A CHANDNA IMPEX PVT. LIMITED

v.

COMMISSIONER OF CUSTOMS, NEW DELHI

(Civil Appeal No. 1383 of 2010)

B JULY 06, 2011

[D.K. JAIN AND H.L. DATTU, JJ.]

Customs Act, 1962 – s.130 – Statutory appeal against the order of Customs Appellate Tribunal – Held: While C *dealing with an appeal under s.130, the High Court must examine each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and give its reasons for holding that question is not a substantial question of law.*

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The appellant, a body corporate, are importers of certain goods viz. plywood, MDF laminated boards and veneers etc. It was alleged that certain goods imported by the appellant had been under-valued. A show cause E **notice was issued to the appellant by the Directorate of Revenue Intelligence (DRI) under Section 124 of the Customs Act, 1962. Subsequently, the Commissioner of Customs (Import & General), ordered the confiscation of goods under Section 111 of the Act; confirmed demand** F **under Section 28AB of the Act, and also levied a penalty under Section 114A of the Act on the appellant.**

The appellant preferred an appeal to the Customs Excise and Service Tax Appellate Tribunal, which was dismissed. Thereafter the appellant filed an appeal under G **Section 130 of the Act before the High Court raising as many as 7 questions, stated to be substantial questions of law, for the opinion of the High Court. However, the High Court dismissed the appeal by a short order holding that no substantial question of law arose from the order**

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of the Appellate Tribunal, for its consideration.

In the instant appeal filed by appellant under Section 130-E of the Act, the appellant, while assailing the order passed by the High Court, urged that the High Court had committed a manifest error of law in dismissing the Statutory appeal *in limine* by a non-speaking order and therefore, the case deserves to be remitted back to the High Court for decision on merits of the questions proposed in the appeal. The appellant contended that all the questions, raised by the appellant in their appeal were substantial questions of law and therefore, the High Court ought to have examined each of the questions so framed instead of dismissing the appeal by a cryptic order, by merely observing that the Tribunal had dealt with each and every argument urged on behalf of the appellant and that they were in agreement with the reasons recorded by the Tribunal. Relying on a recent decision of this Court in *Commissioner of Customs v. Sayed Ali*, the appellant asserted that in any event one of the questions: "whether the Addl. Director General in DRI is "proper officer" within the meaning of section 28 of the Act" is a substantial question of law, which should have been examined by the High Court.

Partly allowing the appeal, the Court

HELD:1.1. There is some merit in the submission of the appellant that while dealing with an appeal under Section 130 of the Customs Act, 1962, the High Court should have examined each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and given its reasons for holding that the question is not a substantial question of law. Every litigant, who approaches the court for relief is entitled to know the reason for acceptance or rejection of his prayer,

A particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected B to examination at the higher forums. [Para 8] [1110-A-D]

1.2. It was expected of the High Court to record some reason, at least briefly, in support of its opinion that the order of the Tribunal did not give rise to any substantial question of law. In this behalf, the language of Section C 130 of the Act is also significant. It contemplates that on filing of an appeal under the said Section either by the Commissioner of Customs or the other party aggrieved, the High Court has to record its satisfaction as to whether or not "the case involves a substantial question of law". D In the instant case, it is clear from the order of the High Court that it does not meet the requirement of stating reasons for coming to the conclusion that the order of the Tribunal did not give rise to any substantial question of law including the question "whether the Addl. Director E General in DRI is "proper officer" within the meaning of section 28 of the Act". [Para 8] [1110-G-H; 1111-A-B]

State of Orissa v. Dhaniram Luhar (2004) 5 SCC 568: 2004 (2) SCR 68 – relied on.

F 2. The appellant had framed in their appeal before the High Court, as many as seven questions as substantial questions of law. It is manifest from a bare reading of the six questions, that none of the questions can be said to be a substantial question of law, in as much as they do G not proceed on the premise that the decision of the Tribunal on the issues raised therein is perverse, in the sense that the findings of fact, arrived at by the Tribunal are not based on the material placed before it or that the relevant material has been ignored by it. It is trite law that

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a finding of fact may give rise to a substantial question of law, *inter-alia*, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread. [Para 9] [1111-D-G]

West Bengal Electricity Regulatory Commission v. CESC LTD. **(2002) 8 SCC 715;** *Metroark Ltd. v. Commissioner of Central Excise, Calcutta* **(2004) 12 SCC 505;** *Commissioner of Customs (Preventive) v. Vijay Dasharath Patel* **(2007) 4 SCC 118: 2007 (3) SCR 738;** *Narendra Gopal Vidyarthi v. Rajat Vidyarthi* **(2009) 3 SCC 287: 2008 (16) SCR 961 and** *Hero Vinoth (Minor) v. Seshammal* **(2006) 5 SCC 545: 2006 (2) Suppl. SCR 79 – relied on.**

Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning & Manufacturing Co. Ltd. **AIR 1962 SC 1314: 1962 Suppl. SCR 549 – referred to.**

3. The order of the Tribunal, wherein the material referred to by the Commissioner in his order has been extensively analysed, does not give rise to the five questions, proposed by the appellant in this appeal, as questions of law, much less substantial questions of law. None of the said questions seek to challenge the findings of the Tribunal or that of the Commissioner, on the issue raised in the questions, as perverse. It is not within the domain of the High Court, in appeal under Section 130 of the Act, to investigate the grounds on which the findings were arrived at by the Tribunal, the final court of fact. In that view of the matter, the Court did not consider it expedient to remit the case to the High Court, in so far as these five questions are concerned. [Para 11] [1112-F-G; 1113-A]

A **4. The issue relating to the jurisdiction of the DRI to issue a show cause notice under Section 28 of the Act as a "proper officer" is a substantial question of law, and requires to be examined afresh particularly in light of the decision of this Court in *Sayed Ali & Anr.*, where the** B **question as to who is a "proper officer" in terms of Section 2(34) of the Act has been examined. [Para 13] [1113-D-F]**

Commissioner of Customs v. Sayed Ali & Anr. **(2011) 3 SCC 537 – referred to.**

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Case Law Reference:

(2011) 3 SCC 537	**referred to**	**Para 6, 13, 14**
2004 (2) SCR 68	**relied on**	**Para 8**
D **(2002) 8 SCC 715**	**relied on**	**Para 9**
(2004) 12 SCC 505	**relied on**	**Para 9**
2007 (3) SCR 738	**relied on**	**Para 9**
2008 (16) SCR 961	**relied on**	**Para 9**
E		
2006 (2) Suppl. SCR 79	**relied on**	**Para 10**
1962 Suppl. SCR 549	**referred to**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. F 1383 of 2010.

From the Judgment & Order dated 2.9.2009 of the High Court of Delhi at New Delhi in C.U.S.A.A. No.7 of 2009.

A.K. Sanghi, Bindu Saxena, Aparajita Swarup, Shailendra G Swarup for the Appellant.

Bishwajit Bhattacharya, ASG, Harish Chander, T.A. Khan, B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

H **D.K. JAIN, J.** 1. Challenge in this appeal under Section

130-E of the Customs Act, 1962 (for short "the Act"), by the importer, is to the final order dated 2nd September, 2009, passed by the High Court of Delhi at New Delhi in CUSAA No. 7/2009. By the impugned order the High Court has dismissed appellant's appeal under Section 130 of the Act on the ground that no substantial question of law arises from the order of the Customs Excise and Service Tax Appellate Tribunal (for short "the Tribunal") in appeal Nos.C/920-22/2005, for its consideration.

2. To appreciate the controversy involved a brief reference to the facts, as found by the Tribunal, would be necessary. These are:

The appellant, a body corporate, is engaged in the business of import of plywood, inlays, MDF laminated boards and veneer sheets etc. On 22nd May, 2000, one of the directors of the appellant, namely, Rakesh Chandna, was apprehended by the officers of the Customs department at Calcutta Airport. He was found in possession of US $45,000/- and Indian currency of Rs. 9,000/-, alongwith several incriminating documents, which fuelled further follow up action by the Directorate of Revenue Intelligence (for short "the DRI"). On 23rd May, 2000, in search operations, certain goods were seized from the premises of the appellant, as no documentary evidence was allegedly produced for their legal acquisition. The value of the goods so seized was determined at Rs. 24,26,234/

3. Statements of Rakesh Chandna and one Sanjeev Murgai, Manager of the appellant and also of some other persons were recorded, which revealed that the goods imported by the appellant viz. plywood, MDF boards and veneers etc. had been under-valued. Based on the incriminating documents recovered during the course of investigation, a show cause notice dated 16th May, 2001 was issued to the appellant by the DRI under Section 124 of the Act, detailing the Bills of Entry, wherein there was mis-declaration of quantity/

description and value of the goods. The appellant was asked to show cause as to why duty, amounting to Rs. 3,95,58,229/-, be not recovered; goods be not confiscated and a penalty be not levied on them. Taking into consideration the explanation furnished on behalf of the appellant in their written submissions and the documentary evidence available on record, including the fax messages sent by Rakesh Chandna to his overseas suppliers, the Commissioner of Customs (Import & General), vide order dated 17th September, 2004, ordered the confiscation of goods valued at Rs. 3,04,98,365/- under Section 111 of the Act; confirmed the demand, amounting to Rs. 1,45,85,446/- under Section 28AB of the Act, besides levying a penalty, amounting to Rs. 1,45,85,446/- under Section 114A of the Act on the appellant. The Commissioner also levied personal penalty of '10 lakh and '5 lakh on Rakesh Chandna and Sanjeev Murgai respectively.

4. Being aggrieved, the appellant preferred an appeal to the Tribunal, which was dismissed vide order dated 26th-27th June, 2007.

5. Having failed in their appeal before the Tribunal, as aforestated, the appellant filed an appeal under Section 130 of the Act before the High Court raising as many as 7 questions, stated to be substantial questions of law, for the opinion of the High Court. One of the questions so framed in para 3 of the application was as follows:

> "(a)-Whether the Addl. Director General in Directorate of Revenue Intelligence is "proper officer" within the meaning of section 28 of the Act?"

However, as already stated above, the High Court has dismissed the appeal of the appellant by a short order, which reads thus:

> "We have heard the learned counsel at length and have

also gone through the orders passed by the Tribunal. The arguments before us are the same, as it was raised before the Tribunal. We find from the orders of the Tribunal that each and every argument has been dealt in detail and we agree with the reasons recorded by the Tribunal.

Therefore, we are of the opinion that there is no substantial question of law for our consideration in this case, which is accordingly dismissed."

6. Mr. A.K. Sanghi, learned senior counsel appearing for the appellant, while assailing the order passed by the High Court, strenuously urged that the High Court has committed a manifest error of law in dismissing the Statutory appeal *in limine* by a non-speaking order and therefore, the case deserves to be remitted back to the High Court for decision on merits of the questions proposed in the appeal. Learned counsel argued that all the questions, raised by the appellant in their appeal are substantial questions of law and therefore, the High Court ought to have examined each one of the questions so framed instead of dismissing the appeal by a cryptic order, by merely observing that the Tribunal has dealt with each and every argument urged on behalf of the appellant and they were in agreement with the reasons recorded by the Tribunal. Relying on the recent decision of this Court in *Commissioner of Customs Vs. Sayed Ali & Anr.*[1], the learned counsel asserted that in any event the question extracted in para 5 (supra) is a substantial question of law, which should have been examined by the High Court.

7. *Per contra*, Mr. Bishwajit Bhattacharya, learned Additional Solicitor General of India, submitted that the impugned order deserves to be affirmed as the questions now proposed in this appeal are pure questions of facts. Learned counsel submitted that in so far as the question of jurisdiction of the adjudicating authority is concerned, no such issue has been raised in the present appeal.

1. (2011) 3 SCC 537.

A 8. Having bestowed our anxious consideration on the facts at hand, we are of the opinion that there is some merit in the submission of learned counsel for the appellant that while dealing with an appeal under Section 130 of the Act, the High Court should have examined each question formulated in the B appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and given its reasons for holding that question is not a substantial question of law. It needs to be emphasised that every litigant, who approaches the court for relief is entitled to know the reason C for acceptance or rejection of his prayer, particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be D subjected to examination at the higher forums. In *State of Orissa Vs. Dhaniram Luhar*[2] this Court, while reiterating that "reason is the heart beat of every conclusion and without the same, it becomes lifeless", observed thus :

> "8.....Right to reason is an indispensable part of a sound E judicial system; reasons at least sufficient to indicate an application of mind to the matter before 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 F the order made;....."

It was thus, expected of the High Court to record some reason, at least briefly, in support of its opinion that the order of the Tribunal did not give rise to any substantial question of G law. In this behalf, the language of Section 130 of the Act is also significant. It contemplates that on filing of an appeal under the said Section either by the Commissioner of Customs or the other party aggrieved, the High Court has to record its satisfaction as to whether or not "the case involves a substantial

H 2. (2004) 5 SCC 568.

question of law". In the instant case, it is clear from the afore-extracted order of the High Court that it does not meet the requirement of stating reasons for coming to the conclusion that the order of the Tribunal did not give rise to any substantial question of law including the question extracted in para 5 above. Nevertheless, the next question for consideration is whether, having regard to the nature of the issues raised by the appellant in their appeal before the Tribunal, would it be worthwhile to remit the case back to the High Court to decide, in the first instance, question as to whether or not the questions proposed by the appellant in their application under Section 130 of the Act are substantial questions of law arising from the order of the Tribunal, before embarking upon their consideration on merits?

9. As stated above, the appellant had framed in their appeal before the High Court, as many as seven questions as substantial questions of law. It is manifest from a bare reading of the six questions, viz. (b) to (g), repeated in this appeal, that none of the questions can be said to be a substantial question of law, in as much as they do not proceed on the premise that the decision of the Tribunal on the issues raised therein is perverse, in the sense that the findings of fact, arrived at by the Tribunal are not based on the material placed before it or that the relevant material has been ignored by it. It is trite law that a finding of fact may give rise to a substantial question of law, *inter-alia*, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread. (Ref: *West Bengal Electricity Regulatory Commission Vs. CESC LTD.*[3];-*Metroark Ltd. Vs. Commissioner of Central Excise, Calcutta*[4];- *Commissioner*

3. (2002) 8 SCC 715.

4. (2004) 12 SCC 505.

A *of Customs (Preventive) Vs. Vijay Dasharath Patel*[5] *& Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi*[6])

10. In *Hero Vinoth (Minor) Vs. Seshammal*[7], referring to the Constitution Bench decision of this Court in *Sir Chunilal* B *V. Mehta & Sons Ltd. Vs. Century Spinning & Manufacturing Co. Ltd.*[8] as also a number of other decisions on the point, this Court culled out three principles for determining whether a question of law raised in a case is substantial. One of the principles so summarised, is :

C "The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong D inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the E evidence, taken as a whole, is not reasonably capable of supporting the finding".

11. Tested on the touchstone of the said legal principle, we are of the opinion that the order of the Tribunal, wherein the material referred to by the Commissioner in his order has been F extensively analysed, does not give rise to the five questions, proposed by the appellant in this appeal, as questions of law, much less substantial questions of law. It would bear repetition that none of the said questions seek to challenge the findings of the Tribunal or that of the Commissioner, on the issue raised G in the questions, as perverse. It is not within the domain of the

5. (2007) 4 SCC 118.

6. (2009) 3 SCC 287.

7. (2006) 5 SCC 545.

H 8. AIR 1962 SC 1314.

High Court, in appeal under Section 130 of the Act, to investigate the grounds on which the findings were arrived at by the Tribunal, the final court of fact. In that view of the matter, we do not consider it expedient to remit the case to the High Court, in so far as these five questions are concerned.

12. However, the question which still survives for consideration is that the appellant having raised the question of jurisdiction of the DRI issuing the show cause notice as also the Commissioner of Customs passing the order of adjudication, in its appeal before the High Court and the High Court having failed to apply its mind as to whether or not it was a substantial question of law, the appellant is barred from raising the said issue before us in this appeal.

13. Having carefully gone through the appeal, in particular ground (f), wherein the jurisdiction of the DRI to issue a show cause notice under Section 28 of the Act as a "proper officer" has been specifically questioned, we are of the view that the said issue is a substantial question of law, and requires to be examined afresh particularly in light of the decision of this Court in *Sayed Ali & Anr.* (supra), where the question as to who is a "proper officer" in terms of Section 2(34) of the Act has been examined.

14. Having so held, again the residual question would be whether, in the first instance, the High Court should be asked to examine the question relating to the jurisdiction of the adjudicating authority or to remit the matter to the Tribunal to reconsider the issue in light of the recent decision of this Court in *Sayed Ali & Anr.* (supra), wherein the decision of the Tribunal in *Konia Trading Co. Vs. Commissioner Of Customs, Jaipur*[9], relied upon by the Tribunal in the present case, has been considered. We are of the opinion that in order to avoid prolongation in the life of lis between the appellant and the revenue, it would be expedient to follow the latter option,

9. (2004) 170 E.L.T. 51 (Tri-LB)

A because ultimately the High Court may also like to have the views of Tribunal on the impact of the said decision of this Court on the facts of the present case, since the said decision, was not available to the Tribunal when the appeal of the appellant was decided by it.

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15. Consequently, the appeal is partly allowed to the extent indicated above and the decision of the Tribunal on the question of the jurisdiction of the adjudicating authority, which stood affirmed by the dismissal of appellant's appeal by the High Court, is set aside. The case is remanded to the Tribunal for C fresh adjudication, confined to the question of jurisdiction of the adjudicating authority to pass order dated 17th September, 2004, after affording adequate opportunity of hearing to both the parties.

D 16. However, in the facts and circumstances of the case, there shall be no order as to costs.

B.B.B. Appeal partly allowed.