Commr. of C. Ex. Vs. Krishan Lal Pawan Kumar JaIn (P)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-20-2000

Reported in : (2001)(127)ELT575TriDel

Appellant : Commr. of C. Ex.

Respondent : Krishan Lal Pawan Kumar JaIn (P)

Judgement :

1. The Commissioner of Central Excise, Kanpur had filed the present miscellaneous application for the rectification of mistake (ROM) under Section 35C(2) of the Central Excises Act, 1944 (hereinafter referred to as the 'Act'), arising out of the Tribunal's Final Order No.A-39/2000-NB (DB) dated 10-12-99 in Appeal No. E/944/99-NB filed by M/s. Krishan Lal Pawan Kumar Jain (P) Ltd. The order rendered by the Tribunal is extracted below in full :- 1. In this appeal filed by M/s. Krishan Lal Pawan Kumar Jain (P) Ltd. order in original dated 26-3-99 is under challenge.

2. Shri R. Santhanam, Advocate appearing for the appellants submitted that on similar facts and circumstances when the earlier order in original dated 27-3-98 was under challenge before the Tribunal, the Tribunal had remanded the matter alongwith the appeal of other appellants under Final Order No. A/573-77/98 dated 9-7-98.

He prays that on similar grounds this matter may also be remanded to the jurisdictional Commissioner of Central Excise.

3. We find that the dispute relates to the determination of the capacity of the furnace/rolling mills as well as the determination of duty liability after allowing the abatement for the period of closure, as claimed by the assessee. We find that on similar facts and circumstances, the Tribunal had already remanded the earlier appeal of the assessee under the order dated 9-7-98 referred to by the learned advocate. We consider that as the earlier appeal had been remanded, it will be in the interest of justice if a consolidated view is taken by the jurisdictional Commissioner and for that purpose we remand this matter also to the jurisdictional Commissioner of Central Excise who should pass appealable speaking order after providing opportunity to both the sides. The appeal is thus disposed of by way of remand.

2. The Commissioner of Central Excise, Kanpur in the present ROM application had recorded that the mistakes apparent from the record of the case since decided by the Tribunal are as under :- (A) (1) The order appears to be incorrect on account of factual inaccuracies. The issue before the Hon'ble Tribunal was denial of abatement claim of the party for the periods 28-4-98 to 31-4-98 and 27-5-98 to Feb., 1999 on the ground that the factory remained closed during the said period.

(2) In para 3 at page 1 of the Hon'ble Tribunal's order it is mentioned that "the dispute relates to the determination of the capacity of the furnace/rolling mills as well as the determination of duty liability after allowing the abatement for the period of closure, as claimed by the assessee.

(3) Thus, it appears that the Hon'ble Tribunal has discussed the aspect of determination of the capacity of the furnace/rolling mills as well as abatement claims for the period of closure of the factory whereas the Order-in-Original against which the appeal before the Tribunal which was discussed was limited only to denial of abatement claims of the party for the periods during which factory remained closed.Commissioner of Central Excise and Customs, Kanpur v. Venus Castings (P) Ltd. - 2000 (117) E.L.T. 273 (S.C.) production capacity based duty. Annual capacity of production - Redetermination of Section 3A(4) vis-a-vis Rule 96ZO(3) - Assessee, if they have availed of the procedure under Rule 96ZO(3) of Central Excise Rules, 1944 at their option, can not claim the benefit of

determination of production capacity under Section 3A(4) of the Central Excise Act, 1944 which is specifically excluded.

3. We find that the Tribunal had not discussed the aspect of determination of the capacity of the furnace/rolling mill. In fact, no view as such had been taken by the Tribunal in this order. The matter had been remanded to the jurisdictional Commissioner of Central Excise in the light of the Tribunal's earlier Order No. A-573-577/98, dated 9-7-98 in group of appeals where the present respondents were one of the appellants in Appeal No. E/1759/98-NB.4. The direction given in the Tribunal's order dated 10-12-99 aforesaid was that the jurisdictional Commissioner of Central Excise should pass appealable speaking order after providing opportunity to both the sides. Thus, it was an open remand.

5. Thus, we find that there is no mistake apparent from the record in the order, which may call for rectification.

However, both the sides are at liberty to cite such decisions including that of the Apex Court which they may consider appropriate to do justice to the subject. The Supreme Court's decision in the case of Commissioner of Central Excise & Customs, Kanpur v. Venus Castings Pvt.

Ltd. - 2000 (117) E.L.T. 273 (S.C.) could also be placed before the adjudicating Commissioner of Central Excise for his consideration.

6. The ROM application filed by the Revenue is disposed of with the above observations.