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Collector of Central Excise Vs. Ceat Tyres of India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-28-2000

Reported in : (2000)(118)ELT758TriDel

Appellant : Collector of Central Excise

Respondent : Ceat Tyres of India Ltd.

Judgement :

1. M/s. CEAT Tyres (India) Ltd. have filed a Miscellaneous Application for rectification of certain mistakes which have allegedly crept into the Tribunal's Miscellaneous Order No. 96/98-C in CCE v. CEAT Tyres (India) Ltd. (Appeal No. E/5848/92-C). In the said Appeal a difference of opinion arose between the two Members who constituted the Bench and, by Misc. Order dated 2-6-1998, the Bench referred the matter to the Hon'ble President for referring the question to a third Member on whether the Appeal was required to be rejected as held by the Member (J) or whether the Appeal should be accepted as held by the Vice-President and Member (T).

2. Appearing for the applicant, M/s. CEAT Tyres of India Ltd., ld.Counsel, Shri Ravinder Narain (with Ashok Sagar, Advocate) submitted that while passing the seperate orders the Hon'ble Members of the Bench had taken up only the question relating to classification. Since a difference of opinion had arisen on this point, reference to a third Member for resolving the difference of opinion had been suggested by the Bench. Ld. Counsel however, submitted that there were also some other issues which were raised and argued before the Bench which did not

find mention in the separate orders passed by the Members. He submitted that there were questions like limitation and methodology of calculation which are also involved in the appeal but which has not been dealt with in either of the separate orders of the Hon'ble Members. Since the question that has been framed by the two Hon'ble Members to the third Member was restricted to the question of classification of the tyres under dispute and not to the other questions referred to above, a mistake apparent on the face of the record had crept in the Miscellaneous Order of the Tribunal, Ld.

Counsel, therefore, submitted that necessary directions for rectifying the mistake by way of refraining the question referred to the third Member may be initiated after recalling the Misc. Order. The reference to the Third Member may be rephrased so that the issues relating to limitation and correct methodology in calculating and quantifying the duty demand may also be gone into by the Third Member, if found necessary.

3. Ld. SDR, Shri H.K. Jain appearing for the Department submitted that the appeal which was filed by the Department arose from the order of the Collector in which he had decided the issue of classification in favour of the assessee. Collector had not therefore considered it necessary to decide the further issues. Since difference of opinion had arisen on the question of classification itself, the said question had been rightly referred to the Third Member. There was therefore no mistake apparent on the face of the record calling for any rectification.

4. We have considered the submissions and have perused the record. It is observed that separate orders recorded by the Members of the Bench while disposing of the appeal does not deal with the question of limitation or methodology of calculation of duty. It is also seen from the notes relating to the hearing of the appeal before the Bench kept by one of the Members [i.e., Member (J)] that it is a fact that the Counsel for the Respondents had argued the point relating to limitation as well as the methodology of calculation adopted by the Department.

We, therefore, find force in the submissions made by the ld. Counsel that the reference to the Third Member as framed in the Miscellaneous Order dated 2-6-

1998 would require modification since the reference as presently framed has left out the points relating to limitation and the methodology of calculation.

5. In the above view of the matter, we recall Miscellaneous Order No.96/98-C and frame the following issue for consideration of the Third Mem-ber:- "Whether in view of the observations and findings of the Hon'ble Member (J) the appeal was required to be rejected or in view of the observations and findings of the Vice-President and Member (T), it is required to be accepted. In case the Appeal is accepted, the Hon'ble Third Member may also hear the parties on the question of limitation and methodology of calculation of rate of duty and pass appropriate orders thereon."

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