Commissioner of Central Excise, Vs. Nahar Spinning Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-2002

Reported in : (2002)(141)ELT773TriDel

Judge : S Kang

Appellant : Commissioner of Central Excise,

Respondent : Nahar Spinning Mills Ltd.

Judgement :

1. Applicant filed this application for rectification of mistake in the Final Order No. A/1158/2001-NB (SM), dated 14-8-2001. The contention of the applicant is that the benefit of Modvat credit was denied on the ground that inputs were not mentioned in the declaration filed by the respondents for availing the benefit of Modvat credit. The contention of the applicant is that Notification No. 7/99-C.E. (N.T.), dated 9-2-99 is applicable on the facts of the present case as Rule 57G and Rule 57T of Central Excise Rules are amended to the effect that no credit shall be denied on the ground that declaration filed does not contained all the details. Their contention is also that in similar circumstances, the Tribunal has remanded the issue to the adjudicating authority for de novo adjudication. The applicants also relied upon the decision of Hon'ble Supreme Court in the case of Hari Singh v. State of Haryana, reported in 1993 (66) E.L.T. 23 (S.C.) to say that no one should suffer for the mistake of the Court and the Courts are not powerless to correct the error. The applicant also relied upon the decision of the Gujarat High Court in the case of Ram Kirpal v. Union of India, reported in 1998 (103) E.L.T. 8 (Guj.) to submit that

the error sought to be corrected is one of law and is apparent on the face of the record.

2. Heard learned JDR. In the present case the benefit of Modvat credit was denied in respect of Cots and Aprons. The respondents filed a declaration and they had not declared the above mentioned items. In the declaration dated 3-7-94. The respondents declared Tubes, Pipes and hoses of vol- canised rubber as packing material and, thereafter, on 23-1-95, they written a letter to the Supdt. of Central Excise that the Cots and Aprons are not raw material but in fact these are spare parts of capital goods and in this letter they specifically mentioned that by oversight, they had filed a declaration under Rule 57G, in fact it should be filed under Rule 57T of the Central Ex cise Rules. Now, the applicants are relying upon the Notification No. 7/99- C.E.(N.T.), dated 9-2-99 vide which the Rule 57G and Rule 57T of the Central Excise Rules are amended. These arguments were never raised in the grounds of appeal nor at the time of arguments. The order was dictated in the Court in the presence of the Chartered Accountant appeared on behalf of the respondents. The plea which was not taken by the party at the time of making of submission nor in the grounds of appeal, cannot be said to be a mistake apparent on record. In the present case, a view has been taken that a declaration has not been filed in respect of the capital goods at the time of taking credit which is also admitted by the appellants in their letter dated 23- 1-95 where they mentioned that by oversight they had filed declaration un der Rule 57G where as it should be filed under Rule 57T of the Central Excise Rules. In these circumstances, I find no error apparent on record. The appli cation is rejected.