

(2014) 06 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 2330 of 2006

Kajal Kumar Paul

APPELLANT

Vs

The Customs, Excise and Service Tax Appellate Tribunal

RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 06 GAU CK 0004

Hon'ble Judges : Abhay Manohar Sapre, C.J.; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : B. Kalita, Advocate for the Appellant; R. Dubey and Mr. D.C. Chakraborty, Advocate for the Respondent

Judgement

Abhay Manohar Sapre, C.J.—By filing this writ petition under Article 226/227 of the Constitution of India, the assessee seeks to challenge the order dated 21.03.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (for short hereinafter called "The Tribunal") in Misc. Application (ROA) No. 545/2005 (CSM-163/2004).

2. By impugned order, the Tribunal allowed the application filed by the Revenue (Commissioner of Central Excise) for recalling the order dated 23.09.2005 passed in Appeal No. CSM-163/04 by the Tribunal by which it had dismissed the Revenue's appeal on technical ground without going into the merits of case and while recalling the said order, has fixed the Revenue's appeal for hearing on merits.

3. So the short question, which arises for consideration in this writ petition is whether Tribunal was justified in allowing the application of the Revenue for recalling the order dated 23.9.2005?

4. Facts of the case are simple and short.

5. The Commissioner of Central Excise and Customs had filed one appeal against the writ petitioner (assessee) bearing No. CSM-163/04 before the Tribunal

against the order dated 30.07.2004 passed by Commissioner (Appeals), Customs and Central Excise, Guwahati in case No. 18/CUS(A)/GHT/04 under the provisions of the Customs Act. This appeal was dismissed by the Tribunal on a technical ground without going into its merits by order dated 23.9.05. The relevant and operative portion of order dated 23.9.05 reads as under:

In view of the above, learned Consultant submits that the appeal filed by the Revenue may be dismissed.

3. I have heard both sides. Since the learned J.D.R. admits that the authorization filed by the Commissioner in this case, is not proper, I dismiss the appeal.

6. The Commissioner of Excise and Customs being aggrieved by the dismissal of its appeal, filed one application before the Tribunal and sought recall/review/rectification of the aforementioned order. It was alleged that so-called defects on which the Tribunal had dismissed the appeal have since been complied with and hence the appeal be restored to its file for hearing on the merits. It may be pertinent to state that writ petitioner did not oppose the application of Revenue before the Tribunal.

7. The Tribunal by impugned order allowed the application. It was held that since the appellant has now ensured compliance by filing the proper authorization in appeal and hence, in the interest of justice, the order dated 23.9.2005 deserves to be recalled by restoring the Revenue's appeal to its file for hearing on merits. The assessee being aggrieved, filed this writ petition questioning legality and correctness of this order.

8. Heard Mr. B Kalita, learned counsel for the petitioner and Mr. R Dubey and Mr. DC Chakraborty, learned counsel for the respondents.

9. Learned Counsel for the writ petitioner, while assailing the impugned order, contended that Tribunal had no jurisdiction to entertain the application filed by the Revenue for recalling the order dated 23.09.05 by which the Revenue's appeal was dismissed because according to him, the appeal was dismissed by the Tribunal in appellant's presence through their representative. In other words, the submission was that since the dismissal of appeal was in the presence of appellants' representative, hence the application for restoration of appeal was not maintainable in such cases of dismissal of appeal.

10. Learned counsel for the respondents, however, supported the impugned order.

11. Having heard learned counsel for parties and on perusal of the record of the case, we are inclined to dismiss the writ petition as in our view, no case is made out to interfere in the impugned order.

12. Indeed, this case reminds us of the memorable observations of Learned Judge Vivian Bose, J made in a case reported in [Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . While dealing with applicability of procedural laws to the case and how it should be applied by exercising the judicial discretion

by the courts, the learned Judge, in his distinctive style of writing, held as under:-

A code of procedure is a body of law designed to facilitate justice and further its ends, and should not be treated as an enactment providing for punishments and penalties. The laws of procedure are grounded on the principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Subject to clearly defined exceptions the laws of procedure should be construed wherever reasonably possible, in the light of that principle. The court is invested with the widest possible discretion to see that justice is done to all concerned. No hard and fast rule can be laid down; and the court in the exercise of its judicial discretion will have, in a given case, to determine what consequences are to follow from non-appearance. An order awarding costs, or an adjournment, or the consideration of the written statement and the framing of the issues on the spot, can in some cases meet the ends of justice. In other cases, more drastic action may be called for.

13. Applying the aforesaid principle of law to the facts of the case in letter and spirit, we are of the view that the argument of the learned counsel for the writ petitioner beside being too technical in nature and based on procedural errors, though may look attractive, eventually deserves rejection.

14. In our considered opinion, this court has wide jurisdiction to examine the legality and correctness of entire proceedings pending before the Tribunals. Our power of superintendence under Article 227 over the proceedings pending before Subordinate Courts and Tribunal are writ large and wide enough to correct any error in such proceedings once it is brought to the notice of High Court in the writ petition. Such error can always be set at right to enable the Tribunal to decide the main proceedings in accordance with law.

15. In other words, even if Revenue had directly questioned the legality and correctness of the order 23.9.2005 by which their appeal was dismissed in the writ petition under Article 227 of Constitution of India, instead of filing an application before Tribunal to recall such order, this court would have had no hesitation in quashing the order 23.9.2005 in the light of the law laid down by the Supreme Court in Sangram Singh's case (supra) together with powers conferred by Rule 11(2) of Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 (for short called "The Rules").

16. It is not in dispute that appeal was dismissed by the Tribunal presumably on the ground that no proper authorization had been filed by the Commissioner in support of the appeal. The Tribunal having noticed such defect, erred in proceeding to dismiss the appeal on such ground by ignoring its powers available under Rule 11(2) *ibid*. In all fairness, therefore, the Tribunal should have afforded an opportunity to the appellant (Revenue) to rectify the defects by taking recourse to the powers available to it under Rule 11(2) of the Rules by

extending the time. It was not disputed that the Revenue did rectify the defect though after dismissal of appeal. The Tribunal, therefore, rightly entertained the application and restored the appeal for its hearing on merits. Such order could be passed by the Tribunal in its rectification jurisdiction because the order contained an error apparent on its face, it having been passed contrary to Rule 11(2) *ibid*. It may be mentioned that the writ petitioner did not choose to oppose the application before the Tribunal and questioned its legality for the first time in writ petition.

17. Be that as it may, in our considered opinion, substantial justice was done to parties because the Revenue's appeal will now be heard on the merits. So far as writ petitioner is concerned, no prejudice is caused to him because no adverse order is passed against them. He will get full opportunity to oppose the Revenue's appeal on merits. If allowed, the writ petitioner will be at liberty to challenge such order in appeal to this court and if dismissed, Revenue will be at liberty to pursue the matter in appeal.

18. In the light of foregoing discussion, we find no merit in the writ petition. It fails and is accordingly dismissed. However, we request the Tribunal to decide the Revenue's appeal on merits within six months strictly in accordance with law after affording an opportunity to Revenue and writ petitioner.

19. Before parting with the case, we consider it apposite to state that we have not applied our mind to the merits of the case and hence, the Tribunal would decide the appeal on merits strictly in accordance with law without being influenced by our observations, which we have refrained from making on merits.

20. A copy of this order be filed before the Tribunal within 2 weeks from the date of this order by the parties.

21. No cost.