Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

CUSTOM APPEAL NO.1 OF 2013

The Commissioner of Customs,
Customs House, Marmagoa, Goa. ….. Appellant.

Versus

Sagar Auto Works,
Shop No.G-8, Govardan Building,
Aquem, Margao, Goa. ….. Respondent.

Ms. Asha Desai, Senor Central Government Standing Counsel for the Appellant.

Coram : M.S. Sonak &
C.V. Bhadang, JJ.

Date : 26th November, 2019.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Ms. Asha Desai for the Appellant.

2. Ms. Dessai, states that the Respondent, in this Appeal, has been duly served and necessary affidavit of service is also filed.

3. On 22/09/2014, this Appeal was admitted on the following substantial questions of law :

(A) Whether CESTAT could reopen an appeal for hearing which was already finally disposed of by its own previous order ?

(B) Whether CESTAT has power to review its own order and pass fresh final order in the absence of any petition for review ?

4. The challenge in this Appeal is to the order dated 19th April, 2007 made by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal), rejecting the appeal instituted by the Appellant herein against the order made by the Commissioner of Customs (Appeals), Mumbai.

5. The record reveals that in fact, by an order dated 10th July, 1998, the appeal against the order of the Commissioner of Customs (Appeals) had, in fact, been allowed *inter alia* by enhancing the final penalty. The operative portion of the order dated 10/07/1998 reads thus :

> *"3. On consideration of the submission made, we find that this Bench of the Tribunal has while dealing with the similar issue of M/s Archana International Vs. Commissioner of Customs, Mumbai in its Final Order No. 3820/97 WZB dt.22.9.97 held that fine of 100% of the assessable value will be appropriated in these cases. The Tribunal has also held that a penalty in these cases of about 10% of the value would be appropriate. The issue in these appeals is only in respect of the quantum of fine on the goods and penalty on the Respondents importers. The M/s Archana International decision of this Tribunal provides reasonable guide lines in this matter which we are inclined to follow. Accordingly we are of the view that the*

Departments plea for enhancing the penalty is well founded because the level at which the Commissioner (Appeals) has determined the fine and penalty in these cases is much lower than what has been found to be reasonable and appropriate in the Tribunal decision (Supra). Therefore, we enhance the final penalty in these cases as follows:

(i) Appellant M/s Sagar Auto Works redemption fine is ordered at Rs. 8,67,750/- and the penalty Rs.87,000/-.
(ii) In the case of Shri Balaji Auto Works the redemption fine is fixed at Rs.8,83,000/- and penalty Rs.88,000/-.
(iii) In the case of M/s. Saraswati Repowering Works redemption fine fixed at Rs. 8,23,000/- and penalty at Rs. 82,000/-.
(iv) In the case of M/s Mahakali International redemption fine is enhanced to Rs.6,62,776/- and penalty to Rs.66,000/-. The above fine and penalty have been determined on the basis of the enhanced assessable value of the consignments and in the light of the precedent decision of M/s. Archana International of this Tribunal. The appeals are disposed of accordingly. The Respondents will be entitled consequential relief if any according to law."

6. Despite the aforesaid, the Tribunal once again took up the appeal for consideration along with two connected appeals. Although the Special Defence Representative (SDR) did appear before the Tribunal on the date when such appeal was taken up for hearing *i.e.* 19.04.2007, the Tribunal was not informed about the order dated 10th July, 1998, by which date, the appeal was finally disposed of. It is possible, as contended by Ms. Desai, that the SDR was unaware of the order dated 10th July, 1998, made almost 9 years earlier. The Tribunal, by the impugned order, on this occasion,

dismissed the Appellant's appeal by the impugned order dated 19th April, 2007. Hence, the present Appeal by the Appellant herein.

7. From the records, it is obvious that very taking up the Appeal No.C/841/1997 by the Tribunal on 19th April, 2007 was an exercise in excess of jurisdiction. Since the Appeal had already been disposed of by the order dated 10th July, 1998, there was really no occasion for taking up such appeal for reconsideration. It is obvious that such taking up of the Appeal was a result of miscommunication. It is obvious that the factum of disposal of the Appeal by order dated 10th July, 1998 was not brought to the notice of the Tribunal, either by the SDR or the staff of the Tribunal.

8. On the aforesaid ground alone, the impugned order dated 19th April, 2007 is liable to be set aside and is, hereby, set aside.

9. In view of the aforesaid, it is not necessary to go into the larger issue as to whether the Tribunal has any power to review its own Judgments and orders. However, we must note that Ms. Desai did place reliance upon the decision of the Madras High Court in ***C.P. Aquaculture (India) Pvt. Ltd. vs. President, CESTAT***[1] to submit that the Tribunal is not vested with any such power of review.

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[1] 2010 (260) ELT 501

10. For the aforesaid reasons, the substantial questions of law, as framed, are liable to be answered in favour of the Appellant and against the Respondent. The impugned order dated 19^{th} April, 2007 is, hereby, set aside and it is made clear that the earlier order dated 10^{th} July, 1998 shall prevail. This shall, however, not preclude the Respondent from taking out appropriate proceedings against the order dated 10^{th} July, 1998, particularly since, we have not examined the matter on merits, but we have merely held that the impugned order dated 19/04/2007, was an order in excess of jurisdiction.

11. The Appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

C.V. Bhadang, J. ***M.S. Sonak, J.***