IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1604 OF 2019

Mahindra and Mahindra Ltd.
(FES) (R&D) .. Petitioner
vs.
The Union of India and anr. .. Respondents.

Mr. V. Sridharan, Sr. Counsel a/w. Mr. Prakash Shah i/b PDS Legal for the Petitioner.
Mr.Pradeep S. Jetly a/w Mr. J.B. Mishra for the Respondents.

CORAM: M.S. SANKLECHA &
M.S.SONAK, J. J.
DATE : 4 JULY 2019.

P.C.:

1] This petition challenges the order dated 11th May 2018 passed by the Customs, Excise & Service Tax Appellate Tribunals (Tribunal). By the impugned order dated 11th May 2018, the petitioner's statutory appeal under Section 35B of the Central Excise Act, 1944 (Act) was dismissed.

2] The grievance of the petitioner is to the decision making process of the Tribunal in passing the impugned order dated 11th May 2018. This inasmuch as the impugned order dated 11th May 2018 ignores earlier orders in respect of the same petitioner-assessee being final orders No.A/85373-85374/17/EB dated 20th September 2016 and No.A/86741-86742/17/EB dated 21st March 2017, which according to the petitioner is on identical facts. This even after recording the same, without in any manner dealing with it even remotely. It is submitted the Tribunal had in petitioner's own case by orders dated 20th September 2016 (supra) and 21st March 2017 (supra) had held that extended period of limitation could not be invoked on account of revenue neutrality. This after holding in its earlier orders in case of the petitioner that where duty is payable by one unit and credit is taken by other unit belonging to the same entity, the shortfall in payment of duty would be revenue neutral exercise. Thus no intent to evade tax could be attributed in such a case to invoke. The two aforesaid decisions of the Tribunal dated 20th September 2016 and 21st March 2017 in its own case were noticed by the Tribunal and yet completely ignored, so as to take a contrary view in the impugned order to hold the demands cannot be set aside on the ground of revenue neutrality. This without any distinction in facts or law in the present facts to the earlier decisions, being pointed out in the impugned order.

3] Mr. Jetly, learned counsel appearing for the Revenue, submits that this Court should not exercise its extraordinary jurisdiction and entertain the petition, as statutory remedy of an appeal under Section 35G of the Act is available to the petitioner. In support reliance is placed on the decision of the Supreme Court in ***Rajkumar Shivhare vs. Assistant Director, Directorate of Enforcement - 253 ELT 3***. It is further submitted that in any event the impugned order of the Tribunal has, on facts, found that the concept of revenue neutrality cannot be invoked in the facts of the present case.

4] Normally, we would not exercise our extraordinary writ jurisdiction to entertain a challenge to the order passed in an appeal under Section 35C of the Act. This for the reason that an alternate remedy of appeal is provided under Section 35G of the Act on a substantial question of law is available to the party aggrieved. However, the bar of entertaining a petition in view of an alternate remedy being available, is a self imposed bar. Therefore, where the actions of *quasi judicial* authority are in breach of natural justice such is an order without reasons, i.e., without considering the submission of the party, then we would exercise our writ jurisdiction under Article 226 of the Constitution of India. In fact, the Supreme Court in *Rajkumar Shivhare (supra)* has specifically recorded the above exception. Moreover, in cases involving breach of natural justice *per se* not requiring application of any of the statutory provisions, would not warrant dismissing the petition on grounds of alternate remedy. Further, if the impugned order is contrary to well settled principles of law, then we may *suo moto* exercise our supervisory jurisdiction under Article 227 of the Constitution of India.

5] In this case, it is clear from the impugned order of the Tribunal that the petitioners had placed reliance upon the two orders dated 20th September 2016 (supra) and 21st March 2017 (supra) passed by Co-ordinate Benches of the Tribunal in the petitioner-assesse's own case on identical facts. However, the impugned order dated 11 May 2018 after referring to the reliance placed by the petitioner on the aforesaid two decisions, completely ignores the same. It makes no attempt to even distinguish the facts therein with the facts which arose in the present case. The Tribunal in the impugned order seems to do away with its obligation to be bound by the decisions of its coordinate Benches by observing that "*the issue of revenue neutrality is to be decided on the basis of facts of each case and the judgments cited by the appellant cannot be made applicable automatically*". Once the litigant before the Tribunal placed reliance upon the decision of the a coordinate Bench of the Tribunal, then a speaking order would require the Tribunal to consider those decisions and state how and why the aforesaid decisions are not applicable to the facts of the present case. In the absence of this exercise is being done, the impugned order itself suffer from being a non speaking order. Moreover we find that where Authorities like the Tribunal functioning within the State of Maharashtra exercise jurisdiction in breach of principles of natural justice or in flagrant disregard of the law of precedents by not referring the issue to the President for constituting a Larger Bench of Tribunal, if it did not agree with the earlier decisions of the Tribunal then we would certainly exercise our writ jurisdiction. Merely stating that the earlier judgments would not be applicable, without more, would not meet the requirement of an order with reasons

6] In the above view, in exercise of our jurisdiction under Article 226 and 227 of the Constitution of India, we set aside the impugned order dated 11th May 2018 and restore the appellant's appeals to the Tribunal for fresh consideration in accordance with law.

7] Petition is disposed of in the aforesaid terms.

(M.S.SONAK, J.) **(M.S.SANKLECHA, J.)**