$~91

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st May, 2025

\+ **CUSAA 74/2025 & CM APPL. 26226/2025**

COMMISSIONER OF CUSTOMS .....Appellant

Through: Mr. Harpreet Singh, SSC, CBIC with Ms. Suhani Mathur, Adv.

versus

KUNAL TRAVEL CARGO .....Respondent

Through: None.

CORAM:
MS. JUSTICE PRATHIBA M. SINGH
MR. JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 26226/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CUSAA 74/2025

3. The present appeal has been filed under Section 130 of the Customs Act challenging the impugned order no. FO/C/A/58740/2024-CU[DB] dated 18th September, 2024(hereinafter '*impugned order*') passed by the Central Excise, Service Tax Appellate Tribunal (hereinafter *'CESTAT'*).

4. The said proceeding arises out of Show Cause Notice dated 24th May, 2023 (hereinafter *'SCN'*) that was issued to the Respondent-M/s Kunal Travels (Cargo). The allegation in the SCN was that certain goods were mis-declared and hence a penalty was imposed in the Order-in-Original in the following terms:

> *"In exercise of powers conferred in terms of Regulation 14 & 18 read with Regulation 17 (7) of CBLR, 2018, "*
> *(i) I refrain from revoking the CB License No.*

95/91 (PAN AAFPB6161L) valid upto 20.10.2025 ofM/s Kunal Travels (Cargo);
(ii) I refrain from forfeiture of the part whole amount of security deposit furnished by them;
(iii) I impose a Penalty of Rs.50,000/- on M/s Kunal Travels (Cargo) (PAN AAFPB616lL) under regulation 18 of CBLR, 2018."

5. The said order was appealed by the Respondent before CESTAT which has set aside the Order-in-Original on the ground that there are no proper allegations in the SCN as to which of the regulations has been violated. Thus the present appeal has been preferred by the Appellant-Commissioner of Customs (hereinafter '*Department*')

6. The submission of Mr. Harpreet Singh, ld. Senior Standing Counsel is that the CESTAT's order is extremely cryptic and does not deal with the matter properly on facts.

7. The Court has considered the matter. A perusal of the impugned order by CESTAT shows that the only reasoning given is as under:

"xxx xxx xxx
3. Paragraph 5 of the show cause notice then proceeds to state that from the above it appears that the appellant is found to be contravening the provisions of regulations 10(d), 10(e), 10 (f), 10(g) and 10(q) of the 2018 Regulations for the reasons narrated in the preceding paragraphs. It, therefore, calls upon the appellant to join the proceedings before the enquiry officer and the enquiry officer was required to submit his report within 90 days from the date of issuance of the show cause notice.
4. It clearly transpires that the show cause notice does not even make an attempt to state the allegations concerning the four regulations that have been alleged to be violated. It has been left to the wisdom of the

appellant to decipher from the show cause notice reproducing in paragraph 3 as to what are the allegations that can be culled out against the appellant in respect of the five alleged violations of the 2018 Regulations.

5. It was imperative for the officer issuing the show cause notice to precisely spell out the allegations pertaining to the regulations of which violation has been alleged.

6. There is, therefore, substance in the submission advanced by Shri Salil Arora, learned counsel appearing for the appellant assisted by Shri Divya Ratan Singh that the impugned order should be set aside for this sole reason, as the show cause notice does not even state the allegations in respect of violation of the five regulations under the 2018 Regulations.

7. It is not necessary to examine the matter on merits because the order, as noticed above, deserves to be set aside for the sole reason that the show cause notice, which is the foundation of the order, is absolutely vague and does not even state the allegations in respect of the five violations.

8. In such circumstances, the impugned order dated 09.10.2023 passed by the Commissioner of Customs deserves to be set aside and is set aside. The appeal is, accordingly, allowed."

8. Insofar as the question of law is concerned, there is a requirement in terms of the judgment in ***Prabhat Zarda Factory Co. and Ors. v. Commissioner of Central Excise, 2018 SCC OnLine Del 9182*** which followed ***Kranti Associates P. Ltd. v. Masood Ahmed Khan; (2011) 273 ELT 345 (SC)*** that facts have to be dealt with by CESTAT. The said judgment is reiterated in the present appeal as well.

"8. The Tribunal is the final fact-finding authority under

the Act, i.e., the Central Excise Act, 1944. As a final fact-finding authority and the first appellate authority against the order-in-original in the present Case, the Tribunal was required to examine the statements, documentary evidence, consider the effect of retraction with reference to the legal position and thereupon arrive at definitive and considered decision. No doubt, as the final fact-finding authority, the Tribunal can rely upon the reasoning, findings or inferences given in the order-in-original; there has to be also fresh and independent application of mind and not a mere reproduction and repetition even if the final conclusion is one of affirmation. In the present case, the impugned order on all aspects and contentions merely reproduces the order-in-original, without specifically and independently examining and dealing with diverse contentions. Reference and independent and exhaustive elucidation of the factual contentions raised by the appellants and consideration of legal issues based upon the said contentions is conspicuously lacking and missing. The impugned order suffers on this account. Supreme Court in Kranti Associates P. Ltd. v. Masood Ahmed Khan (2011) 273 ELT 345 (SC), had examined and elucidated on importance and significance of reasoned and speaking order by quasi-judicial authorities. In the said case, National Consumer Redressal Commission, it was observed, has trappings of civil court and was a high-powered quasi-judicial forum for deciding lis between the parties. Quoting case law on the subject dealing with the question of recording of reasons and thorough and independent application of mind in support of the conclusions by any quasi-judicial authority, it was held as under:

*"**47. Summarising 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 the 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 lifeblood 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 Harvard Law Review 731-37)

(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 Ruiz Torija v. Spain (1994) 19 EHRR 553 and Dr. Anya v. University of Oxford

[2001] EWCA Civ 405 (CA), wherein the court referred to article 6 of the 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'.***"
>
> ***10. In these circumstances, we would hold that the impugned order fails to independently and specifically deal with and examine the contentions raised by the appellants. It fails to meet the parameters required, noticed and summarized by the Supreme Court in Kranti Associates P. Ltd. (supra)***."

9. With that said, a perusal of the above extraction from the impugned order would reveal that there is no discussion on facts in the therein. The Court would have been inclined to entertain this appeal only on the ground of the impugned order lacking any discussion on merits. However, considering the following i.e., -

(i) the total amount alleged to have been wrongly availed by the Respondent by way of drawback is only Rs. 57,201/-; and

(ii) the penalty is imposed in the Order-in-Original is Rs.50,000/-,

while the Respondent may have committed violations in principle, having regard to the negligible quantum involved, the Court is not inclined to entertain the present appeal.

10. Appeal is disposed of in these terms. All pending applications, if any, are also disposed of.

11. Let a copy of this order be sent to CESTAT.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 1, 2025/*Rahul/Ar.*