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Commissioner of Central Excise, Vs. M/S. Manish Fabricators and Allied

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-18-2001

Reported in : (2001)(131)ELT632TriDel

Appellant : Commissioner of Central Excise,

Respondent : M/S. Manish Fabricators and Allied

Judgement :

1. According to the Revenue, the Tribunal has committed a mistake in holding that the process of coating of inner and outer surface of steel pipes and tubes with concrete does not amount of manufacture and rejecting the appeal of the Revenue ld. SDR submits that in the case of Sidhartha Tubes ltd. vs. CCE, New Delhi [1996 (82) ELT 399] which has been confirmed by the Supreme Court in Civil Appeal No. 7282 of 1996 reported in 2000 (115) ELT 32 (SC), it has been held that while the process of galvinisation of steel pipes does not amount to manufacture, it adds to the intrinsic value of the product to make up the full commercial value realised by the appellants by charging the higher price for such pipes covering the cost of galvinisation. He submits that since the respondents in the present case are coating the steel pipes with concrete and marketing them by charging higher price, the appeal of the Revenue ought to have been allowed by the Tribunal.

2. The prayer is opposed by ld. Counsel Shri Y.K. Kumar,, who submits firstly that decision of Sidhartha Tubes Ltd. although dated November, 1999 was not cited before the Bench while deciding the above appal and hence no mistake arises from that Final Order of the Tribunal. He cited the decision of the Hon'ble High

Court in the case of Deeksha Suri vs.

Income Tax Appellate Tribunal [1998 (102) ELT 524 (Del) in this connection. Secondly, he submits that issue before the authorities below and the Tribunal in this case was that of correct classification, while the department is seeking to rely upon a decision of valuation in the case of Sidhartha Tubes Ltd. 3. We have carefully considered the rival submissions. In the case of Deeksha Suri cited (supra), the Hon'ble Delhi High Court has held that merely because the Tribunal overlooked its own order while deciding an appeal finally, it will not render a judgement void or a nullity and such an order cannot be recalled (para 33 of the High Court order).

Further in the case of Ester Industries Ltd. vs. CCE, Meerut [1998 (97) ELT 535 (Tribunal)], the Tribunal has dismissed the ROM application filed on the ground that on similar issue the Tribunal had taken a different view in another case but that case was not cited before the Bench. Following the ratio of the above orders, we hold that there is no error apparent from the face of the record and accordingly reject the ROM application.

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