IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 175 OF 2018

Mahindra CIE Automotive Ltd. .. Appellant

v/s.

The Commissioner of Central Tax
CGST .. Respondent

Mr. Bharat Raichandani a/w Pragya Kotwal I/b UBR Legal for the appellant
Mr.; D.B. Deshmukh for the respondent

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 15th MARCH, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act (the Act) challenges the order dated 19th April, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2. The appeal is admitted on the following re-framed substantial question of law :-

“Whether on the facts and circumstances of the case and in law, the Tribunal was justified in dismissing the appellant's appeal on the following issues :-

(i) Whether the goods after return by the customer were subjected to re-credit of the duty paid at Rs.4,56,302/- as claimed;

(ii) Whether the goods were received under the fictitious invoices and is a method adopted by the appellant which had resulted in evasion of duty of Rs.53,62,232/-;

(iii) Whether the scrap generated in the hands of the job-worker was not supported by the duty-paid documents involving demand of Rs.1,10,656/; and

(iv) Whether the goods claimed to have been destroyed in the course of manufacture were to be subjected to levy of duty of Rs.16,544/-"

3. As the issue is in a very narrow compass, at the request of the parties, the appeal itself is taken up at this stage for disposal.

4. It is urged on behalf of the appellant that the impugned order of the Tribunal is a non-speaking order. This as it has been passed without recording, much less considering the appellant's submissions made during the course of hearing before the Tribunal. Thus, the grievance of the appellant has not been addressed. It is submitted that in the above view, it would be appropriate that the impugned order is set aside and the appeal be restored to the Tribunal for passing a fresh order after considering the petitioner's submissions.

5. Mr. Deshmukh, learned Counsel appearing for the respondent submits that so far as issue (ii) above is concerned, the impugned order of the Tribunal while remanding the matter to the Adjudicating Authority has recorded the submissions made by the appellant. It is only after consideration of the submission as made by the appellant that this issue was remanded to the Adjudicating Authority for fresh consideration. Our attention is specifically invited to paragraph nos. 3 and 4 of the impugned order of the Tribunal. Thus, the order need not be set aside to the above extent. So far as the other issues are concerned, the impugned order of the Tribunal has upheld the view of the Commissioner of Income Tax (Appeals). Therefore, no interference is warranted.

6. We have considered the rival submissions. So far as issue (ii) as framed in the above substantial question is concerned, we find that there is a merit in the submission made on behalf of the Revenue. This as we find that the impugned order of the Tribunal does record the appellant's submissions and only after consideration of the same has come to the conclusion that the issue would require reconsideration by Adjudicating Authority. Therefore, remanded this issue to the

Adjudicating Authority. Thus, we do not interfere with issue no.(ii) framed in above substantial question of law.

7. So far as issue nos. (i), (iii) and (iv) as framed in the above substantial question of law are concerned, we find that the impugned order of the Tribunal merely proceeds to record its conclusion. When an Appellate Authority is in agreement with the lower authority's decision, it does not absolve him to briefly indicate his reasons in the context of the submissions made in the appeal by the party. We find that on the above issues, the impugned order does not record any submissions made by the parties before it. This manner of dealing with an appeal by the Tribunal is not appreciated. The Tribunal is a final fact finding Authority under the Act. It must necessarily record the essence of dispute before it and give its findings on consideration of submissions made in the context of the dispute. It is only when such an exercise is done, the order would be a speaking order. It is only when the conclusions arrived at in the order of the Tribunal passes through the process of apparent reasoning, can it be called a speaking order. It not only ensures that the Authority is clear about the issue and also the basis of its decision is known to all concerned. This also enables the Appellate Authority to test the validity of the impugned order. Besides

giving satisfaction to a litigant that his grievances have been addressed even if it is adverse to him, as he knowns the reasons for it. Therefore, the substantial question of law to the extent of issue nos. (i), (iii) and (iv) are answered in the negative i.e. in favour of the appellant and against the respondent.

8. Normally, whenever orders are passed by the Tribunal without recording any particular submissions which have been made by the party, we direct the party to move to the Tribunal by rectification application to have the record corrected. This as the facts stated by the Tribunal in its order are accepted by us as final. The grievance of a party that a particular submission though made has not been recorded by the Tribunal, can only be decided by the Tribunal on the party making an application of rectification of the order to the extent it does not record and consider the party's submissions. However, in this case so far as issue nos. (i), (iii) and (iv) of the above substantial question of law are concerned, we find that they do not record a single submission on the part of the appellant on the above issues. Therefore, in this case, we are not directing the parties to move the Tribunal in rectification application. This as the impugned order is *ex-facie* bad to the extent of issue nos. (i), (iii) and (iv) of the substantial question of law as it is

clearly in breach of natural justice and displays a flaw in the decision making process.

9. Therefore, the impugned order of the Tribunal is set aside to the extent it decides the issue nos. (i), (iii) and (iv) of the above substantial question of law. The appeal is restored to the Tribunal for fresh decision on the above issues after consideration of the submissions made by the parties being reflected in the order passed by the Tribunal.

10. We are informed that so far as issue (ii) is concerned, the Adjudicating Authority has already passed an order consequent to remand by the impugned order. The respondent has filed an appeal to the Tribunal. It would be open to the appellant to make an application to the Tribunal to hear this appeal on the issues as remanded along with the appeal from the order of the Adjudicating Authority consequent to the remand on issue no.(ii).

11. The appeal is disposed of in the above terms.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**