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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 18.05.2022

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CEAC 1/2021

M/S RUDRAKSHA MARKETING, THROUGH ITS PROPRIETOR,
SH. PAWAN KUMAR GARGAppellant

Through: Mr Akhil Krishan Maggu, Advocate.

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-1

.....Respondent

Through: Mr Harpreet Singh, Sr. Standing
Counsel with Ms Suhani Mathur,
Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):**CM APPL.8478/2021**

1. This is an application filed on behalf of the appellant seeking condonation of delay.

1.1. The application is suggestive of the fact that the delay involved is in re-filing the appeal. The period mentioned in the prayer clause is 411 days.

2. Mr Akhil Krishan Maggu, who appears for the applicant/appellant, informs us that the impugned order dated 20.04.2017, passed by the Customs, Excise and Service Tax Appellate Tribunal [in short 'the Tribunal'] was received by the applicant/appellant, only on 15.03.2018.

2.1. We are told by Mr Maggu that the appeal was filed, in the first instance, on 06.09.2018. In support of his plea that the appeal was filed on 06.09.2018, our attention has been drawn by Mr Maggu to the affidavit filed



by him, which is, appended on page 126DD of the case file (pdf page 136). A perusal of this affidavit shows that in paragraph (b) reference is made to Diary No.268314/2018; which, we are told, was accorded to the appeal.

2.2. It is Mr Maggu's contention that the Registry had pointed out defects, which his clerk failed to remove in time, as he had to visit his native place, located in Uttarakhand, on account of the clerk's grandmother taking seriously ill.

2.3. We are told by Mr Maggu that the clerk's grandmother, ultimately, succumbed to her illness, which lasted for nearly 13 months.

2.4. Mr Maggu says that, thereafter, the appeal was re-filed in and about November 2019. It is submitted by Mr Maggu that since objections were raised once again, they were ultimately removed. Mr Maggu, thus says, that it was these events, which, ultimately, led to a delay of 411 days.

2.5. Insofar as the aspect concerning the difficulty of the clerk is concerned, our attention is drawn, not only to the assertions made in the above-captioned application, but also to the affidavit of the clerk i.e., one Mr Vivek Rawat, which is, appended on page 126D of the case file (pdf page 135).

3. It is important to bear in mind that notwithstanding the delay involved in re-filing the appeal, in the connected matters, a coordinate bench of this Court *vis-à-vis* the very same impugned order i.e., 20.04.2017 has rendered a judgment dated 16.05.2018 in a batch of matters, with the lead matter being CEAC 7/2018, titled ***Prabhat Zarda Factory Co. vs. Commissioner of Central Excise, Delhi-I.***

3.1. The coordinate bench, *via* the aforementioned judgment dated 16.05.2018, has remanded the matters to the Tribunal, for a fresh hearing on



merits.

4. Therefore, keeping in mind foregoing aspects, we are of the view that the delay ought to be condoned, as the appeal before us cannot be subjected to a different treatment.

5. We may note that although the coordinate bench had specifically indicated that its judgement would not apply to the appellant as well as to the other appellant i.e., one Mr Suresh Kumar Garg, who has also filed an appeal i.e., CEAC 2/2021, which is, also listed on our board today, that observation will not come in the way of our condoning the delay, as the fact of the matter is, at that juncture, neither the appellant nor Mr Suresh Kumar Garg had preferred their respective appeals, which is, what prompted the coordinate bench to say that their judgment would not apply to them.

5.1. As is obvious, that position has altered.

6. Therefore, the delay is condoned. The prayer made in the above-captioned application is allowed.

7. The application is disposed of in the aforesaid terms.

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8. As noticed above, this appeal is directed against the order dated 20.04.2017, passed by the Tribunal.

9. It is not in dispute [and something we have noticed hereinabove] that the substantive questions of law which arose in the connected matters, including CEAC 7/2018, would arise in this case as well.

9.1. The substantive questions of law are noted in paragraph 2 of the coordinate bench order dated 16.05.2018. For the sake of convenience, the said paragraph is extracted hereinafter:

“2. These appeals were admitted for hearing vide order



dated 23rd February, 2018, on the following substantial questions of law:-

“(i) Whether the appellant is right that the order passed by the Customs, Excise and Service Tax Appellate Tribunal is contrary to law as it does not examine and discuss the contentions and issues of facts and law as raised and had arisen for consideration?

(ii) Whether the findings recorded by the Customs, Excise and Service Tax Appellate Tribunal are perverse as they do not meet the mandate and requirement of law?”

10. As adverted to above, the coordinate bench set aside the judgment of the Tribunal and while doing so, made the following crucial observations:

*“8. The Tribunal is the final fact finding authority under the Act i.e. the Central Excise Act, 1940. As a final fact finding authority and the first appellate authority against the order-in-original in the present case, the Tribunal was required to examine the statements, documentary evidence, consider the effect of retraction with reference to the legal position and thereupon arrive at definitive and considered decision. No doubt, as the final fact finding authority, the Tribunal can rely upon the reasoning, findings or inferences given in the order-in original there has to be also fresh and independent application of mind and not a mere reproduction and repetition even if the final conclusion is one of affirmation. In the present case, the impugned order on all aspects and contentions merely reproduces the order-in-original, without specifically and independently examining and dealing with diverse contentions. Reference and independent and exhaustive elucidation of the factual contentions raised by the appellants and consideration of legal issues based upon the said contentions is conspicuously lacking and missing. The impugned order suffers on this account. Supreme Court in *Kranti Associates Pvt. Ltd and Others. Vs. Masood Ahmed Khan and Others*, 2011 (273) E.L.T. 345 (SC), had examined and elucidated on importance and significance of reasoned and speaking order by quasi judicial authorities. In the said*



case, National Consumer Redressal Commission, it was observed, has trappings of civil court and was a high-powered quasi-judicial forum for deciding lis between the parties. Quoting case law on the subject dealing with the question of recording of reasons and thorough and independent application of mind in support of the conclusions by any quasi-judicial authority, it was held as under:-

“47. Summarising 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 lifeblood 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.

(m) 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. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

9. We do not think that the impugned order meets the mandate and legal requirements set out in the aforesaid summarization made by the Supreme Court in Kranti Associates Pvt. Ltd. (supra). The impugned order, even if assuming the conclusion



was justified, would fault on the said account. Reference, in this regard, can be also made to the decision of the Delhi High Court in Rakesh Arora Vs. Commissioner of Customs, 2012 (276) E.L.T. 181 (Del.) and Nitesh Kumar Kedia Vs. Commissioner of Customs, Import & General, 2012 (284) E.L.T. 321 (Del.).

*10. In these circumstances, we would hold that the impugned order fails to independently and specifically deal with and examine the contentions raised by the appellants. It fails to meet the parameters required, noticed and summarized by the Supreme Court in **Kranti Associates Pvt. Ltd.** (supra).*

11. Accordingly, the aforesaid substantial questions of law are answered in favour of the appellants and against the respondent with an order of remand to the Tribunal for fresh decision. However, we clarify that we have not commented on merits or made any observation either in favour of the appellants or the respondent. The matter would be re-heard and decided a fresh on merits without being influenced by the impugned order.”

11. Given this position, the appeal is allowed.

11.1. Resultantly, the impugned order dated 20.04.2017 is set aside *qua* the appellant.

11.2. The Tribunal, in this case, like in the **Prabhat Zarda Factory Co.** case, shall decide the matter afresh, on merits, without being influenced by the observations made hereinabove.

12. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MAY 18, 2022/ns

[Click here to check corrigendum, if any](#)