

**Kumar Enterprises Vs. Collector of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-13-1997

**Reported in :** (1997)(94)ELT596TriDel

**Appellant :** Kumar Enterprises

**Respondent :** Collector of Central Excise

**Judgement :**

1. In the captioned application, the applicant has submitted that there has been an error apparent on the face of the records inasmuch as the point of limitation was taken up not only in the memo of appeal but also at the time of personal hearing. But the same was not considered while deciding the appeal. Shri Naveen Mullick, learned Counsel appearing for the applicant submits that the appeal of M/s. Kumar Enterprises, and Swastik Industrial Power Line P. Ltd. were heard together inasmuch as the issue involved in both the appeals was the same. Learned Counsel submitted that first appeal of M/s. Swastik Industrial Power Line P. Ltd. was taken up and the point of limitation was raised which has been dealt with by the Tribunal in para 10. He submits that the same arguments were adopted for the second appeal. But the same is neither mentioned nor decided upon. He, therefore, submits that there is an error apparent which may be rectified.

2. Shri Satnam Singh, learned SDR appearing for the respondent Commissioner has nothing to say on the issue.

3. Heard the submissions of the learned Counsel. From the records we find that the two appeals were listed together. We also note that the arguments advanced by the appellants in the case of Kumar Enterprises were adopted for arguing the case of Swastik Industrial Power Lines P.Ltd. Since the two appeals were heard together perhaps there was some mix up. The order of M/s. Kumar Enterprises i.e. the Tribunal's order No. A/381/97-NB is, therefore, modified by adding para 8(a) after para 8 and before para 9 reading as under: "8(a) Learned Counsel also argued that the demand is hit by limitation. On the question of limitation we find that there is a catena of judgments of this Tribunal wherein it has been held that provisions of Rule 57-1 are to be read in consonance with the provisions of Section 11A of the Central Excises Act, 1944. We observe that there was no mis-statement, suppression or intention to evade payment of duty in the instant case. Therefore, we hold that the demand was hit by limitation." 4. In the result, the ROM application is allowed and the relevant order of the Tribunal is modified to the extent stated above.

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