

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 8 of 2016 (O&M)

Date of Decision: 6.5.2016

Commissioner of Central Excise, Delhi-III (Now Commissioner of Central Excise, Gurgaon-I, Gurgaon)

....Appellant.

Versus

M/s J.D. Auto Electrical (P) 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 MRS. JUSTICE RAJ RAHUL GARG.**

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

Mr. Joy Kumar, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of two days in filing the appeal is condoned.
2. 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 20.4.2015 (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 Assessee is entitled to avail Cenvat Credit on the invoices issued by M/s

Arihant Metal Corporation without actually receiving the goods?

- (ii) Whether the Assessee has contravened Rules 4 and 9 of the Cenvat Credit Rules, 2004 and is liable for penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944?
- (iii) Whether M/s J.D. Auto had suppressed the material facts with the sole and wilful intent to avail inadmissible cenvat credit and have, thus, contravened the provisions of Central Excise Act, 1944 and the rules thereunder?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the manufacture of terminals for wiring harness. The information was received that M/s Arihant Metal Corporation, Gurgaon (in short “the Corporation”), a registered dealer, was dealing in goods like brass sheets, circles, brass strips, copper strips etc. and is purchasing the said items mainly from M/s Agarwal Metal Works Pvt. Ltd., Rewari. It was found that the Corporation had altered the description of the goods, i.e. brass circles as brass sheets and brass strips as brass sheets etc. in the invoices to facilitate the buyers to avail inadmissible Cenvat Credit without actually receiving the goods. By adopting this *modus operandi* the Corporation diverted the duty paid brass circles/strips/sheets purchased from M/s Agarwal Metal Works Pvt. Ltd. in the open market. On the basis of the said information, summons were issued to the Corporation, M/s Agarwal Metal Works Pvt. Ltd. and M/s J.D. Auto.

Statements of various persons were recorded on different dates. Accordingly, a show cause notice dated 8.10.2010 was issued to the assessee for recovery of inadmissible Cenvat Credit of ₹ 33,13,670/- along with interest and penalty. The Corporation was also called upon through the said notice to show cause as to why the penalty should not be imposed upon them under Rule 26 of the Central Excise Rules, 2002 (for brevity "the 2002 Rules"). The Adjudicating Authority vide order dated 1.2.2012 (Annexure A-1) confirmed the said recovery of Cenvat Credit of ₹ 33,13,670/- along with interest from the respondent-assessee and also imposed penalty of equal amount. Penalties of ₹ 33,13,670/- was imposed on the Corporation under Rule 26(i) and (ii) of the 2002 Rules and ₹ 1,00,000/- was imposed on Shri Sidharth Baid, partner and authorized signatory of the Corporation. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Central Excise (Appeals) who vide order dated 6.3.2013 (Annexure A-2) allowed the appeal and set aside the order of the Adjudicating Authority. The revenue assailed the order, Annexure A-2, in appeal before the Tribunal whereas the respondent filed cross-objections. The Tribunal vide order dated 20.4.2015 (Annexure A-3) dismissed the appeal, upheld the order, Annexure A-2 and disposed of the cross-objections. Hence, the present appeal.

4. We have heard learned counsel for the parties.

5. 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.

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

7. 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".

8. A show cause notice dated 8.10.2010 was issued to the assessee for recovery of ₹ 33,13,670/- along with interest and penalty for wrongly availing and utilizing Cenvat Credit. The Adjudicating Authority vide order dated 1.2.2012 (Annexure A-1) confirmed the said demand along with interest and also imposed penalty of equal amount, i.e., ₹ 33,13,670/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Central Excise (Appeals), who vide order dated 6.3.2013 (Annexure A-2) allowed the appeal and set aside the order dated 1.2.2012 (Annexure A-1) passed by the Adjudicating Authority. The revenue filed an appeal against the order, Annexure A-2, whereas the assessee filed cross-objections before the Tribunal. The Tribunal vide order dated 20.4.2015 (Annexure A-3) dismissed the appeal of the revenue and disposed of the cross-objections.

9. The Tribunal had dismissed the appeal of the revenue by recording as under:-

“7. In this case, the only case has been booked

against the respondent on the premise that M/s AMC has diverted the goods as they have altered the description of goods in the invoices issued by them showing the goods supplied by manufacturer/supplier showing the description of good as brass sheets. But revenue has failed to produce corroborative evidence to show that the respondent has not received the goods against the invoices issued by M/s AMC. In these circumstances, I do not find any infirmity in the impugned order, same is upheld.

8. Appeal filed by the Revenue is dismissed. Cross objection is also disposed of in the above terms.”

10. A perusal thereof shows that it does not satisfy the test of a reasoned and speaking order. Further, it was noticed that the case had been booked against the respondent on the ground that the Corporation had diverted the goods as they had altered the description of goods in the invoices issued by them showing the goods supplied by the manufacturer/ supplier. It was only recorded that the revenue had failed to produce corroborative evidence to prove that the respondent had not received the goods against the invoices issued by the Corporation. 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 dismissing the appeal of the revenue.

11. In view of the above, since the order dated 20.4.2015 (Annexure A-4) 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 20.4.2015 (Annexure A-3) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to decide the same afresh for passing a well reasoned speaking order after affording an opportunity of hearing to the parties in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

May 6, 2016
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(RAJ RAHUL GARG)
JUDGE