(2014) 02 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 50 of 2012 (O&M)

Polymer Papers Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC, 35G

Citation : (2015) 315 ELT 505 : (2014) 48 GST 248 : (2014) 26 GSTR 113

Hon'ble Judges : Anita Chaudhary, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocate for the Appellant; Ranjana Shahi, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the assessee-appellant u/s 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated August 28, 2012, annexure A-7 passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, "the Tribunal") in Appeal No. E/2711/2007-SM, (Polymer Papers Ltd. v. CCE [2014] 26 GSTR 114 (Trib.-Delhi)) claiming following substantial questions of law:

(a) Whether the learned Tribunal has passed non-speaking and cryptic impugned order?

(b) Whether demand can be confirmed merely on the ground of wrong reporting in balance-sheet?

(c) Whether duty can be demanded in the absence of any evidence of clandestine removal of goods?

(d) Whether demand is barred by limitation?

(e) Whether imposition of 100 per cent. penalty is justified?

(f) Whether the impugned order is perverse and contrary to the record?

A few facts relevant for the decision of the controversy involved, as narrated in the appeal may be noticed. The assessee is a limited company having its business premises at Faridabad. It is engaged in the manufacture of filters falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. It is registered with the respondent-Department and is regularly paying duty on goods manufactured and cleared from the factory. In the month of March, 2001, the assessee cleared one consignment of filters for export. The export was made vide export invoice No. 127, dated March 28, 2001 and it was duty accounted in bond furnished with the respondent. The assessee prepared AR 4 bearing No. 84/2001, which was duly signed by the inspector and the superintendent of Central Excise. The goods were sealed in the presence of excise officers. The appellant submitted proof of export with the office of the Deputy Commissioner, Central Excise Division 1. On August 13/14th, 2001, audit party of the respondent Commissionerate conducted audit of the appellant''s accounts and returns for the period 2000-01. During the course of audit of the accounts, the officers noticed that the appellant had shown a closing stock of 21,354 number of filters whereas in the balance-sheet in their RT 12 returns for the month of March, 2001, they had shown a closing balance of 11,014 number of filters. The respondent opined that the appellant had suppressed production of 10,340 number of filters and cleared the same without payment of duty. The respondent assessed value of 10,340 numbers of filters at Rs. 11,22,667 and calculated demand of duty amounting to Rs. 1,79,563. Accordingly a show-cause notice dated October 26, 2004, annexure A-3 was issued to the assessee to show cause as to why Central excise duty along with penalty and interest be not imposed. The assessee filed a reply dated November 3, 2004 to the notice, inter alia, submitting that difference in figure shown in the return and balance-sheet was due to wrong posting of balance of RG 1 by accounting section. The goods exported vide invoice dated March 28, 2001 had not been entered in RG 1 at the time of reporting of closing balance to account section. Resultantly, the goods exported vide invoice No. 127 were not considered in balance-sheet. The adjudicating authority vide order dated August 31, 2006 confirmed the duty demand in the show-cause notice along with interest and 100 per cent. penalty u/s 11AC of the Act. Aggrieved by the order, the appellant filed an appeal before the Commissioner (Appeals). The assessee also filed written submissions at the time of hearing. Vide order dated July 26, 2007, annexure A-5, the Commissioner (Appeals) dismissed the appeal. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated August 28, 2012, annexure A-7, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

2. The learned counsel for the appellant-assessee submitted that the order dated August 28, 2012, annexure A-7 passed by the Tribunal is a non-speaking order. The Tribunal was required to deal with all factual and legal issues involved and dismissing the appeal of the assessee without any reasons was against the principles of natural justice.

3. The learned counsel for the respondent-Revenue on the other hand supported

the order passed by the Tribunal.

4. After hearing learned counsel for the parties, we find force in the submissions of learned counsel for the assessee-appellant.

5. The hon''ble apex court in Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, while dealing with the requirement of passing a reasoned order by an authority whether administrative, quasi-judicial or judicial, had laid down as under:

51. Summarizing the above discussion, this court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants'' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [1987] 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [1994] 19 EHRR 553, at 562 paragraph 29 and Anya v. University of Oxford [2001] EWCA Civ 405, wherein the court referred to article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

6. It would be apposite to refer to the order of the Tribunal dated August 28, 2012, annexure A-7 which would show that the Tribunal has in paragraph 4 thereof dismissed the appeal of the assessee without giving any cogent and convincing reasons. It reads thus (page 114 of 26 GSTR):

By paragraph 5 of the first appellate order, there is a concurrent finding of escapement of recording of the aforesaid quantity of filters which cause prejudice to the Revenue. Once no satisfactory explanation came to record as to why the goods escaped accounting that makes no difference in law whether it was sold in domestic market or sent for export. For no further explanation today to explain the reason why the aforesaid quantity remained unexplained before the audit, adjudication or at first appellate stage, there is no scope to intervene to the appellate order. Accordingly, the appeal is dismissed.

7. Therefore, the order dated August 28, 2012, does not satisfy the requirements as enunciated by the apex court noticed hereinabove. Thus, the substantial questions of law are answered accordingly. Consequently, after setting aside the order of the Tribunal dated August 28, 2012, annexure A-7, which is passed in violation of the principles of natural justice as per the law laid down by the apex court as mentioned above, the matter is remanded to the Tribunal to decide afresh after affording an opportunity of hearing to the parties in accordance with law. As a result, the appeal is disposed of.