

# DRAFTING OF REASONED ORDERS

Vikram S. Nankani (Sr. Adv.)

# Underlying Principle-Exercise of Discretion

- Rooker's Case- (1598) 5 Co Rep 99b. " ..and notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law.for discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses, and not to do according to their wills and private affections; for one saith ,*talis discretio discretionem confundit*"(to proceed on discretion means to proceed according to law or discretion may result in confusion)

# Facet of Natural Justice

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- Recording of Reasons Necessary
  - To show application of mind
  - Introduce clarity
  - Party entitled to know whether and how grievances is addressed or redressed.
- Key Decisions
  - State of Punjab vs. Bhag Singh [2004 (164) E.L.T. 137 (S.C.)]
  - Union of India vs. Essel Mining and Industries Ltd. [2005 (6) SCC 675]
  - Jagtamba Devi vs. Hemram [2008 (3) SCC 509]

# Identify and Frame Issues

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- Set out the case of both sides
- Record findings
- Discuss case law
- Key Decisions
  - Nitish Kumar Kedia vs. CC, Import & General [2012 (284) E.L.T. 321 (Del.)]
  - CCE, Rajkot vs. Amul Industries Pvt Ltd. [2010 (260) E.L.T. 499 (S.C.)]
  - Commissioner of Income Tax vs. Keshav Fruit Mart [05 (191) E.L.T. 147 (All.)]

# Preliminary Issues

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- Jurisdiction
  - Arun Kumar vs. Union of India [(2007) 1 SCC 732]
- Cross-examination
  - Request for cross-examination to be decided separately prior to passing order on merits;
    - VeetRag Enterprises vs. CC, Chennai [2015 (330) E.L.T. 74 (Mad.)]
    - Mahek Glazes Pvt. Ltd vs. Union of India [2014 (300) E.L.T. 25 (Guj.)]
- Disclosures – exceptions
- Limitation
  - Since it involves inquiry into facts, not a preliminary issue; Ramesh Desai vs. Bipin Mehta [(2006) 5 SCC 638] & Satti Paradesi Samadhi & Pillayar Temple vs. M. Sakuntala [(2015) 5 SCC 674]

# Essential Tests

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- Number of pages irrelevant
- Sufficiency of reasons – No rigid formula as long as not cryptic
- Deal with all defenses
- Key Decisions
  - CCT vs. Shukla & Brothers [2010 (4) SCC 785]
  - Sant Lal Gupta vs. Modern Co-operative Group Housing Society Limited [2010 (262) E.L.T. 6 (S.C.)]

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# THANK YOU

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