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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 6th February, 2019.

+ **W.P.(C) 5920/2018 & CM APPL.29241/2018**
JINDAL STAINLESS (HISAR) LIMITED Petitioner
versus
UNION OF INDIA Respondent

+ **W.P.(C) 6246/2018 & CM APPL.24118/2018**
JINDAL STAINLESS LIMITED Petitioner
versus
UNION OF INDIA Respondent

Present: Mr.Balbir Singh, Sr. Adv. and Mr.Jitender Singh,
Mr.Abhimanyu Bhandari and Mr.Chaitanya, Advs. for the
petitioner.
Mr.Vinod Diwakar, CGSC with Mr.Sayandeep Pahari and
Ms.Radhika Roy, Adv. for R-1 in W.P.(C) 5920/2018
Mr.Amit Narayan, CGSC with Mr.Apoorv Singhal and
Mr.Randeep Sachdeva, Adv. for R-1 in W.P.(C) 6246/2018
Mr. Sanjay Notani, Mr.Vivek Sharma, Mr.Abhishek Anand
and Mr.Udit Jain, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (OPEN COURT)

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1. In these two petitions, the grievance urged is that the Customs, Excise & Service Tax Appellate Tribunal [hereafter "CESTAT"] by a common impugned order rejected the appeals preferred before it under Section 9C of the Customs Tariff Act, 1975.

2. These two appeals had questioned the notification and the final finding rendered by the Designated Authority (DA) pursuant to the investigations conducted with respect to the information received by the Designated Authority vis-a-vis dumping of Cold Rolled Coils by Chinese and other manufacturers in India, the marginal injury determined and the anti-dumping duty ultimately imposed by the Department of Revenue's notification dated 24.10.2017.

3. The CESTAT by its impugned order took note of the rejection of a similar appeal in the case of M/s Maruti Suzuki India Ltd. The CESTAT had rejected that appeal under Section 9C [Final Order No.58242/2017] on the ground that the initiation and the final findings had been challenged initially through writ petitions by importer/consumer in India before this Court, and later before the Supreme Court by foreign manufactures/exporters. The CESTAT, therefore, rejected the present petitioner's appeals stating as follows:

"3. In view of the above position, we note that we are not able to proceed with the above appeals. Therefore, by following our earlier order, we dispose of appeals along with Misc.application, with liberty to the appellants to come again after having the final verdict from the Hon'ble Supreme Court within the prescribed time, if advised so."

4. With the aforesaid liberty, all the appeals stand disposed of along with Misc. application linked thereto."

4. The CESTAT's approach, we regret to note, is wholly inconsistent with this Court's order and directions in *Manali Petrochemicals Limited vs. Union of India & Ors.* [W.P.(C) 11548/2016, dated 06.12.2016]. The Court had on that occasion, in similar circumstances, noted the nature of Section 9C of the Customs Tariff Act, 1975 and *inter alia* held as under:

“8. It is axiomatic that every order of a judicial or quasi judicial authority who is responsible for deciding disputes concerning citizens as well as myriad body of litigants before it, should indicate the reasons which impelled the decision maker (judicial authority, judge, etc) to hold what it did. Courts rigorously enforce – as an attendant value to the rule of law minimum standards of fairness of procedure (adequate notice, fair opportunity of hearing, a decision on the merits, by an unbiased tribunal or authority, based on reasons). These values are in fact the bedrock of judicial functioning. Bereft of reasons, an order, which might have momentous consequences to those affected by it, is incapable of redress; its sphinx like inscrutability would likely mask untenable reasons and considerations that lay buried forever in the mind of the maker. Unlike the executive and legislative branches whose functioning does not always mandate open scrutiny, courts are always obliged to dispense justice in the public gaze. Rather than ply this order with a surfeit of judgments and past wisdom, this court prefers to quote one decision, apt under the circumstances, of the Supreme Court, M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors (2010) 9 SCC 496, which observed as follows, after considering a welter of previous authorities:

“47. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. Reasons facilitate the process of judicial review by superior Courts.*
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- j. Insistence on reason is a requirement for both judicial accountability and transparency.*
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny."*

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10. *Parliamentary intent in the creation of an appellate forum in respect of findings by the designated authority was to provide meaningful redress by a competent appellate body. The order impugned is not only cryptic but mistaken in its assumption that the pending writ petitions (of others) can provide adequate redress to the petitioner- an entirely erroneous assumption, because those writ petitions are merely pending and depend upon exercise of discretion. The availability of an appellate remedy in this case, is conferment of a right to approach the higher forum for correction, on facts and law, whereas exercise of judicial review is within a restricted canvas. The CESTAT has in essence, treated an appellate remedy (otherwise a compulsive jurisdiction) to be alternative and discretionary, robbing it of substantial content.*

11. *For the foregoing reasons, a direction is issued to the CESTAT whose President shall constitute a Bench as expediently as possible and issue notice of hearing to the parties- within six weeks. The CESTAT shall endeavor to complete the hearing as early as possible, and within three months of conclusion of hearing, issue final orders. Orders dasti, to the parties; orders shall also be communicated directly to the President, CESTAT by the Registry. The writ petition and accompanying applications are allowed in the above terms."*

5. The failure of the CESTAT to adjudicate the petitioners' appeal, in the opinion of this Court, is inexplicable. Its impugned order, is completely at variance with the directions in *Manali Petrochemicals* (supra). The Court is also cognizant of the fact that the proceedings before the Supreme Court have not in any manner restrained CESTAT from performing its statutory duty of adjudicating on the appeals pending before it. The CESTAT's approach of 'washing its hands' of the duty cast upon is, therefore, deprecated in the strongest terms.

6. The impugned order is, for the above reasons, set aside and the appeals preferred by the petitioners before it are restored to the file of CESTAT. Consequently, the CESTAT shall proceed to hear and decide the

pending appeals before it in accordance with law after issuing notice to all the concerned parties.

7. The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J.

PRATEEK JALAN, J.

FEBRUARY 06, 2019

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