IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.140 of 2008

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **Yes**

2 To be referred to the Reporter or not ? **Yes**

3 Whether their Lordships wish to see the fair copy of the judgment ? **No**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **No**

5 Whether it is to be circulated to the civil judge ? **No**

==========

THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS - Appellant(s)

Versus

CHANDUBHAU SHIROYA - Opponent(s)

==========

Appearance :
MR HARIN P RAVAL for Appellant(s)
NOTICE SERVED BY DS for Opponent(s)

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 24/10/2008

ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. The appellant-Revenue has preferred this appeal

challenging the composite order dated 6.7.2007 made by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad ("the Tribunal") in Appeal No.E/913-914/2006. The Tribunal was hearing appeals preferred by the Unit and the Director and a consolidated order was passed. Being aggrieved by the direction contained in the order of the Tribunal whereby the penalty imposed upon the Director has been set aside, the Revenue has come before us in appeal against this part of the order of the Tribunal.

2. The following substantial question of law has been proposed by the Revenue:

> *(a) Whether, in the facts and circumstances of the case, the Tribunal is justified in setting aside the penalty on the Director under Rule 209A presently Rule 26 of the Central Excise Rules, 2002?*

3. However, we make it clear that for reasons recorded hereunder, we do not intend to enter into the merits of the appeal and, therefore, we refrain from answering the proposed question. Instead, we admit the appeal and formulate the following substantial question of law which, arises for consideration in the present appeal.

> *"Whether the impugned order made by the Tribunal can be said to be an order made in accordance with law?"*

4. Mr.Harin P.Raval, learned Assistant Solicitor General of India, has submitted that the impugned order of the Tribunal is an order devoid of any reasons so far as the direction contained regarding setting aside of the penalty imposed upon the Director is concerned. He has submitted that in view of the fact that the Assistant Commissioner had imposed the penalty upon the Director of the Unit by Order-in-Original dated 10.5.2005, which was confirmed by the Order-in-Appeal dated 17.2.2006, by the Commissioner (Appeals), the Tribunal was not justified in setting aside the penalty without assigning any convincing and cogent reasons.

5. Although the respondent has been served, none has appeared on his behalf.

6. The impugned order dated 6.7.2007 of the Tribunal reads as under:

> *“Order No.A/1722 & 1723/WZB/AHD/2007*
>
> *Per: Mrs.Archana Wadhwa, Member (Judicial)*
>
> *The ld. Advocate Shri K.J.Vyas appearing for the appellant is not contesting the demand of duty of Rs.91680/- confirmed on the ground that the appellant has cleared their final product without payment of duty. Further penalty of Rs.50,000/- stands imposed upon the manufacturing unit along with imposition of identical penalty under Section 11AC. In addition, penalty of Rs.50,000/- has been*

imposed upon the director.

2. Inasmuch as, a part amount of duty was deposited by the appellant, I reduce the penalty under Section 11AC to Rs.25,000/- and under Rule-25 to Rs.25,000/-. Penalty on the Director is set aside. Appeal is disposed off in the above terms.

(Pronounced in Court)

sd/-

(Archana Wadhwa)
Member (Judicial)"

7. So far as the present appeal is concerned, it challenges the setting aside of penalty imposed upon the Director. As is amply clear from a perusal of the above-quoted impugned order, the penalty imposed upon the Director is dealt with in a single, cryptic sentence of the Tribunal which reads, "penalty on the Director is set aside". This is the only sentence in the order which is relevant for the purposes of this appeal and, we find, that it is woefully lacking in any kind of reasoning which would indicate that there has been a proper application of mind before the penalty imposed upon the Director has been set aside. In fact, the impugned order is made without assigning any reason, whatsoever.

8. An order made by the Tribunal under Section 35C of the Central Excise Act, 1944 ("the Act") is required to

be made after giving an opportunity to the parties, of being heard. The Tribunal may then confirm, modify or annul the decision or order appealed against or may refer the case back to the authority which passed the order with appropriate directions, as the Tribunal may think fit. Under sub-section (4) of Section 35C of the Act, an order made by the Tribunal shall be final, subject to the right of appeal to the High Court under Section 35G of the Act and the right of appeal to the Supreme Court under Section 35L of the Act. While making an order under Section 35C of the Act, the Tribunal must keep in mind that the proceedings before it are likely to have far-reaching financial implications so far as parties, i.e. the assessee as well as the Revenue are concerned and it is, therefore, essential that the order made by the Tribunal should reflect an application of mind before fastening of liability upon an assessee or granting relief against the Revenue.

9. The legal position in this regard is, by now well-settled. The giving of reasons in support of their conclusions by judicial, quasi-judicial and administrative authorities when exercising jurisdiction is imperative, in order to avoid any element of arbitrariness or unfairness which may attach to

unreasoned conclusions. The Tribunal is a quasi-judicial forum and while deciding matters, it has to bear in mind that a speaking order is required to be passed as it is adjudicating upon the Order-in-Appeal made by the Commissioner (Appeals) in which the Order-in-Original has merged. As the order made by the Tribunal is an appealable one, it should be ensured that it is founded on cogent reasons. The reasons contained in an order may not be lengthy or elaborate but, at the same time, they must reflect proper application of mind and an understanding of the pros and cons of the matter, as well as the legal position, which has led the Tribunal to come to its conclusion, more so, when the conclusion arrived at by the Tribunal differs from the conclusion arrived at by the adjudicating and Appellate Authorities.

10. In **State of Rajasthan v. Rajendra Prasad Jain – JT 2008(3) SC 159**, the Supreme Court has held as under:

> *".....The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable.*

*Similar view was expressed in **State of U.P. v. Battan and Ors.** [JT 2000(8) SC 50; 2001(10) SCC 607]. About two decades back in **State of Maharashtra v. Vithal Rao Pritirao Chawan** [AIR 1982 SC 1215] the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was reiterated in **Jawahar Lal Singh v. Naresh Singh and Ors.** [JT 1987(1) SC 388; 1987(2) SCC 222]. Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the `Constitution').*

*8. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See **Raj Kishore Jha v. State of Bihar and Ors.** [JT 2003 (Suppl.2) SC 354]).*

*9. Even in respect of administrative orders, Lord Denning M.R. in **Breen v. Amalgamated Engineering Union** [1971(1) All ER 1148] observed "The giving of reasons is one of the fundamentals of good administration". In **Alexander Machinery (Dudley) Ltd. v. Crabtree** [1974 ICR 120] (NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis*

on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

10. The above position was highlighted in ***State of Orissa v. Dhaniram Luhar*** *[JT 2004(2) SC 172; 2004(5) SCC 568]."*

11. This Court has, similarly, also time and again reiterated the necessity of giving reasons by the Tribunal. In Tax Appeal No.81 of 2005 - **Jay Enterprises v. Commissioner of Central Excise** decided on 4.5.2005, this Court has summed up the legal position in the following terms:

"It is necessary for CEGAT to assign reasons while disposing of an appeal before it. Reasons are the soul of the proceedings including the

order of CEGAT and in absence of the same the order remains merely a shell without any substance. It is not necessary that CEGAT pass an elaborate order, but at the same time the body of the order must reflect that CEGAT is aware of the aforestated legal position and the order, when read as a whole, must reflect application of mind. It is for this purpose that reasons are required to be assigned, howsoever brief they may be."

In Special Civil Application No.22931 of 2005 **Shree Devkrupa Ship Breaking v. Union of India** decided on 30.11.2005, this Court held that:

"6 It is thus apparent on plain perusal of the impugned order that CESTAT, which is the final fact finding authority, ought to have taken due care and shown greater consideration to the case than is shown by the order under challenge. As laid down by the Apex Court in the case of Standard Radiators Pvt.Ltd. (supra) "It is expected that it will discuss the facts in some detail and not cursorily and come to briefly stated conclusions on that basis".

7 The impugned order unfortunately does nothing of that sort as already noticed hereinbefore. The entire order is silent as to

what were the contentions raised before it by both the sides, what were the material facts for decision, what was the evidence pro and contra in relation to the said issue and what was the finding of facts on each of the contentions raised before CESTAT by both the sides. During course of hearing, a faint attempt on behalf of the respondent authority was made to submit that once the Tribunal accepts the findings recorded by Commissioner (Appeals) it is not necessary for it to reiterate the same and hence no fault should be found with the impugned order. The proposition would have been acceptable provided the impugned order had even given an indication to this effect. The Tribunal has not even cared to state that the findings recorded by the Commissioner (Appeals) are not disputed. In fact, the principal grievance on behalf of the petitioner is that none of its submissions have been taken into consideration.

8 There is one more reason why CESTAT is required to give reasons after recording findings while passing an order. The said order is amenable to statutory appeal. How does the High Court, which is an appellate authority under the statute, appreciate the correctness or otherwise of an order made by CESTAT in absence of any reason in the order made by CESTAT. For this reason also the impugned order cannot be permitted to stand."

The above are just a few extracts from relevant judgments elaborating upon the settled legal position which is no longer res-integra. No doubt, there are a catena of judgments stating the necessity of passing reasoned orders.

12. Tested upon the anvil of the aforesaid legal position, the impugned order fails to satisfy the requirements of law. Not only is the impugned order devoid of any reasons, it is also silent with regard to the facts of the case as well as the contentions raised by both sides, which may have had a bearing upon the conclusion arrived at by the Tribunal. The findings arrived at by the Appellate Authority are also not discussed and the order gives no indications as to why the Tribunal thought it fit to differ with the findings recorded by the Commissioner (Appeals). The order made by the Tribunal is amenable to statutory appeal before the High Court. In the absence of any reasons in the order made by the Tribunal, it is not possible for the appellate forum to appreciate the correctness or otherwise of the

conclusions arrived at, or the basis upon which such conclusions rest.

13. It can also be said that the reasons are like the bricks with which the edifice of justice is built. If the bricks are not in place, or are missing, the entire edifice comes crashing down. The conclusions arrived at by a judicial or quasi-judicial authority should rest upon the foundation or reasons and cannot be sustained if they are in the air. An order passed by a quasi-judicial forum has to be supported by convincing and cogent reasons, howsoever brief they may be.

14. Viewed in the light of the above-stated legal position, it cannot be said that the impugned order of the Tribunal is an order made in accordance with law. We, therefore, answer the substantial question of law in the negative.

15. Under the circumstances, the impugned order dated 16.7.2007 cannot be allowed to stand. The appeal is, therefore, allowed. Appeal No.E/913-

914/2007 is restored to the file of the Tribunal, which is directed to hear the same on merits after giving a reasonable opportunity of hearing to both sides and pass an order, in accordance with law.

16. For the reasons stated hereinabove, the Registry of this Court is directed to transmit a copy of this order to the President of the Tribunal.

(D.A.Mehta, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)