Cc Vs. Mrf Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-08-1999

Reported in : (2000)(91)LC949Tri(Chennai)

Judge : A T V.K., S Peeran

Appellant : Cc

Respondent : Mrf Limited

Judgement :

1. In this MISC application for rectification of mistake filed by Revenue against Tribunal Final Order No. 2242 to 2272/97 dated 11.9.1997, the contention is that the said final order suffers from mistake which needs to be rectified with respect to denial of leviability of CESS on imported natural rubber under Section 12 of the Rubber Act, 1947.

2. Heard Shri Section Sankaravadivelu, Ld. DR who submits that the goods were imported sometime in July to August 1995 and thereafter when the Tribunal heard the appellants appeal leading to the said final order the clarification of the Department of Revenue dt. 22.7.1997 was issued subsequent to the assessment of the goods and therefore should not have been applied in view of the settled law that said circular will have only prospective effect. In this connection, he cites the decision in the case of Eswaran & Sons Engrs. Ltd. v. CCE wherein this principle enunciated in the decision of the Larger Bench of the Tribunal in the case of Quadrotnatic Engg. Pvt.

Ltd. v. Collector vide final order No. E/945 to 947/98-B1 dt. 17.7.1998 were followed. He also submits that thereafter the said circular has been withdrawn by later circular dt. 8.10.1998, the effect of which is that the CESS would be leviable on imported natural rubber prior to 22.7.1997 and after 8.10.1998 even if the circulars are binding on the Revenue. He therefore submits that the retrospective application of circular dt. 22.7.1997 contained in the Tribunal final order has led to a mistake apparent on the face of record in that final order. He also reiterates the grounds made out in the application by citing the decision of the Hon'ble Supreme Court in the case of Aroon Phospho Products v. Collector in 1996 (86) ELT 476 (SC) : 1996 (67) ECR 121 (SC) wherein the Hon'ble Apex Court had remanded the matter for reconsideration by CEGAT on the basis of fresh evidence coming into existence after passing of the final order. He submits that ratio thereof would be applicable to the facts of this case. Thirdly, Ld. DR submits that the ROM application gives consideration favour in order to avoid multiplicity of litigations forcing the Revenue to run from pillar to post for amelioration of the grievance.

3. Heard Shri Section Ignatius, Ld. Consultant for the respondents who submits that it is respondents who are running from pillar to post because the Revenue has not given effect to the decision in the final order in their favour. He submits that there is no mistake occurring on the face of the record of this final order because when the said order was passed only circular in existence was circular dt. 22.7.1997 wherein it was categorically held that CESS would not be leviable on imported natural rubber but only on rubber which is produced in India under the said Rubber Act. He further submits that Revenue's circular was based on circular issued by the parent Administrative Ministry namely Ministry of Commerce. Therefore when the final order was passed, at that time the Tribunal had rightly taken cognisance of the said circular and issued decision in their favour as contained therein.

Therefore, no mistake on the face of the record in this case and the ROM application needs to be rejected.

4. We have carefully considered the rival submissions and records of the case. We find that the facts on record are clear and the point that when the Tribunal had

passed the subject final order, only circular which was in existence and which was placed before the Tribunal was that circular dated 22.7.1997 wherein it was held that cess would not be leviable on imported natural rubber. The Tribunal had merely followed the said circular and granted consequential relief to the appellants. The Revenue by their letter dt. 8.10.1998 i.e. after a period of many months withdrew this circular. Now, Revenue contends that in view of this circular, there is existing a mistake apparent on the face of the final order. It is our considered opinion that this cannot be acceded to. When the Tribunal had issued the said final order, this circular dt. 8.10.1998 was not even in existence. Therefore the Tribunal had correctly as per law given credence to the circular dt. 22.7.1997 and had accepted the same. It cannot be said that by doing so a mistake apparent on the face of the record of the final order has crept in. On the contrary, there was no mistake contained in that order as on the date on which it was issued. If it is the grievance of Revenue that the decision is at variance with subsequent circular issued many months later, then the issue would involve reconsideration of the merits of the case itself. Such a reconsideration is not possible by this Tribunal through the medium of an application for rectification of mistake. The remedy probably lies elsewhere. Further our own decisions in the case of Eswaran & Sons Engineers Ltd. v. CCE as in . This Tribunal has consistently held that the said circular would have only a prospective effect. Therefore, going by the same well settled position in law, the circular dt. 8.10.1998 would have only the effect from that date while the Tribunal order had been issued much earlier to that date.

Therefore, on this count, no mistake can be said to have occurred in the said final order. In this connection, we also find that the Ld. DR has submitted that if the principle of prospective effect applicability of circulars is to be considered, then it is also to be considered with respect to applicability of the first circular dt. 22.7.1997 to imports which were made prior to the issue of that circular. While we do find considerable logical force in the said submission, our considered view is that this matter is not a matter connected with a rectification of mistake on the face of the record but would involve a reconsideration of the merits of the case. Therefore, once again the present ROM application would not be a legally correct instrument to agitate that logic. We also find that Revenue in this application has cited the decision of the Hon'ble Supreme Court in the case of Aroon Phospho Products supra. On a consideration thereof, we find that the Hon'ble Apex Court had considered a situation wherein two new documents were filed for the first time before the Supreme Court. These documents related to relevant evidence in connection with the dispute involved herein. In the present case, the circular concerned dt. 8.10.1998 is not a document of the same nature and is certainly not a fact and therefore not an evidence. At best it is a circular enunciating the decision of law. Therefore, we find that the said decision of the Hon'ble Supreme Court dealt with different set of facts and would stand distinguished to the facts of this case.

5. In view of the aforesaid analysis and findings, we find that there is no merit in this application and we reject the same.