CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87496 of 2015

(Arising out of Order No. F. No. S/6-B-Misc-100(A)/2015-16 ICD (M)(X) dated 07.09.2015 passed by the Commissioner of Customs (General), Mumbai)

M/s Polson Ltd. **.... Appellant**
Ambaghat Vishalgad, Taluka Shahuwadi,
Dist: Kolhapur - 415101

Versus

Commissioner of Customs (Gen), Mumbai .... Respondent
New Custom House, Ballard Estate, Mumbai - 400001

WITH

Customs Appeal No. 86730 & 86732 to 86743 of 2019

(Arising out of Order No. F. No. S/6-B-Misc-100(A)/2015-16 ICD (M)(X) dated 20.03.2019 passed by the Commissioner of Customs (General), Mumbai)

M/s Polson Ltd. **.... Appellant**
Ambaghat Vishalgad, Taluka Shahuwadi,
Dist: Kolhapur - 415101

Versus

Commissioner of Customs (Gen), Mumbai .... Respondent
New Custom House, Ballard Estate, Mumbai - 400001

AND

Customs Appeal No. 87259 & 87274 to 87279 of 2019

(Arising out of Order No. F. No. S/6-B-Misc-146/2017-18 ICD (M)(X) dated 07.05.2019 passed by the Commissioner of Customs (General), Mumbai)

M/s B.K. Giulini Specialties Pvt. Ltd. **.... Appellant**
615/616, Churchgate Chambers,
5, New Marine Lines, Churchgate, Mumbai - 400020

Versus

Commissioner of Customs (Gen), Mumbai .... Respondent
New Custom House, Ballard Estate, Mumbai - 400001

Appearance:

Shri Kirit Paleja, Advocate for the Appellant

Shri Manoj Kumar, AC, Auth Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86352-86372/2021

Date of Hearing: 14.01.2021
Date of Decision: 14.01.2021

Per: Dr. D.M. Misra

These appeals are filed against communications/orders wherein the Assistant Commissioner of Customs, ICD, Mulund (Exp.) has informed the appellant that competent authority has not allowed the conversion of free shipping bills to drawback scheme as requested by them. Aggrieved by the said communications/ orders, they preferred the present appeals.

2. At the outset, the learned Advocate for the appellant has submitted that the appellant exported Synthetic Organic Tanning Substance against free shipping bills for export during the relevant period. Most of these exports have been done from the CFS Mulund and they have realized the export proceeds from the buyer and converted bank certificate of export and realization to the Joint DGFT. It is his contention that at the time of export, they were not aware that drawback on the said items were admissible to them. When they realized their mistake after coming across Board's Circular No. 4/2004-Cus dated 16.1.2004 and 36/2010-Cus dated 23.9.2010 and the Public Notice No. 105/2010 dated 20.10.2010 relating to conversion of free

shipping bills to drawback, they approached the Department through their letters for conversion of free shipping bills at the industry drawback rate along with supported documents. It is his contention that the said request was rejected through the impugned order and even though time and again they requested for speaking order, however, the same was not given. It is his contention that it is not clear as to on what ground their request for conversion of free shipping bills to drawback schemes have been rejected without specifying any reason. He has submitted that the Appellants were not informed the grounds under which their request for conversion of free shipping bills to drawback shipping bills, hence, the same is liable to be set aside.

3. Learned AR for the Revenue reiterates the findings of the learned Commissioner.

4. We have carefully considered the submissions advanced by both sides and perused the records.

5. We find that the order of rejection of the request for conversion of free shipping bills to drawback scheme passed by the competent authority has been communicated by the concerned Assistant Commissioner of Customs to the appellants. We find that no grounds have been disclosed to the appellants in rejecting their claim of conversion of free shipping bills to drawback claim shipping Bill. Needless to mention this has resulted in gross violation of principle of natural justice. Also in absence of reasoning while passing the order, affecting the rights

of the parties, it would be difficult for appellate Court to read the minds of the adjudicating authority in deciding the issues raised in the appeal. Needless to mention reasoning is the heart and soul of an order or judgment. Summarizing the precedents on the issue of necessity of reasoning in a judgment/order, Hon'ble Supreme Court in the case of *Kranti Associats Pvt. Ltd. Vs. Masod Ahmed Khan - 2011 (273) ELT 345(SC)* observed as follows:

> "**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 a 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 (1994) 19 EHRR 553, at 562 para 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. In the result, the impugned orders are set aside and the matters are remanded to the adjudicating authority with a direction to record specific reasons and grounds in disposing the request of the appellants for conversion of free shipping bills to drawback scheme after observing the principles of natural justice in the event rejection is warranted.

7. Appeals are allowed by way of remand.

(Operative portion of the order pronounced in open Court)

(C.J. Mathew)	**(Dr. D.M. Misra)**
Member (Technical)	**Member (Judicial)**

Sinha