

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 36 of 2019

{Arising out of Order dated 21.12.2018 passed in Excise Appeal No. E/50432/2016-EX (DB) by the learned Customs, Excise & Service Tax Appellate Tribunal, New Delhi}

- M/s Shri Ram Rolling Mill Through its Partner Shri Sandeep Gidwani, Age About 42 Years S/o Shri Pratap Rai Gidwani, Plot No. 13- B, Rawabhata, Industrial Area, District Raipur (C.G.).

---- Petitioner

Versus

- The Commissioner Central Excise & Customs, Raipur Commissionerate, Central Excise Building, Dhamtari Road, Building, Dhamtari Road, Tikerapara, Raipur – 492001 Chhattisgarh.

---- Respondent

For Appellant	:	Shri Yogesh Pandey, Advocate
For Respondent	:	Shri Maneesh Sharma, Standing Counsel

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

P. R. Ramachandra Menon, Chief Justice

27.08.2019

1. This appeal has been preferred in terms of the Section 35G of the Central Excise Act, 1944. The factual matrix reveals that there was an inspection made by the Preventive Officers of the Central Excise Department in the Raipur Division of the Appellant-Assessee's Company on 13.02.2013, when some incriminating materials were collected; which included some 'loose sheets' as well, with regard to the business transactions of the Assessee. Pursuant to the said search, statements were taken from different persons, based on which Annexure P/2 show cause notice was issued on 08.08.2013. After getting the explanation of the Appellant, the matter was considered and finalised by the Adjudicating Authority as per

Annexure P/3 order dated 31.12.2015, whereby a finding was rendered to the effect that there was 'clandestine removal' of materials/goods without satisfying the duty, which otherwise was exigible to duty.

2. Met with the situation, the Appellant filed an appeal against the verdict passed by the Commissioner by approaching the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for short, 'the Tribunal') where the appeal was numbered as **Excise Appeal No. E/50432/2016-EX[DB]**. After considering the issue projected in similar appeals, the above appeal preferred by the Appellant was tagged alongwith the connected appeals (altogether six appeals), leading to the final order dated 21.12.2018, whereby the findings rendered by the Commissioner were upheld under some heads; while some interference/modifications were made under some other heads.
3. Grievance of the Appellant is that the case of the Appellant was never considered or decided, as discernible from paragraph 28 onwards of the order passed by the Tribunal. At the same time, the Revenue is pursuing further steps and is after the Appellant, stating that the verdict passed by the Commissioner has become final, having left untouched; which made the Appellant to approach this Court by filling the appeal suggesting some questions as the substantial question of law.
4. When the matter came up for consideration before this Court on the last occasion, we expressed our doubts as to the questions suggested by the Appellant, to be treated as substantial question of law, pursuant to which a new substantial question of law is also sought to be raised by filing I.A. No. 01 of 2019. The three questions originally suggested by

the Appellant and the additional question now raised in the I.A. 01 of 2019 are in the following terms:

Original Substantial Questions of Law :

“a) Whether, in the facts and circumstances of the case, the Hon'ble CESTAT has passed a cryptic and non-speaking order without showing any reasoning or deliberation of the materials that were placed before it for consideration?

b) Whether, in the facts and circumstances of the case, the Hon'ble CESTAT had committed serious infirmity in appreciation of evidence by overlooking material evidence vital to determination of issues involved?

c) Whether, in the facts and circumstances of the case, the Hon'ble CESTAT had made patent error in confirming the demand without any corroborative or affirmative evidence?”

Additional Question of Law :

“In the absence of any reasons much less discussion and finding, whether impugned judgment is liable to be sustainable?”

5. During the course of submissions, we still maintained our doubts and required the learned counsel for the Appellant to substantiate the extent of the substantial questions of law.
6. The learned counsel submits that the difficulty of the Appellant is by virtue of the fact that absolutely no discussion is there in the common verdict passed by the Tribunal, with regard to case projected by the Appellant and there is no reference to the Appellant's case anywhere, but for mentioning the case number in the 'face sheet' of the common order.
7. We heard Shri Maneesh Sharma, the learned standing counsel for the Department as well. To appreciate the submissions made on behalf of

the Appellant, we have gone through the order under challenge. It is seen that after the general discussion, the Tribunal has taken up all the matters, case by case, as discussed in paragraphs 28, 29 and 30. Paragraph 28 deals with Appeal No. **E/50477/2016-EX[DB]** which is **filed by M/s Hanukripa Ispat Pvt. Limited** i.e., the first one out of the six cases mentioned on the top of the face sheet. The discussion in paragraph 29 is in respect of the Appeal No. **E/50476/2016-Ex[DB]** **filed by Shankar Lal Jain**, Appeal No. **E/50489/2016-EX[DB]** **filed by Kailash Chandra Agrawal** and Appeal No. **E/50491/2016-EX[DB]** **filed by Bajrang Lal Jain**. These are the cases at the 1st, 3rd and 4th slots / levels mentioned on the top of the face sheet. Paragraph 30 of the order passed by the Tribunal deals with Appeal No. **E/50497/2016-Ex[DB]** **filed by Rooplaxmi Industries India Pvt. Ltd.** which is the 5th case mentioned on the top of the face sheet of the order passed by the Tribunal. There is no discussion with regard to the case of the Appellant anywhere, but for the discussion in respect of the other five appeals.

8. The learned standing counsel for the Respondent/Revenue concedes to the above factual position, that there is no discussion with regard to the appeal preferred by the Appellant in the common order.
9. In the above circumstances, we find considerable force in the submission made by the Appellant to the effect that the common order dated 21.12.2018 passed by the Tribunal cannot be said to be an order in the appeal preferred by the Appellant which is pending for consideration as E/50432/2016-EX [DB].

10. We are of the view that the matter requires to be reconsidered only insofar as the appeal of the Appellant is concerned. We do not intend to say anything with regard to the merits discussed in the connected appeals, as it is not a matter of consideration before this Court, as of now. It is for the Tribunal to make necessary corrections with regard to the number of the appeal shown in the cause title of Annexure P/1 order and to have it confined to the remaining five appeals, for clarity of records.
11. The Tribunal shall consider the merits of the case raised by the Appellant in Appeal No. E/50432/2016-EX[DB] after affording opportunity of hearing to the Appellant and pass appropriate order in accordance with law, as expeditiously as possible.
12. The matter stand remitted to the above limited extent, without expressing anything with regard to the merits involved.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge