

IN THE HIGH COURT OF BOMBAY AT GOA

CUSTOM APPEAL NO. 5 OF 2010

AND

CUSTOM APPEAL NO.5 OF 2014

CUSTOM APPEAL NO. 5 OF 2010

The commissioner
of customs, Customs
House, Marmagoa,
Goa.

... Appellant

V e r s u s

Shree Balaji Automobiles,
5 Arab Lane, 'B' Street,
Richmund Town Banglore, 25.

... Respondents

A N D

CUSTOM APPEAL NO.5 OF 2014

The commissioner of
customs, Customs
House, Marmagoa,
Goa.

... Appellant

V e r s u s

M/s. Saraswati Repowering Works,
888, Venkatiah Bldg,
Muneshwara Layout RT Nagar Post,
Bangalore – 32.

... Respondents

Ms. Asha Desai, Senior Central Government Standing Counsel for the Appellants.

Coram :- **M. S. SONAK &**
 M. S. JAWALKAR, JJ.

Date : **28th January, 2020**

ORAL JUDGMENT (Per M. S. Sonak,J.)

1. Heard Ms. Asha Desai, the learned Senior Standing Counsel for the Customs Department, who are the appellants in both these appeals.

2. Both these appeals were in fact tagged to Customs Appeal No. 1 of 2013 in which, the issue was virtually identical to the issue involved in both these appeals. Custom Appeal No.1 of 2013 was disposed off vide Judgment and Order dated 26.11.2019. However, these two appeals could not be disposed off on the said date, because there was some issue of service upon the respondents. Leave was therefore granted to effect service

upon the respondents, *inter alia*, by way of substituted service i.e. paper publication.

3. Ms. Desai, the learned Senior Standing Counsel, now tenders affidavits of service in both these appeals. Along with these affidavits, copies of paper publications affected in the Times of India, Bangalore Edition dated 21.12.2019 have also been placed on record.

4. From the perusal of the affidavit of service and its annexures, we are satisfied that respondents have been validly served in these appeals.

5. The challenge in this appeal is in fact to the common Judgment and Order dated 19.04.2007 made by the Customs, Excise and Service Tax Appellate (Tribunal), rejecting the appeal instituted by the appellant herein against the order made by the Commissioner of Customs (Appeals), Mumbai.

6. Both these appeals were 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 ?"

7. In these cases as well as noted by us in our Judgment and Order dated 26.11.2019 disposing off Custom Appeal No.1 of 2013, the records reveal that in fact by order dated 10.07.1998, the appeals instituted by the appellants herein had in fact been allowed, *inter alia*, by enhancing the final penalty.

8. Despite the aforesaid, the Tribunal took up the appeals 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,

the Tribunal, it appears, was not apprised of its earlier order dated 10.07.1998 by which the appeals had already been disposed off almost nine years earlier. The Tribunal, on this occasion, however dismissed the appeal vide impugned order dated 19.04.2007. Hence, the present appeals by the appellants herein on the aforesaid substantial questions of law.

9. 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. For these reasons alone, the impugned orders dated

19.04.2007 in both these appeals are liable to be set aside and are hereby set aside.

10. 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* to submit that the Tribunal is not vested with any such power of review.

11. 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 19th April, 2007 is, hereby, set aside and it is made clear that the earlier order dated 10th July, 1998 shall prevail. This shall, however, not preclude the Respondent from taking out appropriate proceedings against the order dated 10th 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.

12. Both the appeals are disposed off in the aforesaid terms.

There shall be no order as to costs.

M. S. JAWALKAR

M. S. SONAK, J.

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