IN THE HIGH COURT OF BOMBAY AT GOA

CUSTOM APPEAL NO. 1 OF 2019

M/s. GKB Ophthalmics Ltd.
16-A, Tivim Industrial Estate,
Mapusa, Goa – 403 526,
Represented through
Mr. Prakash Joshi,
Director. ….. Appellant

V e r s u s

Commissioner of Customs,
Mormugao Harbour,
Goa - 403 803. …... Respondent

With

CUSTOM APPEAL NO. 2 OF 2019

M/s. GKB Ophthalmies Ltd.
16-A, Tivim Industrial Estate,
Mapusa, Goa – 403 526,
Represented through
Mr. Prakash Joshi,
Director. …. Appellant

V e r s u s

Commissioner of Customs,
Mormugao Harbour,
Goa - 403 803. …... Respondent

With

CUSTOM APPEAL NO. 3 OF 2019

M/s. GKB Ophthalmics Ltd.
16-A, Tivim Industrial Estate,
Mapusa, Goa – 403 526,
Represented through
Mr. Prakash Joshi,
Director. …. Appellant

V e r s u s

Commissioner of Customs,
Mormugao Harbour,
Goa - 403 803. …... Respondent

With

CUSTOM APPEAL NO. 4 OF 2019

M/s. GKB Vision Limited
27 & 28 Pilerne Industrial Estate,
Saligao, Goa – 403 511,
Represented through
Mr. Prakash Joshi,
Director. ….. Appellant

V e r s u s

Commissioner of Customs,
Mormugao Harbour,
Goa - 403 803. …... Respondent

With

CUSTOM APPEAL NO. 5 OF 2019

M/s. GKB Vision Limited
27 & 28 Pilerne Industrial Estate,
Saligao, Goa – 403 511,
Represented through its Director,
Mr. Prakash Joshi. ……. Appellant

V e r s u s

Commissioner of Customs,
Mormugao Harbour,
Goa - 403 803. …... Respondent

With

CUSTOM APPEAL NO. 6 OF 2019

M/s. GKB Vision Limited,
27 & 28 Pilerne Industrial Estate,
Saligao, Goa – 403 511,
Represented through its Director,
Mr. Prakash Joshi. …. Appellant

V e r s u s

Commissioner of Customs,
Mormugao Harbour,
Goa - 403 803. …... Respondent

Mr. C. A. Ferreira, Advocate with Adv. Rajiva Srivastava for the Appellants in all the appeals.
Ms. Priyanka Kamat, Standing Counsel for the Respondent in all the appeals.

Coram:- M. S. SONAK &
DAMA SESHADRI NAIDU, JJ.
Date:- 20th February, 2020.

Oral Judgment (Per M.S. Sonak, J):

Heard Mr. C. A. Ferreira, who appears along with Advocate Mr. Rajiva Srivastava for the appellants in all these appeals and Ms. P. Kamat, the learned Standing Counsel for the respondent in all these appeals.

2. The learned counsel for the petitioners submit that these appeals can be disposed of by a common judgment and order, since, the issues involved are identical and, in fact, the challenge is basically to the common judgment and order dated 14/9/2017 made in Appeal Nos. A/89748 to 89751/17/CB by the Customs Excise & Service Tax Appellate Tribunal (Tribunal).

3. These appeals were admitted on 9/4/2019 on the following substantial questions of law:

> *(i) Whether revenue was justified in demanding custom duties on the wastage/brokerage available within the factory premises of the appellant/assessee and were neither exported nor removed from the bounded warehouse?*
>
> *(ii) Whether the revenue could have imposed custom duties on the allegation that there was breach of Policy Sion Norms by the appellant/assessee?*

4. On perusal of the impugned judgment and order made by the Tribunal, we find that the two main grounds which were raised and urged by the appellants have not even been adverted to, much less, considered and disposed off.

5. The first ground raised by the appellants in the appeals before the Tribunal was that the demand of duty was entirely premature, because the wastage generated was not even removed from the warehouse and was, in fact, lying in the warehouse. Mr. Ferreira points out that the show cause notice issued to the appellants supports this position. Accordingly, this issue, which goes to the root of the matter, has not at all been adverted to and decided by the Tribunal, though we find that the same was specifically raised by the appellants before the Tribunal.

6. The second issue raised by the appellants was that the "SION Norms" were applicable only to advance licence holders and not to the appellants, who wee export oriented units (EOU). This issue has also not been considered by the Tribunal while making the impugned judgment and order.

7. In this case, the appellants had filed rectification applications, in which,

they had placed reliance on the Ministry's decisions dated 23/9/2008 and 26/11/2008, which had provided for enhancement of the wastage percentage limits from 9% to 15%. In disposing of the application for rectification, the Tribunal, by its order dated 7/6/2018 has merely held that since the Ministry's decisions were not specifically pointed out by the appellants when the original judgment and order dated 14/7/2017 was passed, no case was made out for rectification.

8. Taking into considerations the position that, the two main grounds urged by the appellants were not even adverted to, much less, considered by the Tribunal, it is only appropriate that the impugned judgment and orders made by the Tribunal are set aside and the appellant's appeals are restored before the Tribunal for fresh disposal on their own merits and in accordance with law. On this occasion, however, the Tribunal will have to address these two main grounds as also consider the appellant's contention based upon the Ministry's decision dated 23/9/2008 and 26/11/2008. We order accordingly.

9. We, however, make it clear that we have not examined the merits of the rival contentions and, therefore, the Tribunal to examine such rival contentions on their own merits and in accordance with law in pursuance with this remand.

10. The substantial questions of law are disposed of in the aforesaid terms, without we answering the same ourselves. These appeals are accordingly, disposed off.

11. The parties to appear before the Tribunal on 16/3/2020 at 10.30 a.m. and file an authenticated copy of this order, so that, they can receive instructions as to the further schedule for disposal of the appeals. We request the Tribunal to dispose of the appeals as expeditiously as possible.

12. All concerned to act on an authenticated copy of this order.

DAMA SESHADRI NAIDU, J. **M. S. SONAK, J.**

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