

(2010) 09 CAL CK 0033

Calcutta High Court

Case No: Writ Petition No. 1053 of 2010

Comet Technocom

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** Sept. 15, 2010**Acts Referred:**

- Customs, Excise Service Tax Appellate Tribunal (Procedure) Rules, 1982 - Rule 41

**Citation:** (2011) 2 CHN 51**Hon'ble Judges:** Soumitra Pal, J**Bench:** Single Bench**Advocate:** P.K. Dutta and N.K. Chowdhury, for the Appellant; N.C. Roy Chowdhury and Shampa Sarkar, for the Respondent**Final Decision:** Allowed

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**Judgement**

Soumitra Pal, J.

In the writ petition, the Petitioners have challenged the order dated 1st February, 2010 and the order dated 30th July, 2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, principally on the ground that though judgments cited by the Petitioners were taken note of in the order dated 30th July, 2010, those were not dealt with while passing the order directing pre-deposit. Submission is since judgments cited are in aid of submissions advanced, it is expected that the Tribunal while passing an order, be it interim or final, will deal with the same. It is submitted that for the ends of justice, the Tribunal in the orders impugned particularly in the order dated 30th July, 2010 should have dealt with the decisions cited which are applicable to the facts of the case, as the impugned order passed without considering the same, leaves the Petitioner affected.

2. Learned Senior Advocate appearing on behalf of the Respondents submits that since facts and the principles of law laid down in [Lakshman Exports Limited Vs.](#)

[Collector of Central Excise](#), (SO and other judgments as mentioned in paragraph-6 of the order dated 30th July, 2010, cited by the Petitioner, are not applicable to the facts of the case, those were not considered.

3. It is evident from the records that earlier the Petitioners had moved a writ petition, being W.P. No. 379 of 2010, Comet Technocom (P) Ltd. and Anr. v. Union of India and Ors., which was disposed of on 22nd April, 2010 by passing the following order-

In this writ application the Petitioners have challenged the order dated 1st February, 2010 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (for short "the Tribunal") directing them to deposit a sum of Rs. 75 lakhs within a period of eight weeks from that date. The matter was moved on 26th March, 2010 when directions were issued for filing of affidavits. Affidavits have since been exchanged and are on records.

Referring to paragraph-27 of the writ petition it is submitted by the learned Advocate for the Petitioner that while passing the impugned order the Tribunal did not consider the decisions which were relied at the time of hearing. It is submitted that the submissions in paragraphs 24 to 30 of the writ petition have not been dealt with in the affidavit-in-opposition filed by the department.

Learned Senior Advocate appearing on behalf of the Respondents submits that a submission need not be dealt with in the affidavit-in-opposition. Moreover, it is difficult to submit whether those judgments were at all relied on by the Petitioners before the Tribunal.

Heard Mr. Datta and Mr. Roy chowdhury for the parties. True, submission at times need not be dealt with in the affidavit-in-opposition. However, when it has been submitted in paragraph 27 of the writ petition on oath that the judgments cited were not considered by the Tribunal and since this Court is not in a position to ascertain whether those judgments at the time of hearing were cited or not, I dispose of the writ petition by granting liberty to the Petitioner to file appropriate application before the Tribunal by 26th April, 2010. If such application is filed before the Tribunal within the time as stipulated, the Tribunal shall take up the matter preferably by 3rd May, 2010 when compliance of the impugned order is to be reported. If the Tribunal is not in a position to take up the matter, it would extend the time of compliance as it deems fit and proper.

I make it clear that I have not gone into the merits of the case and it is for the parties to advance their arguments before the Tribunal.

No order as to costs.

All parties concerned are to act on a xerox signed copy of this order on the usual undertakings.

4. It is to be noted that pursuant to the order dated 22nd April, 2010, the Petitioners had filed an application. Thereafter, pursuant to the liberty granted on 26th July, 2010 by the Tribunal, the Petitioners filed an application for recalling and/or variation of the order dated 1st February, 2010 passed by the Tribunal. Earlier the Petitioners had moved the writ petition, being W.P. No. 379 of 2010, with a grievance that the judgments cited were not considered. As this Court was not in a position to ascertain whether those judgments at the time of hearing were cited or not, as seen, the writ petition was disposed of by granting liberty to file appropriate application before the Tribunal. Accordingly, application was filed. Subsequently, an application for recall and/or variation of the order dated 1st February, 2010 was also filed. It appears that the Tribunal though while passing the impugned order dated 30th July, 2010 had referred to the judgments cited by the Petitioners, such as, Lakshman Exports (supra) or the judgments referred in paragraph-6 of the said order, however, in the said impugned order it did not deal with the judgments, it is true that the Tribunal has no power to review its order but it has to ensure dispensation of justice. In this context it is appropriate to refer to Rule 41 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, which is as under:

Rule 41. Orders and directions in certain cases.-The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.

5. Therefore, under Rule 41 Tribunal has been empowered to pass such orders or give such directions as may be necessary to secure the ends of justice. In the instant case, the Petitioners feel aggrieved as the judgments which according to them are relevant and which have been taken note of in the impugned order dated 30th July, 2010, have not been considered. It is to be noted that judgments are cited in aid of submissions advanced for their persuasive value. In my view, since judgments were cited, those should have been considered and dealt with by the Tribunal as the Petitioners have urged that they are affected by the impugned orders directing pre-deposit. It has to be kept in mind that the Tribunal being a creature of the statute has to follow the mandate laid down in the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 in its true spirit. Moreover, the Tribunal has to ensure that justice is not only done but manifestly shown to be done. In the instant case, as it is evident from the order dated 30th July, 2010 that judgments particularly in Lakshman Export (supra) cited by the Petitioners were not dealt with, in my view, there has been denial of justice as postulated in Rule 41. It lends credence to the submission of the Petitioner that judgments cited were not considered and dealt with in the orders impugned. It is to be noted that the Tribunal while protecting the interests of the revenue, cannot ignore the mandate contained in the rules. Therefore, the orders dated 1st February, 2010 and 30th July, 2010 are set aside and quashed. Accordingly, the Tribunal is directed to hear the application for pre-deposit afresh and shall pass a reasoned order dealing with the judgments

as mentioned therein.

6. Hence, the writ petition is allowed.

No order as to costs.

All parties concerned are to act on a xerox signed copy of this order on the usual undertakings.