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ORDER SHEET
WPO/636/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VEDANTA LIMITED
VS
THE UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 6th July, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Parth Parikh, Adv.
Mr. Rishi Raju, Adv.
Mr. Tamoghna Das, Adv.
...For the petitioner
Mr. K.K. Maiti, Adv.
Mr. Abhradip Maity, Adv.
...For Respondent Customs Authority

The Court: By this writ petition, petitioner has challenged the impugned adjudication order dated 5th January, 2023 passed on the order of remand by the learned Tribunal dated 28th July, 2022. I have perused the aforesaid order of the Tribunal and particularly taken note of the observation and direction made by it particularly paragraphs 6, 7 and 8 of the same which are quoted as hereunder :

"6. the only take-away from the above is that the correct Fe content was required to be determined on the basis of the guidelines contained in the judgement of the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra). The same having not been done here, in the case on hand, it is clear to us that the order of First Appellate Authority dated 06.10.2020 is correct. It is the settled position of law that not following the order of the Hon'ble High Court or the Hon'ble Apex Court would amount to mistake/error which is rectifiable under the provisions of Section 154 ibid. It is strange that in the second round and in the impugned order, the First Appellate Authority has ignored its own earlier order which has attained finality and thereby sustained a tangential order of lower authority.

7. Further, as claimed by the appellant the provisional assessments have remained as provisional only, which are required to be assessed finally and hence, we are of the clear view that the impugned order has to be set aside with a direction to the lower authority to finalise the assessments adhering to the guidelines of the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra).
8. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority with a direction to pass a speaking order, finalizing the assessments. It is also directed that relief as per Notification No.62/2007-Cus dated 03.05.2007 be given taking into account the test reports; needless to reiterate that consequential benefits, if any, be given to the appellant, as per law."

It appears from record that the respondent Customs Authority being not satisfied with the aforesaid order of the Tribunal had challenged the same before the Division Bench of this Court by way of appeal being Custa 2 of 2023 and Hon'ble Division Bench which has dismissed the said appeal by order dated 28th June, 2023 by making the detailed discussion and by also taking into consideration one of the submissions of Mr. Maiti, learned advocate appearing for the appellate department in the said appeal that in order to give effect to the aforesaid of the Tribunal the adjudicating authority has passed a fresh order in original. But on perusal of the aforesaid order of the Division Bench I find that the appeal of the appellant department was not dismissed solely on the ground that in the meantime fresh order in original has been passed order of remand of the appeal rather the Hon'ble Division Bench made discussion and observation on both facts and law and facts remain admittedly that the order, findings and directions made in the aforesaid order of the Tribunal dated 28th July, 2022 attains its finality since the same was neither reversed nor set aside by the Appeal court in the appeal filed by the respondent Customs Authority. As such, the observations, findings and direction in the aforesaid order of the Tribunal is binding on the adjudicating authority which the subordinate authority.

Considering the aforesaid factual and legal position as appears from record now the question arises as to whether the adjudicating authority in passing the impugned order in original dated 5th January, 2023, on remand, has acted strictly as per observations, findings and directions given by the Tribunal its remand order and particularly in paragraphs 6, 7 and 8 of the said order and on perusal of the aforesaid impugned order in original I find that the adjudicating authority has not acted strictly as per findings, observations and directions given by the Tribunal rather it has given its own reason and opinion and has not implemented the aforesaid order of the Tribunal in its letter and spirit. Though Mr. Maiti very vehemently argues that since the order-in-original is an appealable order under the statute before the first appellate authority, this Court should not interfere with the same on the ground of availability of alternative remedy which is not convincing and acceptable to this Court for the exceptional reason that aforesaid order of the Tribunal which has attained its finality after the order of the Division Bench of this Court by neither interfering with nor setting aside the same, the adjudicating authority was bound to carry the aforesaid order of the Tribunal in its letter and spirit and the impugned order-in-original is not only a factual error it is a jurisdictional error and error in law since it is contrary to the decision of the Supreme Court upon which even the first appellate authority in the first round has relied and held in favour of the petitioner and for the same reasoning the Tribunal has remanded the matter back by its aforesaid order.

Considering the facts and circumstances of the case and the discussion made above, I am of the considered view that the aforesaid impugned order in original dated 5th January, 2023 is not sustainable in law and is set aside and the matter is remanded back to the adjudicating authority concerned to implement the aforesaid order of the Tribunal dated 28th July, 2022 strictly as per findings, observations and directions given by the learned Tribunal in the aforesaid order and particularly giving relief to the petitioner as per Notification No.62/2007-Cus dated 03.05.2007 as per paragraph 8 of the aforesaid order of the Tribunal, within a period of eight weeks from the date of communication of this order by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authority representative.

With these observations and directions, this writ petition being WPO 636 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/