THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

C.E.A.NO.47 OF 2019

JUDGMENT: (per SK,J)

This appeal under Section 35G of the Central Excise Act, 1944 (for short, 'the Act of 1944'), calls in question the common final order dated 28.02.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad, in so far as it pertains to Appeal No.E/41/2009.

2. The appellant is the assessee who filed the subject appeal before the Tribunal. Therein, its grievance was as to the Order-in-Original dated 17.09.2008 of the Commissioner of Customs and Central Excise, Hyderabad-III Commissionerate, in so far as an opportunity of cross-examination was denied to it before the passing thereof. By the order under appeal, the Tribunal set aside the impugned Order-in-Original and remanded the matter to the adjudicating authority to enable it to follow the law laid down by the Punjab and Haryana High Court and the Chattisgarh High Court in the context of Section 9D of the Act of 1944. The present appeal is preferred on the ground that the Tribunal was not justified in remanding the matter to the adjudicating authority.

3. We however find that, in para 3 of the order dated 28.02.2019, the Tribunal recorded that the learned counsel appearing for the appellant himself suggested that the matter should be remanded back to the adjudicating authority to follow the provisions of Section 9D of the Act of 1944.

4. Sri K.Vijay Kumar, learned counsel for the appellant, would however assert that he himself appeared before the Tribunal and that he never made such a suggestion.

5. It may be noted that once the Tribunal recorded the events that took place during the hearing before it, be it by way of docket proceedings or in the body of the final order, this Court is bound to accept the same as being reflective of fact. It would not be open to this Court to disbelieve what has been stated by the Tribunal in the context of the happenings during the hearing of the appeal before it.

6. Section 35C(2) of the Act of 1944 however vests the Appellate Tribunal with the power of rectifying any mistake apparent from the record and amending any order passed by it. No doubt, this power requires to be exercised within six weeks from the date of the order.

7. We may note that the certified copy of the order under appeal was furnished to the appellant-assessee on 19.03.2019 and therefore, the six month period reckoned from that date expired on 18.09.2019 and that was the date on which this appeal was preferred.

8. We are therefore of the opinion that the Tribunal would be well within its powers in entertaining an application under Section 35C(2) of the Act of 1944 for rectification of the order, if warranted on facts.

9. The appeal is accordingly disposed of permitting the appellant-assessee to submit an application under Section 35C(2) of the Act of 1944 before the Tribunal within one week from the date of receipt of a copy of this order in the context of the statement recorded in para 3 of the order to the effect that it was the learned counsel for the appellant who had submitted that the matter should be remitted back to the adjudicating

authority. The Tribunal shall consider such a plea on its own merits and pass appropriate orders thereon.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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K.LAKSHMAN,J

Date:27.09.2019

GJ

HIGH COURT FOR THE STATE OF TELANGANA ★ HYDERABAD ★