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

\+ **<u>CEAC 35/2017</u>**

SUPREME ROAD TRANSPORT (P) LTD ..... Appellant

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-I..... Respondent

\+ **<u>CEAC 36/2017</u>**

RAVI SINGHAL ..... Appellant

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-I..... Respondent

\+ **<u>CEAC 37/2017</u>**

SUPREME TRADING CO. ..... Appellant

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-I..... Respondent

Through : Mr Aditya Kumar, Advocates for the petitioners.
Mr Bhuvnesh Satija and Ms Kriti Sinha, Advocates for R-1/Excise.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **18.07.2018**

The following questions of law were framed by this Court on 31st January, 2018 for consideration:-

> *(i) Whether the Customs, Excise and Service Tax Appellate Tribunal was correct and justified in disposing of the application for rectification filed by the appellant vide order dated 30th June, 2017?*

> *(ii) Whether the Customs, Excise and Service Tax Appellate Tribunal was correct in only modifying the final order dated 30th March, 2017 vide miscellaneous order dated 30th June, 2017 and should have recalled the order dated 01st March, 2017 and re-heard the appeal on merits?*
>
> *(iii) Whether the order dated 30th June, 2017 read with the order dated 01st March, 2017 is contrary to law because it does not discuss the issues and contentions raised by the appellant on facts and law?"*

The facts of the case are that the appellants were issued a show-cause notice pursuant to investigation conducted on the affairs of M/s.K.P.Pouches Private Limited. During the course of these investigations, it was revealed that M/s.K.P.Pouches Private Limited was involved in clandestine removal and manufacturing goods (*Gutkha).*

Statement of Mr Ravi Singhal, who is Director of Supreme Road Transport (P) Ltd. and proprietor of Supreme Trading Company, two of the Appellants, was recorded, *inter alia,* incriminating the role of these two entities with respect to the assistance given for facilitating clandestine removal of goods.

Based upon the statements and other materials on record, the Commissioner of Central Excise, Delhi, by the Order-in-Original, confirmed the demand made on M/s.K.P.Pouches Private Limited and also directed imposition of penalty under provisions of the Central Excise Act on the said Shri Ravi Singhal as well as the two entities (Supreme Road Transport (P) Ltd. and Supreme Trading Company), he was involved with.

They accordingly appeal to the CESTAT, which, by the first of its impugned orders, confirmed the Order-in-Original made by the Commissioner. Rectification application was moved by the present Appellants complaining that the original orders (which had confirmed the Order-in-Original) were unreasoned. The Rectification Orders extracted the reasoning of the Commissioner and made no advertence to the submissions or arguments made by the Appellants.

After hearing the counsel for the parties and considering the material on record, this Court is of the opinion that the Appellants' complaint with respect to the lack of any reasoning in the impugned order is justified.

Although the findings in the Order-in-Original are damaging, the impugned orders dated 01.03.2017 & 30.06.2017 made by the CESTAT do not reflect what persuaded the CESTAT to reject the Appeals. They do not even advert – how should they brief and the manner, as would have been convenient to the submissions made before it by the present appellants.

The only reasoning indicated in the impugned order is with respect to the Supreme Road Transport (P) Ltd. in the rectification order. The reasoning of the CESTAT is as follows:-

> *"It was submitted by M/s SRT during the course of hearing as well as vide written submissions dated 13/01/2017 that the Department has not adduced any cogent evidence to link M/s SRT with M/s KPP. They have claimed that they had no relation with M/s KPP and that they had only undertaken transportation of goods*

booked by various persons at their Delhi office to Raipur. Accordingly, they have argued that they cannot be penalized under Rule 26 ibid.

11. B. On perusal of records it is seen that M/s SRT operate both in Delhi and in Raipur. At Raipur they have two godowns from where three transport vehicles were seized along with 2404 bags of Gutkha bearing the brand name "Rajshree" and "Safal". As per the statements of drivers of vehicles, these goods were booked at SRT Delhi and transported to Raipur through these vehicles. Shri Ravi Singhal, Director, when questioned, expressed his inability to submit any document evidencing payment of excise duty on the Gutkha nor could he produce the consignor/consignee details or transport details of the branded Gutkha. As discussed in the above paragraphs, the goods are held as manufactured and cleared by M/s KPP without payment of duty. Consequently, it stands established that M/s SRT had facilitated the transportation of 2404 bags of non-duty paid Gutkha from Delhi to Raipur. Consequently, we find no reasons to interfere with the imposition of penalty on M/s SRT."

Interestingly, the Order-in-Original by the Commissioner found as follows:-

"43. Thus, I find that Noticee No.1 M/s K.P. Pouches (P) Ltd. has contravened the provisions of Rule 4, 6, 8, 10 and 11 of Central Excise Rules, 2002 and thus, are liable to pay Central Excise Duty amounting to Rs.1,27,69,655/- and education cess of Rs.2,55,393/- (total Rs. 1,30,25,048/-) on removal of 2404 bags of Gutkha which were seized at the godown of noticee No.2 on 18.10.2006 which are liable for confiscation under Rule 25 of the Central Excise Rules, 2002. I also find that Sh. R.P. Tripathi, Director of M/s K.P. Pouches (P) Ltd. is also liable for Penal action under Rule 26 of the Central Excise Rules 2007 for his omissions and

commissions. I further find that M/s Supreme Road Transport (P) Ltd. at Delhi to Raipur without payment of Central Excise Duty. I find that Sh. Ravi Shinghal, Director of M/s Supreme Road Transport (P) Ltd. had dealt with storing, transportation of goods on which Central Excise Duty has not been paid as he failed to produce any genuine documentary proof for the same. Hence, I find they are liable to pay penalty under Rule 26 of the Central Excise Rules, 2002."

In the opinion of this Court, the CESTAT appears to have merely reproduced either verbatim or preface of the Commissioner's orders without discussing why the submissions of the Appellants were meritless.

In view of the above discussion, the answer of question No.3 has been framed in favour of the Assessee/Appellant. The other two questions are also answered in favour of the Appellant. The impugned orders are hereby set aside. The Appeals are restored to the file of the CESTAT.

The parties are directed to be present before the CESTAT on 30th July, 2018, which shall then proceed to set down the Appeals for hearing .

The Appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 18, 2018/'sn'