

Collector of Central Excise Vs. Dynomac Pumps

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-01-2000

Reported in : (2001)(128)ELT299TriDel

Appellant : Collector of Central Excise

Respondent : Dynomac Pumps

Judgement :

1. This is an application filed by the Revenue for rectification of mistake apparent from record of the Tribunal Final Order Nos.

495-499/99-C, dated 26-6-1999.

2. When the matter was called no one was present on behalf of the Respondents. In fact the notices issued to them had been received back from the Postal Department undelivered. We, therefor 2, heard Dr. D. K.Verma, SDR, and perused the records. The Id. SDR submitted that the Tribunal, under the impugned Order, had rejected the appeals filed by revenue relying upon the Bombay High Court's decision in the case of Solar Pesticides Ltd. v. U.O.I. -1992 (57) E.L.T. 201; that this decision has been set aside by the Supreme Court in its judgment reported in 2000 (116) E.L.T. 401 (S'.C.) holding that the principle of unjust enrichment will apply even in case: of refund of duty paid on goods consumed, captively. The Id. SDR submitted that in view of this judgment of the Apex Court an error has crept in the final order passed by the Tribunal which may be rectified.

3. We have considered the submissions of the Id. DR. It has been held by the Larger Bench of the Tribunal in the case of Gujarat State Fertiliser Corporation v. CCE, Vadodara, - 2000 (122) E.L.T. 282 (T-LB), that a subsequent decision of the Supreme Court cannot form the basis for rectification of mistake under Section 35 C(2) of the Central Excise Act. As the judgment of the Supreme Court has been pronounced much after the final order passed by the Tribunal, it cannot be said that there is an error apparent on the record of the order.

Accordingly, following the ratio of the Larger Bench decision in Gujarat State Fertilizer case, the application filed by the Revenue is rejected.

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