**(2010) 04 GUJ CK 0065**

**In the Gujarat High Court**

**Case No :** Tax Appeal No''s. 847 and 2338 of 2009

Commissioner of Customs (Preventive) APPELLANT

Vs

Essar Oil Limited RESPONDENT

**Date of Decision :** 15-04-2010

**Acts Referred:**

**Citation :** (2010) 176 ECR 248 : (2010) 256 ELT 204 : (2011) 21 STR 465

**Hon'ble Judges :** H.N. Devani, J;D.A. Mehta, J

**Bench :** Division Bench

**Advocate :** R.M. Chhaya, for the Appellant; Mihir Joshi, for Nanavati Associates, for the Respondent

**Final Decision :** Allowed

## Judgement

H.N. Devani, J.—Since identical question of law has been raised in both these two appeals, the same were taken up for hearing together and are being disposed of by this common judgement.

2. Appellant revenue has challenged order dated 26.11.2008 passed by the Customs, Excise & Service Tax Appellate Tribunal (the Tribunal), proposing the following substantial questions of law:

[1] Whether, in the facts and circumstances of the case, the Hon''ble Tribunal was justified in placing reliance upon the ratio of the decisions in the case of [1] 2007 [216] ELT 15 (Bom) in the case of Commissioner of Customs v. Man Industries (I) Ltd. [2] 2008 [228] ELT 479 [Tri. Mumbai] in the case of Metallic Bellows (I) Pvt. Ltd. v. Commissioner of Customs (Exports) [3] 2007 [216] ELT 15 (Bom) in the case of Nucleus Satellite Communications Pvt. Ltd. v. Commissioner of Customs (Seaport) [4] 2008 TIOL 982 in the case of Gujarat Ambuja Export Ltd. v. Commissioner of Customs, Kandla, when the facts and circumstances of these cases are different to that of the present one?

[2] Whether the disposal of appeal by mere reference to the said decision by the Hon''ble CESTAT without analysis in detail the factual position of the present case

 

is legal and proper?

3. Vide order dated 11th March 2010, this Court has issued notice for final disposal in the following terms:

[1]. Mr. R.M. Chhaya, learned Standing Counsel for the appellant - Revenue submits that in the impugned order the Tribunal has merely referred to various earlier decisions of the Tribunal without discussing as to how the same were applicable to the facts of the present case, and has decided the appeal without any discussion on the merits of the case. The order is, therefore, a non-speaking order. It is accordingly submitted that the matter be remanded to the Tribunal for deciding the same afresh on merits. Reliance is placed upon the decision of the Supreme Court in Commnr. of Central Excise, Bangalore Vs. Srikumar Agencies etc. etc.,

[2]. In view of the aforesaid, issue notice for final disposal returnable on 01st April, 2010. Direct Service is permitted.

4. In response to the notice, the respondents have put in appearance and are represented by Mr. Mihir Joshi, learned Senior Advocate.

5. Heard the learned Advocates for the respective parties.

6. Admit. The following substantial question of law arises for consideration:

Whether the Customs, Excise & Service Tax Appellate Tribunal was justified in passing an order merely by placing reliance upon various decisions of the Tribunal and the Bombay High Court without any discussion on the merits of the case?

7. Considering the controversy involved in the present case which lies in a very narrow compass, with the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

8. Mr. R.M. Chhaya, learned Senior Standing Counsel for the appellant-revenue has submitted that the Tribunal has, in the impugned order, merely referred to various earlier decisions of the Tribunal without discussing as to how the same were applicable to the facts of the present case and has decided the appeal without adverting to the merits of the case. The order is, therefore, a non-speaking order and the matter is required to be remanded to the Tribunal for deciding the same afresh. In support of his submissions, the learned Counsel has placed reliance upon the decision of the Supreme Court in Commnr. of Central Excise, Bangalore Vs. Srikumar Agencies etc. etc.,

9. On the other hand, Mr. Mihir Joshi, learned Senior Advocate appearing for the respondent has supported the impugned order made by the Tribunal. It is submitted that the Tribunal has only held that Commissioner was not justified in refusing to allow conversion, and has further clarified that it has not gone into the merits of the appellant''s claim of drawback, which shall be decided by the proper officer on merits. Hence, no case is made out so as to warrant

 

interference.

10. As can be seen from the impugned order dated 26.11.2008 made by the Tribunal which is subject matter of challenge in Tax Appeal No. 847 of 2009, in the opening part thereof, the Tribunal has merely observed that in the order impugned before it the Commissioner had rejected the request for conversion of free shipping bills into drawback shipping bills. The Tribunal has thereafter recorded that it finds that the issue is no longer res integra as settled by various decisions of the Tribunal and upheld by the Bombay High Court. It has thereafter referred to five judgments, viz. names of parties and citations and has observed that, apart from the said citations, there are many other decisions on the said subject; that as such, they were of the view that refusal by the commissioner to allow conversion was not justified. The Tribunal has thereafter clarified that they are not going into merits of the appellant''s (respondent herein) claim of drawback, which shall be decided by the proper officer on merits. That by setting aside the order impugned, they only allow the appellant to file the conversion of free shipping bills into drawback shipping bills. The Tribunal accordingly disposed of the appeal in the above terms. This, in sum and substance is the order made by the Tribunal.

11. Insofar as Tax Appeal No. 2338 of 2009 is concerned, in its impugned order dated 17th June 2009, the Tribunal has merely referred to its earlier decision dated 26.11.2008, which is subject matter of challenge before in Tax Appeal No. 847 of 2009, and has set aside the order impugned and remanded the matter to Commissioner for de novo adjudication.

12. Thus, it is apparent that the impugned orders of the Tribunal do not reflect as to what was the controversy which the Tribunal was called upon to decide; what was the ratio laid down in the decisions referred to by the Tribunal and as to in what manner the said decisions were applicable to the facts of the case. The decision of Commissioner while rejecting the request of the respondent, for conversion of free shipping bills into duty drawback shipping bills, is supported by detailed reasons based upon statutory provisions as well as the relevant Circular governing the conversion of Free Shipping Bills into Drawback Shipping Bills. However, while setting aside the order of the Commissioner the Tribunal has not recorded any finding as to in what manner the findings recorded by Commissioner are erroneous or as to why it was required to take a different view. The learned Counsel for the appellant is therefore justified in contending that the impugned order of the Tribunal is a non-speaking order.

13. In Commissioner of Central Excise, Bangalore v. Srikumar Agencies (supra), the Apex Court has held thus:

[4] Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid''s theorems nor as provisions of the statute and that too taken out of their context.

 

These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments.

The Court further held that since the factual position has not been analyzed in detail, disposal of appeals by mere reference to decisions was not the proper way to deal with the appeals. The Court also observed that the CEGAT had not dealt with the decision on which strong reliance had been placed by the learned Solicitor General and accordingly, set aside the impugned orders of the Tribunal and remitted the case to the Tribunal.

14. The Apex Court in H.V.P.N.L. Vs. Mahavir, while dealing with an order passed by the State Consumer Disputes Redressal Commission, held that the appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons.

15. In Tata Engineering & Locomotive Co. Ltd. v. Collector of Central Excise, Pune 2006 (203) ELT 360 (SC), the Supreme Court was dealing with a case where by a cryptic and non-speaking order, the Tribunal had upheld the order passed by Commissioner by applying the ratio of the decision of the Larger Bench in TISCO Ltd., without recording any findings of fact. The Apex Court held that it is not sufficient in a judgment to give conclusions alone but it is necessary to give reasons in support of the conclusions arrived at. The Court, set aside the order of the Tribunal as the findings recorded by the Tribunal were cryptic and non-speaking, and remitted the matter back to the Tribunal for taking a fresh decision by a speaking order in accordance with law after affording due opportunity to both the parties.

16. In State of Punjab Vs. Bhag Singh, the Apex Court was considering a case where the High Court had dismissed the appeal without giving any reasons. The Court held that 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 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. The Court further held that 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 the 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.

17. This Court has also in an umpteen number of decisions held that the orders passed by the appellate authorities should be supported by reasons. Despite

there a being plethora of precedents holding that an appellate authority is required to record facts, contentions as well as reasons for arriving at its conclusions, it is a matter of regret that the Tribunal still continues to ignore the same and pass orders like the present one without recording facts or reasons.

18. In the light of the aforesaid, the impugned orders passed by the Tribunal cannot be sustained. The question stands answered accordingly.

19. The impugned orders dated 26.11.2008 and 22.06.2009 are hereby quashed and set aside. Appeal No. C/381/2008 as well as Appeal No. C/495/2008 respectively, are restored to the file of the Tribunal for taking a fresh decision by a speaking order in accordance with law after affording due opportunity to the parties.

20. The appeals are allowed in the above terms with no orders as to costs.