

Unisys Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-06-2000

Reported in : (2001)(73)ECC239

Appellant : Unisys

Respondent : Commissioner of Central Excise

Judgement :

1. The applicant filed this application under Rule 41 of the CEGAT (Procedure) Rules, 1982 for rectification of mistake in the Stay Order No. 160/2000-B dated 17th August, 2000.
2. The contention of the applicant is that the case of the applicant before the lower authorities was that they were clearing goods with the House marks of M/s. Fujitsu India Telecom Limited, whereas in the Stay order No. 160/2000-B dated 17th August, 2000, it was noted that applicants were clearing goods with the brand name of M/s. Fujitsu India Telecom Limited. The submission of the applicant is that therefore, the stay order dated 17th August, 2000 be suitably amended.
3. Learned, JDR appearing on behalf of the Revenue submitted that this application is for rectification of mistake in the Stay order. He submits that under Section 35C(2) of the Central Excise Act, the Tribunal can rectify the mistake apparent on record in any order passed under Section 35C(1) of the Central Excise Act. His submission is that the Stay order dated 17-8-2000 is not an order passed under Section 35C(1) of the Central Excise Act, therefore, Rectification of

Mistake application is not maintainable. His submission is that under Rule 41 of the CEGAT (Procedure) Rules, 1982, the Tribunal can pass orders or give directions as may be necessary in relation to pass the order or to prevent abuse of his process to secure the ends of justice. He submits that the present application does not fulfil the conditions laid down under Rule 41 of the CEGAT (Procedure) Rules, 1982. He, therefore, prays that the application be dismissed.

5. Appellant filed this application under Section 41 of the CEGAT (Procedure) Rules, 1982 for rectification of mistake in the Stay order.

In the Stay order after taking into consideration the facts on record, prima facie, a view has been taken for waiver of pro-deposit of duty and penalty for hearing of the appeal and the observation made in the Stay order cannot be cited as a binding precedent. In this case the benefit of exemption of notification is denied to the appellant on the ground that they were using the brand name belonging to M/s. Fujitsu India Telecom Limited. Therefore, we find no ground to pass any order or to issue any direction as provided under Rule 41 of CEGAT (Procedure) Rules, 1982. The application is rejected.

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