

IN THE HIGH COURT OF BOMBAY
Customs Appeal No.29 of 2017
COMMISSIONER OF CUSTOMS (EXPORT)

Vs

ATUL DALPATRAM PANDYA

M S Sanklecha & Sandeep K Shinde, JJ

Dated: July 01, 2019

Appellant Rep by: Mr Pradeep S Jetley

Respondent Rep by: Mr R V Desai, Sr. Adv. with Mr R B Pardeshi i/by KRP Legal

Cus - Whether the order passed by Tribunal after six months from the date of hearing, without dealing with the issues raised, submissions made, is sustainable in law, in view of judgments in cases of *Shivsagar Veg.*

Restaurant - 2008-TIOL-579-HC-MUM-IT, Emco Ltd. - *2014-TIOL-222-HC-MUM-CX* and Gandhar Oil Refinery (I) Ltd.- *2016-TIOL-2366-HC-MUM-CUS* -

On the last occasion the respondent had invited attention to the decision of Supreme Court in *Ram Bali* - In said case, the Supreme Court had held that mere delay in rendering a decision after hearing may in the absence of any prejudice may not make the order vulnerable - The appellant in response had placed reliance upon Tribunal's Order read with Order No.1 of 2010 dated 6th January, 2010 issued by the President of Tribunal to contend that the above may not have been complied with in this case - Thus, drew support of the legal maxim that "Cursus Curie Est Lex Curie" i.e. the practice of the Court is the law of the Court - Revenue on instructions fairly states that the above Order issued by the President has been complied with - Therefore, the Revenue cannot make any grievance about the same - This appeal was expedited as it prima facie appeared that issue would stand covered by decision of this Court in *Shivsagar Veg. Restaurant - 2008-TIOL-579-HC-MUM-IT* - However, this issue would require further consideration as the respondents have relied upon the decision of the Supreme Court in *Ram Bali* - Appeal to await its turn for final disposal: HC

Appeal disposed of

Case laws cited:

Ram Bali v. State of U.P. 2004(10) SCC 598... Para 2

Shivsagar Veg. Restaurant v. Assistant Commissioner of Income Tax - 2008-TIOL-579-HC-MUM-IT... Para 4

JUDGEMENT

On 3rd June, 2019, we passed the following order:

"This appeal under Section 130 of the Customs Act, 1962 (the Act) was admitted on 20th August, 2018 on the following substantial questions of law:

(a) Whether on the orders of the Tribunal setting aside penalty of Rs.1 crore imposed under Section 114(iii) of the Customs Act, 1962 is based on no evidence or on partly relevant and partly relevant evidence and is otherwise perverse and arbitrary?

(b) Whether the order passed by the Tribunal after six months from the date of hearing, without dealing with the issues raised, submissions made, is sustainable in law, in view of the judgments of this Hon'ble Court in the cases of Shivsagar Veg. Restaurant V. Assistant Commissioner of Income Tax, Mumbai 2009 (13) S.T.R. 11 (Bom.) = 2008-TIOL-579-HC-MUM-IT, Emco Ltd. V. Union of India 2015 (319) E.L.T.28 (Bom) = 2014-TIOL-222-HC-MUM-CX, Gandhar Oil Refinery (I) Ltd. Vs. Commissioner of Customs (Import) 2016 (342) E.L.T. 31 (Bom.) = 2016-TIOL-2366-HC-MUM-CUS?"

2. At that time, in our order dated 28th August, 2018, we observed as under:

"It appears that the controversy in this appeal lies within a narrow compass as the impugned order has been passed long after the conclusion of the hearing, contrary to the binding decision of this Court. In the above view, the appeal itself is kept for final hearing on 24th September, 2018 at 3.00 p.m."

3. Today, when the appeal was taken up for hearing, Mr. Jetly, learned Counsel in support of the appeal, while making submissions in respect of question No.2 above, sought to place reliance upon an order No.4 of 2009 dated 17th July, 2009 read with order No.1 of 2010 dated 6th January, 2010 issued by the President, Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). The aforesaid orders of the President of the Tribunal requires that the bench of the Tribunal to pronounce its order/judgment immediately after conclusion of arguments/ submissions. However, if an order is not passed within the period of two months from the date of the conclusion of the hearing, then after taking consent of the President of the Tribunal in writing to continue to hold the matter. This after having placed on record the reasons for delay in pronouncing the order after the conclusion of hearing, for the President's consideration. Thereafter, the order has to be passed not beyond a period of six months from the date of the conclusion of the hearing. In case, the order is not passed within the period of six months from the date of the conclusion of the hearing, then the matter would be placed for fresh hearing.4. In the facts of the present case, the hearing of the appeal was concluded on 9th March, 2016 while the impugned order was pronounced on 9th September, 2016. Thus, it may meet the requirement of the President' above orders. This only if, the necessary consent were given by the President of the Tribunal.5. Mr. Jetly, learned Counsel appearing for the Appellant seeks time to obtain instructions and bring on record the exact chronological

events in disposal of the appeal by the Tribunal. In particular, whether or not the consent was obtained by the bench of the Tribunal from the President for passing the impugned order beyond a period of two months after the conclusion of the hearing.6. In support of his application, the legal maxim "Cursus Curie Est Lex Curie" i.e. the practice of the Court is the law of the Court is invoked.7. In the above view, at the request of Mr. Jetly, this appeal is adjourned by a period of four weeks from today to enable Mr. Jetly to obtain instructions and file appropriate affidavit, if so advised.8. It is clarified that Appeal Nos.162, 163 and 165 of 2018, which were clubbed with this Appeal, are delinked and are to be heard independently. This as the issue arising in the Appeal Nos.162, 163 and 165 of 2018 are different from the issue raised in Appeal No.29 of 2017.

9. Stand over to 1st July, 2019."

2. It is pertinent to note that on the last occasion the respondent in regard to Question (b) above, had invited our attention to the decision of the Hon'ble Supreme Court in *Ram Bali v. State of U.P. 2004 (10) SCC 598*. In the above case, the Supreme Court had held that mere delay in rendering a decision after hearing may in the absence of any prejudice may not make the order vulnerable. The appellant in response had placed reliance upon the Tribunal's Order No.4 of 2009 dated 17th July, 2009 read with Order No.1 of 2010 dated 6th January, 2010 issued by the President of the Tribunal to contend that the above may not have been complied with in this case. Thus, drew support of the legal maxim that "Cursus Curie Est Lex Curie" i.e. the practice of the Court is the law of the Court.

3. Today, Mr. Jetley the learned counsel appearing for the Revenue on instructions fairly states that the above Order No.54 of 2009 and 1 of 2010 issued by the President has been complied with. Therefore, the Revenue cannot make any grievance about the same.

4. This appeal was expedited as it prima facie appeared to us that issue would stand covered by the decision of this Court in *Shivsagar Veg. Restaurant v. Assistant Commissioner of Income Tax 13 STR 11 = 2008-TIOL-579-HC-MUM-IT*. However, this issue would require further consideration as the respondents have relied upon the decision of the Supreme Court in *Ram Bali (Supra)*.

5. In the above view, appeal to await its turn for final disposal.

6. The respondent waives service.