

Electro Mech. Engineering Vs. Collector of Central Excise

Electro Mech. Engineering Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/19638

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-03-2000

Reported in : (2001)(127)ELT115TriDel

Appellant : Electro Mech. Engineering

Respondent : Collector of Central Excise

Judgement :

1. The applicants filed this rectification of mistake application in respect of Final Order No. 1078/99-B1, dated 5-10-1999 passed on Appeal No. E/112/93-B1 filed by the Commissioner of Central Excise, Rajkot.

3. The contention of the applicants in the application is that the applicants, who were respondents in the appeal, had filed a cross-objection No. 127/93-B in the year 1993. The Final Order was passed without taking into consideration the cross-objection filed by the applicants. The submission of the applicants is also that, vide letter dated 5-7-1999, the applicants made a request to decide the appeal on merits and in this letter the applicants particularly relied upon the Circular No. 82/82/94-CX, dated 5-12-1994 issued by the Board in respect of classification of Domestic Flour Mills. A copy of the circular was also enclosed with the letter.

4. The contention of the revenue is that the impugned order was in favour of the applicants and they had no right to file any cross-objection and the cross-objections were only in the nature of counter.

5. We have perused the record. The applicants had filed the cross-objections and the Final Order was passed without considering the cross-objections. The Circular issued by the Board, a copy of which was also filed with the letter dated 5-7-1999, was also not considered at the time of passing the Final Order. In this view of the matter, we hold that the appeal should have been decided after considering the cross-objections and the Circular issued by the Board. Accordingly, the rectification of mistake application is allowed and the Final Order No.1078/99-B1, dated 5-10-1999 is recalled for fresh consideration and the appeal is restored to its original number.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com