- along with interest and penalty for wrongly availing and utilizing Cenvat Credit. The Adjudicating Authority vide order dated 17.12.2013 (Annexure A-2) confirmed the said demand along with interest and also imposed penalty of equal amount, i.e., ₹ 9,97,38,882/-. Feeling aggrieved, the assessee filed an appeal before the Tribunal who vide order dated 15.1.2015 (Annexure A-3) allowed the appeal. The Tribunal while allowing the appeal of the respondent had dealt with the issue in para 3 of the order. A perusal thereof shows that it does not satisfy the test of a reasoned and speaking order. Para 3 is quoted below:-

> "The definition of capital goods as given in Rule 2(a) of the Cenvat Credit Rules, 2004 covers the goods listed in this sub Rule, which have been 'used in the factory of manufacture of final product.' Thus, for capital goods Cenvat Credit, their use in or in relation to manufacture of final product is not required and their use in the factory of manufacture for the purpose whether in or in relation to manufacture or for any other purpose including R&D would be enough for permitting the Cenvat Credit. In view of this, the impugned order is not sustainable. The same is set aside. The appeals are allowed."

8. The Tribunal being a final fact finding authority was required to deal with all aspects of facts and law and then record its conclusions based thereon. No legally justified reasons have been recorded by the Tribunal for allowing the appeal of the assessee.

9. In view of the above, since the order dated 15.1.2015 (Annexure A-3) does not qualify being a reasoned speaking order as enunciated by the Apex Court in **M/s Kranti Associates Pvt. Ltd's case (supra),**accordingly, the appeal is allowed and the order dated 15.1.2015 (Annexure A-3) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to decide the same afresh and for passing a well reasoned speaking order after affording an opportunity of hearing to the parties in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

February 29, 2016 **(HARI PAL VERMA)**
gbs **JUDGE**