Commr. of Cus. Vs. Videocon Leasing and Indus. Finance

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-04-2002

Reported in : (2002)(146)ELT416Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commr. of Cus.

Respondent : Videocon Leasing and Indus. Finance

Judgement :

1. Disposing of an appeal by Videocon Leasing and Industrial Finance Ltd., the Commissioner (Appeals) confirmed the classification determined by the Assistant Commissioner and dismissed the importer's appeal. He thereafter issued a corrigendum stating that the classification that he determined was 'without prejudice to the benefit under Notification 49/95 for the "packaging material" which is evidently a commodity entitled for exemption. Accordingly, the rest of the appeal is dismissed. The rest of the order remains unchanged.' He thereafter issued a corrigendum to the corrigendum that was already issued. This amended the corrigendum to read 'benefit under Notification 49/95 to the machine for producing the "packaging materials" which is evidently a commodity. Accordingly, the rest of the corrigendum remains unchanged.' 2. The department's appeal contends that this corrigendum could not have been issued under Section 154 of the Act, that section is limited to correction of clerical and arithmetical error and cannot cover a corrigendum which has the effect to change the character of the order.

3. The respondent was absent. We decline to hear Mr. Joseph Ferrao of Vishnu Vijay Packaging Pvt. Ltd. on the ground that this firm has no locus standi not being the importer. The fact that the goods were imported on behalf of the firm by the respondent does not confer jurisdiction on it.

4. After hearing the Departmental Representative, we are of the view that the second "corrigendum" that the Commissioner (Appeals) issued does in fact change the character of the order. His first order does not refer to the exemption at all and confirmed the classification dismissing the appeal and corrigendum left untouched the question of the applicability of the notification, although it referred to it. The corrigendum has granted the benefit of the exemption. This was the only issue before the Commissioner (Appeals). He has reversed the earlier order of dismissal to one of allowing it. This corrigendum clearly cannot be sustained.

5. We however note that the first order of the Commissioner (Appeals) did not deal with the availability of the exemption to the notification, which is what prompted him to issue the corrigendum.

Therefore, while we strike down the second corrigendum, we think that the eligibility of the goods to the notification which ought to have been considered appropriately by the Commissioner (Appeals) should now be considered.

6. We therefore allow the appeal and remand the matter to the Commissioner (Appeals), who shall deal with the appeal before him in accordance with law.