(2005) 12 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 16276 of 2005

Micro Forge (India) Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Citation : (2005) 12 GUJ CK 0022

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

Bench : Division Bench

Advocate : N.K. Pahwa for Thakkar Assoc. for Petitioner 1, for the Appellant; Jitendra Malkan, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—Mr. Malkan prays for time to tender affidavit-in-reply. The request is rejected taking into consideration the facts of the case and the view that the court is inclined to take.

2. Heard Mr. N.K.Pahwa, learned advocate for the petitioner, and Mr. Malkan for the respondents. RULE, returnable today. Mr. Malkan waives service. The petition is taken up for final hearing and disposal today considering the facts and the nature of controversy.

3. This petition challenges order dated 15th July, 2004 made by Government of India, Ministry of Finance, (Department of Revenue) (the Authority), in revision application filed by Commissioner of Customs, Kandla.

4. The petitioner had claimed duty draw back and the same came to be rejected by the Dy. Commissioner, Customs House, Kandla by passing an Order-in-Original dated 20th June, 2003. Against the same the petitioner preferred an appeal before the Commissioner (Appeals), who vide order dated 15th December, 2003 allowed the appeal. Against the aforesaid order Commissioner of Customs, Kandla preferred revision application before Government of India and the same came to be allowed vide order dated 15th July, 2004.

5. As can be seen from the impugned order (Annexure-A) Paragraph No. 2 of the order narrates brief facts of the case, while Paragraph No. 3 records that the Commissioner (Appeals) had allowed the appeals filed by the petitioner and one another. Paragraph No. 4 of the impugned order records three grounds on which the revision application has been filed before the Authority, while Paragraph No. 5 records granting of personal hearing to both the sides. Paragraph No. 6 states Government has carefully considered the submissions made. Thereafter, Paragraph No. 7 records contentions raised on behalf of the applicant-Commissioner. Paragraph No. 8 reproduces relevant entries issued from time to time vide different notifications. This is followed by Paragraph Nos. 9 and 10 which reiterate what is stated in the entry and clarification issued by Joint Secretary (DBK) vide letter dated 8th April, 2003. Paragraph No. 11 records the conclusion of the Authority and in Paragraph No. 12 it is stated that SGovernment finds force in the submission of the applicant-commissioner and the impugned order in appeal is accordingly set aside.

6. The respondent Authority is exercising quasi-judicial powers when it is called upon to discharge its role as a revisional authority. The jurisdiction has to be exercised in a manner which is fair and just. In the entire order it is not possible to locate even one sentence which would give an indication as to what were the submissions made on behalf of the petitioner-assessee before the Authority, let alone deal with the same. Similarly, neither does the order contain any reference to what were the findings of the Commissioner (Appeals) allowing claim of the petitioner and why the same were not acceptable to the revisional Authority. If one may say, this is not an order, being without reasons, but an apology for the same. In the case of State of West Bengal Vs. Atul Krishna Shaw and Another, the Apex Court has vey succinctly stated ''... Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice.

7. The position in law is well settled. An authority/forum which is called upon to deal with an order of a subordinate authority/forum in an appeal or revision is required to, in the first instance, record, howsoever briefly, the relevant facts; secondly, the contentions of both the sides; thirdly, discuss the evidence pro and contra, before the authority/forum; and lastly, give reasons for accepting or rejecting the case of one or the other side. This would also take within its sweep the reasons to be assigned by an authority/forum for disagreeing with the subordinate authority/forum by recording specific reasons for disagreement, if any. The impugned order dated 15th July, 2004 (Annexure-A) does nothing of the kind and cannot be permitted to stand and operate.

8. In the circumstances, order No. 334-335/2004 dated 15th July, 2004 (Annexure-A) made by Government of India in revision application filed by

Commissioner of Customs, Kandla is hereby quashed and set aside.

9. The revision application filed by the Commissioner is restored to file and the respondent Authority shall post the same for hearing in due course. The revision application shall be decided by the respondent Authority after giving full and adequate opportunity of hearing to both the sides. Needless to state that the respondent Authority shall thereupon pass a reasoned order.

10. Rule is made absolute. The petition is allowed accordingly. Respondents to pay the costs quantified at Rs. 5,000/- (Rupees Five thousand).

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