(2004) 09 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No''s. 3150, 3154, 3315 and 3317

Jay Bharat Steel Co. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Constitution of India, 1950 — Article 227
Customs Act, 1962 — Section 129B(2)
Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 — Rule 20

Citation : (2005) 184 ELT 20 : (2004) 3 GLR 2668

Hon'ble Judges : Sharad D. Dave, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Megha Jani in Special Civil application Nos. 3315 and 3317 of 2004, for the Appellant; Dharmishta Raval, for Respondent Nos. 1 to 4 in Special Civil Application Nos. 3315 and 3317 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—All these seven writ petitions are disposed of by this common order as they are arising out of common order dated 12.02.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Block No.2, New Delhi (for short "the appellate Tribunal"). For deciding all these matters, we have preferred to narrate the facts of main Special Civil Application no.3315 of 2004 which are as under :

2. The petitioner Jay Bharat Steel Company of Special Civil Application No. 3315 of 2004 is a partnership firm engaged in activity of ship breaking. The Assistant Commissioner, Customs passed orders finalising the assessment of the disputed bills of entry and confirmed the differential duties. It is averred in para 3 of the petition that in a number of identical cases of ship breakers, the orders of assessment were challenged by ship breakers in appeal nos. 1575 to 2203 of 1999 before the Commissioner of Central Excise and Customs (Appeals), Ahmedabad - respondent no.3 who, by his order dated 21.10.1999, set aside all

the orders of assessment on the ground that the adjudicating authority had not given any opportunity to the ship breakers to present their case and accordingly the matter was remanded to the authority for its denovo consideration after extending an opportunity of hearing to the parties (Annexure `B''). On remand, the Dy.Commissioner (Customs) by the order dated 23.03.2001 confirmed the final assessment orders passed by the Assistant Commissioner, Bhavnagar (Annexure `C''). It was challenged in appeal no.130 to 138 before the Commissioner (Appeals), Central Excise and Customs, Ahmedabad with stay application no. 260 to 268 of 2001 wherein the Commissioner (Appeals) passed an order dated 19.09.2001 directing the petitioner to deposit 90% of the amount of demand within one month and directed the Assistant Commissioner/Deputy Commissioner to provide the appellants all the material evidence and directed the petitioner to file reply thereafter (Annexure `D''). The petitioner, thereafter, filed modification application which was rejected by Commissioner (Appeals) by his common order dated 18.03.2002 (Annexure `E''). Thereafter, a letter dated 27.03.2002 was addressed by the petitioner to the Commissioner (Appeals) requesting him to take up his matter for final hearing without insisting for pre-deposit (Annexure `F'').

3. However, the Commissioner (Appeals) dismissed the appeals of the petitioner and others for non-deposit of the amount as ordered in stay applications on 14.06.2002 (Annexure `G'').

4. Aggrieved by the aforesaid order at Annexure `G'' passed by the Commissioner (Appeals) dismissing the appeals, the petitioner and others approached the learned Appellate Tribunal by way of separate appeals wherein the appellate Tribunal stayed the order of recovery on condition that the petitioner shall deposit a sum of Rs.4,50,000/- within a period of four weeks by its order dated 13.11.2002 (Annexure H).

5. Meanwhile, Shriji Traders challenged the order passed by the Dy.Commissioner (Customs) passed on 30.03.2001 finalising the assessment before this Court by way of Special Civil Application No. 6299 of 2002 and the matter was remanded to the Commissioner (Appeals) with a direction to afford opportunity of rebutting the evidence relied upon by the department against the said petitioner (Annexure I).

6. It is the case of the petitioner in this petition that in view of the aforesaid judgment and order passed by this Court allowing Special Civil Application of Shriji Traders on 13.08.2002, its advocate Shri A.D.Maru withdrew the appeal on his own without consulting the petitioner as he was of the opinion that the Dy.Commisssioner, Bhavnagar will necessarily consider his case and pass fresh order after extending opportunity of hearing to the petitioner. Accordingly, the learned appellate Tribunal by its order dated 14.02.2003 (Annexure `J'') granted permission to the petitioner to withdraw its appeal.

7. It is also the case of the petitioner that after withdrawing the appeal, by its

letter dated 12.03.03 requested the Dy.Commissioner (Customs) to consider the matter denovo (Annexure `K'' collectively). However, request of the petitioner came to be rejected by the Assistant Commissioner (Customs) on 22.07.03 and payment of duty was demanded from it (Annexure `L''). Thereupon the petitioner had once again requested by its letter dated 30.07.2003 to reconsider the decision in light of the order passed by this Court on 13.08.2002 in Special Civil Application No. 6299 of 2002 (Annexure`M'') but his request was once again rejected by the Assistant Commissioner (Customs) on 17.10.2003 (Annexure `N''). Thereupon, the petitioner addressed a letter dated 28.10.2003 to the Assistant Commissioner (Customs) (Annexure `O'') but his request was rejected by Assistant Commissioner (Customs) on 07.11.2003 (Annexure `P'') on the ground that since no order was passed in case of the petitioner by the High Court, therefore, request of the petitioner to have denovo proceedings by the appellate authority cannot be considered.

8. Being aggrieved by the aforesaid order at Annexure `P'', the petitioner earlier approached this Court by way of Special Civil Application No. 15980 of 2003 and prayed for quashing and setting aside the impugned order dated 20.03.2001 passed by the Dy.Commissioner (Customs) and commanding the Dy.Commissioner (Customs), Bhavnagar to decide the issue regarding assessment of duty denovo after giving necessary documents to the petitioner. The said petition was disposed of by the Division Bench on 19.11.2003 as withdrawn by a brief order (Annexure `R'') which is as under :

"Senior advocate Shri Mihir Thakore, on instructions received from the petitioners, seeks permission to withdraw the petitions so as to approach the CEGAT with an appropriate application in each case. We hope that the applications, which might be made by the petitioners shall be entertained on merits and shall not be rejected only on the grounds of delay.

Permission for withdrawal of the petitions is granted. The petitions stand disposed of as withdrawn."

9. Thereafter, the petitioner approached the Appellate Tribunal by way of Miscellaneous application and prayed for recalling the order (Annexure `S'') along with affidavit of its advocate Shri Maru (Annexure `T''). Cross-objections were filed by the representative of the department before the Tribunal in the said application at (Annexure`U''). After hearing the learned counsel for the appellant-petitioner and the representative of the department, the appellate Tribunal by its impugned common order dated 12.02.2004 (Annexure `V'') dismissed all the applications. Aggrieved by the same, the petitioner and other six petitioners have filed in all seven petitions before this Court.

10. Learned Senior advocate Shri Mihir Thakore for the petitioners in all these petitions submitted that their advocate Shri A.D.Maru under the wrong belief made a statement before the Appellate Tribunal and withdrew all the seven appeals as he was of the opinion that once the identical Special Civil Application

filed by another ship breaker was allowed, then the authority concerned will consider their cases denovo and decide the same after extending opportunity of hearing. He submitted that the whole order of withdrawal was passed by the appellate Tribunal on such mistaken statements made by advocate Shri A.D.Maru. Therefore, the learned appellate Tribunal ought to have exercised its jurisdiction in favour of all the petitioners u/s 129B(2) of the Customs Act, 1962 by recalling its earlier order. Relying on the judgment of the Hon''ble Supreme Court in case of B.S. Bajwa and Another Vs. State of Punjab and Others, Mr.Thakore submitted that because of the mistake of the advocate, the petitioners should not be made to suffer.

11. At the outset, we may state that the judgment of the Hon''ble Apex Court in case of B.S.Bajwa (supra) has no application whatsoever to the facts of this case, therefore, we have refrained ourselves from dealing with the same in detail. Suffice it to say that the said judgment was delivered in a service matter wherein the order was passed by the High Court on the concession of the Additional Advocate General. We fail to appreciate that how the judgment of the Apex Court will have any application to the present case wherein the learned advocate Shri Maru had withdrawn all the appeals without reserving any liberty. At this stage, we would like to reproduce the order dated 14.02.2003 passed by the learned appellate Tribunal dismissing all the appeals as withdrawn on the request of Mr.Maru to grant him permission to withdraw the appeal, which reads as under :

" C/Misc./472,473,471,474/2002-B in & C/Appeal No.410-11, 414-415/2002-B/2002-B (Arising out of Order-in-Appeal No.703 to 715/2002 (296 to 308-CCP)Cus/Commr(A)/Ahd. dated 13.6.2002, 847 to 852/2002 (422 to 427-CCP)Cus/Commr(A)/Ahd. dated 14.6.2002, 725 to 729/2002 (318 to 322-CCP)Cus/Commr(A)/Ahd. dated 13.6.2002, & 874 & 882/2002 (449-457-CCP)Cus/Commr(A)/Ahd. dated 14.6.2002 all passed by the Commissioner (Appeals), Customs & Central Excise, Ahmedabad) M/s Ispat Traders, M/s J.M.Industries, M/s Crown Steel Company, M/s Jay Bharat Steel Co. Appellants Reptd.By Shri A.D.Maru, Advocate.

V e r s u s

C.C., Ahmedabad Respondent

Reptd.by Sh.R.D.Negi,SDR

Coram : Shri V.K.Agrawal, Member (T),

Shri P.S.Bajaj, Member (J).

Final order No.105-108/03-B dated 14.2.2003

Per V.K.Agrawal :

When the matters were called Shri A.D.Maru, learned Advocate, requested for permission to withdraw the appeals. The request is acceded to. Accordingly all the appeals are dismissed as withdrawn."

12. From the above order, it appears that nowhere, Shri Maru had stated that he wanted to withdraw the appeals in view of the judgment of the Gujarat High Court for approaching the concerned authority for denovo proceedings. On a simple statement made by advocate Shri Maru to grant him permission to withdraw the appeals, without reserving any liberty to approach the Tribunal in case of difficulty, the matters were dismissed as withdrawn. It is a different matter that the authority refused to reopen the case of the petitioners and rightly so. Thereafter, the petitioners approached this Court by way of writ petitions and after withdrawing their writ petitions they approached the learned appellate Tribunal filed the applications for recalling the order regarding withdrawal of the appeal and/or for rectification of mistake.

It clearly appears from the impugned common order dated 12.02.2004 passed by the learned Tribunal at Annexure `V'' that such applications can be filed before the Tribunal under Rule 20 of the CEGAT procedure rules for recalling the order or restoring the appeal provided the appeal or appeals were dismissed for default and the appellants appear before the Tribunal afterwards and satisfy the Tribunal about the sufficient cause. That is not the case here. In the instant case, there was no mistake on the part of the learned Tribunal while granting permission to withdraw the appeals to learned advocate for the appellants-petitioners. When there was no mistake apparent on the face of the record committed by the Tribunal while passing the impugned order at Annexure `R'' then there was no question of exercising its powers u/s 129B(2) of the Customs Act. Therefore, in our considered opinion, the learned Tribunal has rightly rejected all the applications filed before it by common order dated 12.02.2004.

13. We are conscious of the fact that the petitioners are made to suffer because of their advocate Shri Maru for which they can take any suitable action against their advocate but on that ground this court cannot exercise its jurisdiction under Article 227 of the Constitution when the appellate Tribunal had not committed any error much less jurisdictional error while dismissing all the applications by its impugned common order dated 12.02.2004.

14. Repeatedly, it was tried to be submitted by Mr.Thakore that for no fault of them, the petitioners should not be made to suffer as in the instant case, there was a fault of their advocate Shri A.D.Maru and prayed for quashing and setting aside the impugned order passed by the Tribunal at Annexure `V'' to decide the matter in accordance with law by entertaining their appeal on merits. If the suit is required to be filed within a particular period of limitation and the papers of the case are handed over to the advocate and advocate does not file the suit within period of limitation, then no court had jurisdiction to entertain the suit after the expiry of the period of limitation, even though the plaintiff was vigilant and made to suffer because of the mistake or fault of the advocate. Similarly, when there is an express provision under the CEGAT procedure rules for rectification of the order which can be rectified only on certain grounds, then this court cannot set aside the order passed by the Tribunal when no error committed

by it. At the cost of repetition, we may state that if at all the petitioners are aggrieved, they may sue their advocate or take appropriate steps against their advocate, but there is no question of exercising the discretionary jurisdiction in favour of the petitioners in all these petitions.

15. In view of the above discussion, all these petitions fail and are hereby dismissed. Notice discharged. No order as to costs.