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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 527 of 2007
Cuttack, this the 26th day of April, 2013

CORAM
HON'BLE MR.A.K.PATNAIK, MEMBER(JUDL.)
HON'BLE R.C.MISRA, MEMBER (ADMN.)

Sudan Seth,
S/o.Parakshit Seth,
Superintendent,
Central Excise, Service Tax Range,
Jharsugda, At/Po/Dist.Jharsuguda.

.....Applicant

(Advocate(s): M/s. A.K.Bose, P.K.Dash, D.K.Mallick)

VERSUS

Union of India represented through-

1. Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi-1.
2. Central Board of Excise & Customs,
Ministry of Finance,
Department of Revenue,
Government of India,
Represented through its Secretary,
Jeevan Deep Building,
Parliament Street,
New Delhi-110 001.

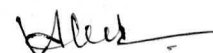
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3. Commissioner,
Central Excise & Customs,
Bhubaneswar-II, Rajaswa Vihar,
Bhubaneswar-7, Dist. Khurda.
4. Joint Commissioner (P&V),
Central Excise & Customs,
Bhubaneswar-II,
Rajaswa Vihar,
Bhubaneswar-7,
Dist. Khurda.
5. Secretary to Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
North Block,
New Delhi-1.
6. Commissioner,
Central Excise & Customs & Service Tax,
Bhubaneswar-1 Commissionerate,
Bhubaneswar,
Dist. Khurda.
7. Chief Commissioner,
Central Excise and Customs & Service Tax,
Bhubaneswar, Dist. Khurda-751 007.
8. Shri Chandra Kanta Dalai,
Aged about 52 years,
Son of Kanhu Dalai,
Superintendent,
Central Excise and Customs House,
At/Po/Dist. Paradeep,
Dist. Jagatsinghpur.

.... Respondents

(Advocate(s) – Mr. S.B.Jena & Mr.S.K.Patnaik)

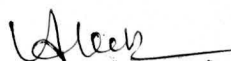


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ORDERA.K.PATNAIK, MEMBER (J):

Mr.Sudan Seth working as Superintendent of Central Excise Service Tax Range, Jharsuguda has filed this Original Application seeking the following reliefs:

- “(a) The Original Application may be heard on merits and the same may be heard if necessary by referring the matter to a larger bench and appropriate order be passed to review/**set-aside the judgment dated 11.8.2000 passed in OA No. 58 of 1991;**
- (b) That Applicant be declared senior to the respondent No.8 Shri Chandrakanta Dalai in the cadre of Inspector (OG) and Inspector (SG) and the seniority list published by the departmental **respondents as on 1.1.1990 annexed as Annexure-A/5 to the OA may be declared legal and valid in the eye of law;**
- (c) The order dated 27.11.2007 passed by the Chief Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar Zone under Annexure-A/10 excepting 1st sale passes of part II to be declared as invalid in the eye of law and the same may be quashed accordingly.
- (d) Any other appropriate order be passed or direction be made which deems just and proper and this OA be allowed with cost.”



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2. Respondents have filed their counter opposing the prayer of the Applicant. The Applicant has also filed rejoinder.

3. We have heard Mr. A.K.Bose, Learned Counsel for the Applicant, Mr. S.B.Jena, Learned Additional CGSC appearing for the Respondent-Department and Mr.S.K.Patnaik, Learned Counsel appearing for the private Respondent No.8 (Shri Chandra Kanta Dalai) and perused the materials placed in support thereof and the written note of submission filed by the respective parties.

4. Instead of going into the details, it would suffice to state that Shri Laxmi Narayan Mohapatra and 9(nine) others had earlier filed OA No. 436 of 2007 before this Tribunal claiming the reliefs as claimed by the Applicant in the instant OA on the grounds that they were not parties to the OA No. 59 of 1991 disposed of on 11.08.2000 filed by Respondent No.8 and therefore, the said order of this Tribunal that was upheld by the Hon'ble High Court of Orissas as well as the Hon'ble Apex Court being not binding, the order passed by the Respondents placing Respondent No.8 above them

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needs to be quashed. The said OA No. 436 of 2007 filed by Laxmi Narayan Mohapatra and nine others was referred to Full Bench. The Full Bench of the Tribunal vide order dated 18.6.2012 held that Tribunal cannot interfere in the matter nor can review the judgment under challenge in the said OA and accordingly directed the matter to be placed before the DB for passing appropriate order. Thereafter, the OA No. 436 of 2007 was placed before the DB and the DB vide order dated 27th July, 2012 dismissed OA No. 436 of 2007. Relevant portion of the order of the Full Bench of this Tribunal dated 18.6.2012 is quoted herein below:

"23. At this juncture, it would also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax Bombay Vs. M/s.Amritlal Bhogilal and Co.**, reported in AIR 1958 SC 868 wherein the effect of merger had been discussed as follows:

"There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the



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appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement....."

In view of above judgment also, this Tribunal cannot review the judgment dated 11.8.2000 passed in OA No. 58/1991 because that has merged in the judgment of the Hon'ble High Court and Hon'ble Supreme Court.

24. It would also be relevant to refer to the judgment of Hon'ble Supreme Court in the case of **Shreedharan Kallat Vs. Union of India and Others** reported in 1995 (4) SCC 207 wherein somewhat same position existed. It was held by the Hon'ble Supreme Court as follows:

"This appeal directed against the order of the Central Administrative Tribunal does not arise by intricate question of law but it exposes very disturbing feature as the Tribunal not only commented upon the judgments rendered by the Kerala High Court in favour of the appellant which had been affirmed by this Court, but went on to hold that they had no binding effect as they appeared to be inconsistent with the Rules. This was against judicial comity and propriety. We do not approve of it.

Since the earlier order has been upheld by this Court the order could be set aside by this Court. The Tribunal could not have passed an order which resulted in disturbing the finality about interpretation of rule especially when the SLP had been dismissed by this Court."

25. In the instant case not only Hon'ble High Court had given positive direction to the respondents to implement the judgment dated 11.8.2000 but the judgment of Hon'ble High Court was upheld by the Hon'ble Supreme Court also because leave to appeal itself was rejected, **therefore, in the given circumstances Tribunal cannot reopen or review**

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the judgment as that would be against judicial comity and property.

26. Counsel for the applicant placed reliance on order dated 3.4.2012 passed by the Hon'ble High Court whereby Tribunal has been directed to constitute the Larger Bench and dispose of the matter within a period of two months. However perusal of this order shows that the earlier order dated 10.4.2007 passed by Hon'ble High Court in OJC No. 6825/2001 was not brought to the notice of the Hon'ble High Court. It goes without saying that since judgment dated 10.4.2007 had dealt with the case on merits and had given positive directions, it cannot be ignored by the Tribunal and Tribunal can review the judgment dated 11.8.2000 only after the order dated 10.4.2007 passed by the Hon'ble High Court is set aside by a higher court. It is also relevant to note that the Hon'ble High Court was not informed about the orders passed in SLP filed by Laxmi Narayan Mahapatra which was rejected as there is no mention of these orders in order dated 3.4.2012. In fact, perusal of order dated 3.4.2012 shows it was passed merely on the basis of the statement made by the learned Counsel at the bar. Moreover, this Writ Petition was filed against the interim order passed by the Tribunal in the present case, so it cannot be stated that the order dated 3.4.2012 was passed after examining the whole background of the case. It is rather a piquant situation because both the judgments given by the Tribunal in 1st OA as well as 2nd OA have been upheld upto the Hon'ble Supreme Court. **In view of the above, with due regards to Hon'ble High Court, the Tribunal cannot now interfere in the matter.**

27. Counsel for the applicant strenuously argued that their judgment in 1st OA had been upheld upto Hon'ble Supreme Court, therefore, it could not have been upset in the 2nd OA. Even^y we agree with their contention, there is little we can do in the matter because judgment in 2nd OA has also been upheld by the Hon'ble High Court and these very applicants had



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approached the Hon'ble Supreme Court but were refused the leave to appeal without even giving liberty to go back to the lower court.

28. In view of the above facts, with due respect to the Hon'ble High Court and all the humility at our command, we hold that Tribunal cannot review the order dated 11.8.2000 as that has been upheld upto the Hon'ble Supreme Court nor can we interfere with the order dated 27.11.2007 as that had been passed by the respondents in compliance with the directions of Hon'ble High Court.

29. It is also relevant to note that while referring the matter to the Full Bench, Division Bench has to give reasons why they disagree with the earlier judgment whereas in the instant case no such finding was recorded by the Division Bench, therefore, technically speaking there is merit in the objection raised by the counsel for the private respondents that experience itself is not as the law. **In any case, for reasons given above, we have already held Tribunal cannot interfere in the matter nor can review the 2nd judgment.** The matter is accordingly remitted to the Division Bench for passing appropriate orders."

(emphasis supplied)

5. In view of the specific observations and directions of the Full Bench of this Tribunal which was also after placing reliance on various decisions of the Hon'ble Apex Court, there is hardly any scope left for the present Division Bench to annul the order issued by the Government of India in compliance of the order of the Hon'ble High Court which was subsequently upheld by the Hon'ble Apex Court.

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Accordingly we hold that this OAⁱ sans any merit and is dismissed by leaving the parties to bear their own costs.

(R.C.MISRA)
Member(Admn.)

(A.K.PATNAIK)
Member (Judl.)