Triveni Engineering and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-2002

Reported in : (2003)(161)ELT492TriDel

Judge : B T K.K.

Appellant : Triveni Engineering and

Respondent : C.C.E.

Judgement :

1. Both of these ROM petitions are filed in respect of the identical orders both dated 30-4-2001 passed by the Tribunal in the respect of the present petitioners. Both petitioners manufacture V.P. Sugar and had availed the Modvat credit during the year 1996 on the capital goods and the inputs under Rule 57Q and Rule 57A respectively. The proceedings were initiated against them and the Central Excise Authority disallowed the Modvat credit availed by the petitioners. They filed the appeals but the same stood rejected by the respective orders of the Commissioner (Appeals), Allahabad. They filed the second stage appeals before the CEGAT. Their appeals were called on 30-4-2001 but none of the appellants were present despite the notice. The appellants in their appeals had advanced identical argument that the Apex Court in the case of Kolhapur Cane Sugar v. Union of India - 2000 (119) E.L.T.257 (T) had held that if the rules are repealed without having any saving clause, all the proceedings initiated thereon would become void; that on these lines, the matter is referred to the Larger Bench in the case of Kisan Sahakari Chinni Mills in Appeal No. E/2032/97-NB(S) [2001 (131) E.L.T. 651

(T)] as per their knowledge and it was prayed that hearing may be adjourned. The Tribunal, however, observed that the appeals were already adjourned earlier on 6 or 7 occasions and decided to dispose of the appeals by following the ratio of the decision of the Tribunal in the case of Wipro Limited v. CCE [2001 (135) E.L.T. 1337 (T) = 2001 (43) RLT 317 (T)]. In this decision, it was held that all the proceedings initiated with reference to the provisions and rules repealed on 1-4-2000 are non-est in the eyes of law and accordingly the appeals are liable to be dismissed. Consequently, both these appeals were dismissed.

2. I have heard Shri Rajesh Chhibber, ld. Advocate for the petitioners and Shri Hitesh Shah, ld. JDR for the respondents. The ld. Counsel for the appellants is contending that it was pleaded before the Bench that the matter on the issue was before the Larger Bench of the Tribunal and therefore an adjournment may be granted. The Bench, however, proceeded with the matter and dismissed their appeals by following the ratio of the Division Bench of the Tribunal in Wipro Limited referred to supra.

The ld. Counsel for the petitioners contends that by not granting the adjournment and keeping the case in abeyance till the order of the Larger Bench of the CEGAT was available, the Bench in its impugned orders, has committed an apparent mistake on record which calls for rectification. He, therefore, requests that both orders should be recalled and posted for reconsideration. I have considered these submissions. It is well settled that the Tribunal has no power to review its own order. On a specific query, the ld. Counsel for the petitioners was not able to cite any decision which would hold that an order passed in respect of an issue pending before the Larger Bench of CEGAT per se is liable to be recalled in terms of the provisions of Section 35C(2) for rectification of mistake. As already stated above, the Tribunal had passed the impugned orders by following the decision of the Tribunal in the case of Wipro Limited (supra) and there is no mistake in the said orders. The present petitions, therefore, have no merit and the same are accordingly dismissed.