



Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 32758 OF 2024

SBI General Insurance Company Ltd]
A and B wing, 9th floor, Fulcrum,]
Building, Sahar Road, Andheri,]
Mumbai – 400 099.]...Petitioner

Versus

1. The Union of India,]
represented by Secretary to,]
Government, Ministry of Finance,]
North Block, New Delhi – 110 001.]
]
2. The Commissioner (Appeals-II),]
3rd Floor, CGST Bhavan, Plot No. C-24,]
Sector-E, Bandra-Kurla Complex,]
Bandra (E) Mumbai 400 051.]
3] Joint Commissioner CGST & C.Ex.,]
Mumbai East, 9th Floor, Lotus]
Info Centre Station Road,]
Parel (East), Mumbai – 400 012.]...Respondents

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Mr Prasad Paranjape, *i/b, Lumiere Law Partner, for the
Petitioner.*

Ms Jaymala Ostwal *a/w Sangeeta Yadav, for the Respondents.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 24 October 2024

ORAL JUDGMENT :- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The Petition challenges the Order-in-Appeal No. SK/234/Appeals-II/ME/2024-25 by which the Petitioners's appeal before the Commissioner (Appeals) was dismissed on the ground that the authorised signatory of the Petitioner did not sign the same. The Commissioner (Appeals) reasoned that since no proof, such as a board resolution, was produced, it could not accept the appeal instituted by the authorised signatory.
4. Ms Ostwal, learned Counsel for the Respondents, objected to the entertainment of this Petition on the ground that the Petitioner has an alternate remedy before the tribunal. However, she admitted that the tribunal is not functioning presently. Accordingly, we see no reason not to entertain this Petition.
5. Besides, in almost identical circumstances, this Court has entertained and allowed some Petitions where appeals were rejected because they were not instituted or signed by the authorised signatories. In most of such matters, we found that the learned Counsel for the revenue, quite fairly, did not even oppose the grant of any reliefs.
6. In this regard, we refer to our recent order dated 13 August 2024, read with the order dated 20 August 2024, in Writ Petition No. 11298 of 2024, which reads as follows: -

“1. The order dated 29th May 2024 has been impugned on various grounds. One of the grounds is that the appeal has been dismissed on the basis that the appeal has not been signed by authorised signatory and the Appellant has not submitted Board Resolution under the Companies Act, 1956, appointing the said person as authorised signatory to sign the appeals, documents or any other proof of his being authorised signatory of Appellant. Appeal has been signed and verified by one Akshaya P. Herle. We find in the impugned order the Appellate Authority admits that an affidavit has been signed and verified by the same Akshaya P. Herle reiterating the arguments made during the personal hearing. In our view, if the Appellate Authority wanted to verify the authority of Akshaya P. Herle, he was duty bound to call upon Appellant, if he had any doubts with regard to the authority. In this case, in our view, if only the Appellate Authority had bothered to check the GST portal of Appellant, he would have found that Akshaya P. Herle was an authorised signatory.

2. When we brought all these to the notice of Mr. Mishra, on instructions from the same officer, i.e., Sumit Kumar, who is present in the Court, Mr. Mishra stated that the impugned order could be quashed and set aside and the matter remanded for denovo consideration. Ordered accordingly.

3. Appellate Authority who will hear this appeal shall give personal hearing to Appellant, notice whereof shall be communicated atleast 5 working days in advance. The order to be passed shall be a reasoned order dealing with all submissions of Appellant. If the Appellate Authority is going to rely on any order or judgment of any Court or Tribunal or any other forum, a list thereof shall be made available along with the notice for personal hearing. If the order or a judgment is unreported then a copy thereof shall also be made available along with the notice. This is to enable Appellant to deal with/distinguish the judgment or the order.

4. *The appeal shall be disposed by 30th November 2024.*

5. *All rights and contentions are kept open to the parties.*

6. *We hasten to add that we have not made any observations on the merits of the matter.*

7. *Petition disposed.”*

7. The facts in the present case are also not significantly different. Proper material has been produced to show that the signatory on the appeal memo was indeed authorised to sign the same. In any event, we do not approve of the appellate authorities adopting such shortcuts and dismissing the appeals, even without allowing the appellants to either establish that the signatory was authorised to sign the appeal memo or to place on record resolutions authorising such signatory with the necessary powers. Denial of such opportunity violates the principles of natural justice and fair play, not to mention avoidable harassment and pressure on the Court's docket. We were informed that there were about 100 such orders made by this officer dismissing appeals on hypertechnicalities without giving a fair opportunity to the appellants.

8. Accordingly, we set aside the impugned order dated 31 July 2024 and restore the Petitioner's appeal to the file of the Commissioner (Appeals) for fresh consideration on its merits and per law. All parties' contentions on merits are left open. The Commissioner (Appeals) shall grant an opportunity of hearing to all the parties and pass the reasoned order.

9. The Commissioner (Appeals) must dispose of the Appeal as expeditiously as possible, and in any event, on or before 31 January 2025. The order should be communicated to the parties no sooner than it is made.

10. The Rule is made absolute in the above terms without any cost of order. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)