

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI  
COURT NO. IV**

**APPEAL NO. C/1251/2009**

(Arising out of Order-in-Original No. 140/2009 CC(I)/JNCH dated 15.09.2009 passed by the Commissioner of Customs (Import), JNCH, Nhava Sheva.)

**M/s Tejus**

Appellant

Vs.

**Commissioner of Customs (Import),  
Nhava Sheva**

Respondent

Appearance:

Shri S. Suriyanarayanan, Advocate  
Ms. P.V. Sekhar, Joint Commissioner (AR)

for Appellant  
for Respondent

CORAM:

**HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)  
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBR (TECHNICAL)**

Date of Hearing: 26.10.2018  
Date of Decision: 28.12.2018

ORDER NO. A/88181/2018

***Per: Ajay Sharma***

The present appeal has been filed from the Order-in-Original dated 15.09.2009 passed by the Commissioner of Customs (Import), JNCH, Nhava Sheva.

2. During the course of hearing, learned Counsel for the Appellant pointed out that the impugned order is not a speaking order and that there is no discussion on the submissions raised by the Appellant

before the learned Commissioner through their reply dated 25.08.2009. He also submitted that there is no finding as to how the authorities below had arrived at the conclusion. He further submitted that there is no answer or finding on the submission raised by the Appellant that the parallel invoice was error of foreign party. The learned Commissioner neither accepted no rejected the said submission in the impugned order.

3. Learned Authorised Representative appearing for the Revenue, on the other hand supported the impugned order passed by the learned Commissioner and she submitted that the reply dated 25.08.2009 was never submitted by the Appellant before the learned Commissioner. We are not expecting such a submission from the learned Authorised Representative because in the impugned order in paragraph No. 6 the learned Commissioner has clearly recorded the submission raised by the Appellant in their reply dated 25.08.2009.

4. We have heard the matter in detail and gone through all the relevant documents and in particular reply dated 25.08.2009 submitted by the Appellant before the learned Commissioner. Although so many submissions were raised by the Appellant before the learned Commissioner which has been recorded by the learned Commissioner in the impugned order but there is no discussions on the said submission by the learned Commissioner nor there is any finding as to how the authority has arrived at the conclusion.

5. We are of the view that the order passed by the learned Commissioner cannot be sustained and has to be set aside for the reason that the Commissioner has passed a non-speaking order. The learned Commissioner ought to have known the fact that any order amenable to challenge and/or consideration before a superior Forum has to be reasoned containing brief narration of essential facts, contentions of the parties and then the conclusion based upon the reasoning, to facilitate judicial review. It must contain a brief discussion on the plea raised by the parties. It is not sufficient in an order, to give conclusion alone, but it is necessary to give reasons also for not accepting the submissions of the party or parties. A perusal of the impugned order clearly reveal that while the Assessing Officer has noted the pleas/submissions raised by the Appellant, but has not dealt with the same and has passed the impugned order without going through the same. For example the impugned order has recorded a finding that the Assessee/Appellant has nowhere averred that the relied upon documents are not recovered from his premises or that those were planted. Whereas in the submissions dated 25.08.2009 which are recorded in para 6 of the impugned order, it is the specific case of the Appellant that the Panchnama dated 09.03.2007 is a sham and false documents made against them due to false information given by their rivals.

6. Needless to say, a reasoned order is an essential requirement of the principles of natural justice. In catena of decisions, the Hon'ble Supreme Court has laid down that even a quasi-judicial body is required to give reasons in its order. Such orders are appealable in

nature and adversely affect the rights of one or the other party. The adversely affected party have right to know the reasons for the quasi-judicial body while passing of its order. Thus, the Assessing Officer is duty bound to give cogent reasons for rejecting the pleas raised by the Appellant but he has failed to do so.

7. Thus, for the reasons stated above, we have no other option, but to set aside the impugned order dated 15.09.2009 and to remand the case back to the learned Commissioner for a fresh decision, by a speaking order in accordance with law, after affording opportunity of hearing to the Appellant and after dealing with each and every plea raised and judicial decisions cited by the Appellant. The learned Commissioner shall pass the fresh speaking order within a period of two months from the date of communication of this order.

8. The Appeal is therefore allowed by way of remand.

*(Pronounced in Court on 28.12.2018)*

**(Sanjiv Srivastava)**  
**Member (Technical)**

**(Ajay Sharma)**  
**Member (Judicial)**

*Prasad*