

J.C.T. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-2000

Appellant : J.C.T. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Captioned ROM Application was argued by Shri Vinod Agarwal, Id. Advocate. He submits that in Para 6 of the impugned Final Order No.A/941/97-NB(SM) dated 28-11-1997, the Tribunal had relied on its earlier decision in Netplasts Limited v. CCE, Kanpur 1996 (87) E.L.T.434 holding that Rule 57G(4) required the production of original GPIs for taking Modvat credit. Ld. Counsel has submitted that the said Final Order had not taken note of the Board's Circular No. 44/86 which was operative during the period in question under which photo copies of gate passes were valid documents evidencing payment of Excise Duty.

Since the aforesaid Board's Circular was binding on the Department, the Department could not have taken a contrary stand in support of the said allegation. Ld. Counsel relied in this connection on the Apex Court judgment in the case of Paper Boards Ltd. v. CCE 1999 (112) E.L.T. 765 (S.C.). He therefore submits that an error has thus crept into the Final Order which may be rectified and credit of Rs. 1,00,887.00 allowed to the applicants.

2. Opposing the ROM Application, Id. JDR, Shri A.K. Jain submitted that no error apparent on the face of the record has been brought out by the applicant in terms of Section 35C(2) of the Central Excise Act, 1944.

The Final Order had relied on the earlier decision of the Tribunal in Netplast case (supra). Whether the decision in M/s. Netplast case was made after noticing or without noticing a relevant Board's Circular was not a matter which can be termed as an error apparent on the face of the record of another Order especially when the impugned order was only an order which had relied on the Final Order in Netplast case. Ld. JDR therefore prayed for rejection of the ROM Application.

3. I have given consideration to the rival submissions and have perused the record. I find that the only ground urged in the ROM Application is that the earlier decision of the Tribunal which was followed in the impugned Final Order had not taken note of a Circular issued by the Board which had a bearing on the issue decide by the Tribunal. I find merit in the objection raised by the Id. JDR stating that such plea, even if found to be correct will not amount to 'mistake' apparent on the face of the record of the Order presently impugned. It is well settled that a mistake apparent from the record must be a mistake which is obvious and patent and not something which can be established by a long drawn process of reasoning on points on which there may be different interpretations.

4. This ROM Application cannot therefore succeed and in the result, it is rejected.

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