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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 06.12.2016

+ **W.P.(C) 11548/2016, C.M. APPL.45453/2016**

MANALI PETROCHEMICALS LIMITED Petitioner

Through: Sh. Sandeep Sethi, Sr. Advocate with Sh. Sharad Bhansali, Sh. Jitendra Singh and Sh. Vaibhav Sharma, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Sh. Darpan Wadhwa and Sh. Arnav Kumar, Advocates, for Respondent Nos. 1 and 2.

Sh. Balbir Singh, Sr. Advocate with Sh. Angad Sandhu, Sh. Ankit Vijaywargiya, Sh. Darpan Bhuyan and Sh. Ankur Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Issue Notice. Mr. Darpan Wadhwa, and Mr. Angad Sandhu, Advocates accept notice.
2. The petition was finally heard.
3. The writ petitioner impugns a final order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) made under Section 9C of the Customs Tariff Act (CTA), dismissing its appeal by an unreasoned order, on the premise that writ petitions filed by other parties, challenging the order against which the petitioner was aggrieved as an appellant, were pending.
4. The brief facts are that pursuant to an anti-dumping complaint, investigations were carried out; this resulted in findings recorded on 11.01.2015 (Notification No.

14/01/2013-DGAD) by the second respondent (designated authority) with respect to injury as a result of dumping of the concerned goods, by foreign suppliers/manufacturers. On 07.04.2015 Customs Notification No. 09/2015-Customs (ADD) was issued, imposing the duty recommended. These findings and notification led to institution of two sets of writ petitions by the third and fourth respondents: W.P.(C) Nos. 2309/2015 and 2313/2015 on the one hand, and W.P.(C) Nos. 3764/2015 and 3726/2015, on the other. The first set of writ petitions challenged the findings; the second set challenged the anti-dumping duty levy. Those writ petitions are pending on the file of this court.

5. The petitioner claims to have been partly aggrieved by the final findings and the notification. It, therefore, preferred the appeal before the CESTAT (A0/52805/2015). When the appeal was listed before the CESTAT, it was informed that the petitions filed by other parties (the third and fourth respondent) challenging the order of the designated authority and the anti dumping duty notification issued by the Central Government are pending. Taking note of that fact, the CESTAT, dismissed the appeal (by the present petitioner which had not filed any writ petition questioning the anti-dumping duty or challenging the findings of the designated authority), stating that:

“2. In view of the above, the liberty is granted to the appellant to come again after having final verdict from the Hon'ble High Court, if need be, within the prescribed time. With the aforesaid liberty, the appeal is disposed of.”

6. The petitioner urges that the CESTAT could not have dismissed the appeal in the manner that it did by the impugned order, on the ground that third parties had approached this court in writ petitions. It was urged that existence of an alternative remedy is a ground for refusal for exercising writ jurisdiction; pendency of a writ petition cannot be ever a ground to deny appellate remedy, which is created specifically by the statute and exists as of right. Furthermore, submitted counsel, the grievance of the third and fourth respondents was primarily not on merits, but on the ground of denial of natural justice.

7. Counsel for the respondents do not dispute the factual nature of the controversy and submit that since the right to appeal is a creature of statute and access to appeal is a

matter of right and not dependent upon exercise of discretion, the CESTAT should have heard and disposed of the appeal on the merits.

8. It is axiomatic that every order of a judicial or quasi judicial authority who is responsible for deciding disputes concerning citizens as well as myriad body of litigants before it, should indicate the reasons which impelled the decision maker (judicial authority, judge, etc) to hold what it did. Courts rigorously enforce – as an attendant value to the rule of law minimum standards of fairness of procedure (adequate notice, fair opportunity of hearing, a decision on the merits, by an unbiased tribunal or authority, based on reasons). These values are in fact the bedrock of judicial functioning. Bereft of reasons, an order, which might have momentous consequences to those affected by it, is incapable of redress; its sphinx like inscrutability would likely mask untenable reasons and considerations that lay buried forever in the mind of the maker. Unlike the executive and legislative branches whose functioning does not always mandate open scrutiny, courts are always obliged to dispense justice in the public gaze. Rather than ply this order with a surfeit of judgments and past wisdom, this court prefers to quote one decision, apt under the circumstances, of the Supreme Court, *M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors* (2010) 9 SCC 496, which observed as follows, after considering a welter of previous authorities:

“47. 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 a 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."

9. There is no doubt that the provision empowering CESTAT to act as an appellate forum is an appeal of right; Section 9C of the CTA reads as follows:

"Section 9C Appeal

(1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Service tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(5) Every appeal under sub-section (1) shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.”

10. Parliamentary intent in the creation of an appellate forum in respect of findings by the designated authority was to provide meaningful redress by a competent appellate body. The order impugned is not only cryptic but mistaken in its assumption that the pending writ petitions (of others) can provide adequate redress to the petitioner- an entirely erroneous assumption, because those writ petitions are merely *pending* and depend upon exercise of discretion. The availability of an appellate remedy in this case, is conferment of a right to approach the higher forum for correction, on facts and law, whereas exercise of judicial review is within a restricted canvas. The CESTAT has in essence, treated an appellate remedy (otherwise a compulsive jurisdiction) to be alternative and discretionary, robbing it of substantial content.

11. For the foregoing reasons, a direction is issued to the CESTAT whose President shall constitute a Bench as expediently as possible and issue notice of hearing to the parties- within six weeks. The CESTAT shall endeavor to complete the hearing as early as possible, and within three months of conclusion of hearing, issue final orders. Orders *dasti*, to the parties; orders shall also be communicated directly to the President, CESTAT by the Registry. The writ petition and accompanying applications are allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

DECEMBER 6, 2016