Cce Vs. S.R. Foils Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-2002

Reported in : (2002)(81)ECC581

Judge : S T G.R., B T P.S.

Appellant : Cce

Respondent : S.R. Foils Ltd.

Judgement :

1. Revenue has filed this R.O.M. stating that some mistakes have crept in the Final Order No. 231/2001-A dated 8.6.2001. The mistakes are stated to be that the issue involved was whether after taking into consideration the facts stated in the show cause notice the said Order of the Commissioner in allowing deduction of the duty payable from wholesale price treating the same as cum-duty price while no such duty was paid, is correct, legal and proper; that the Tribunal has wrongly decided an issue which was never the subject-matter of this appeal. The issued is whether the cutting of Jumbo Roll of Aluminium Foils into smaller length does not amount to manufacture.

2. Arguing the case for Revenue Shri M.M. Dube, learned DR submits that in so far as the question of cutting of jumbo roll of aluminium foils into smaller length amounts to manufacture or not was not the subject-matter of the appeal. He, therefore, did not press this point.

The only point pressed by him was that whether after taking into consideration the facts stated in the show-cause notice the said order of the learned Commissioner in allowing deduction of duty payable from wholesale price treating the same as cum duty price is correct, legal and proper. He, therefore, prays that mistake may be rectified and the R.O.M. may be allowed.

3. We have heard the submissions of the learned DR. We have also heard Shri M.P. Devnath, learned Advocate for the respondent (s) who stated that the point has been taken in para 4 wherein the Tribunal has held that "In so far as Chapati Wrap is concerned, we note that the issue is covered by the decision of the Larger Bench in the case of Sri Chakra Tyres RLT (LB) 1262" We note that in the case of Sri Chakra Tyres the issue before the Larger Bench was whether excise duty held payable subsequently to be abated from the total sale price realisation by treating it as cum-duty price for purpose of determination of assessable value and quantum of demand payable . Thus we find that there is no mistake as the point is squarely covered by para 4 of the Tribunal's order referred to above. However, for the sake of clarity para 4 of the impugned order is amended to read - "4. In so far as Chapati Wrap is concerned we note that the issue is covered by the decision of the Larger Bench in the case of Sri Chakra Tyres RLT (LB) 1262 interpreting Section 4(4)(d)(ii) of Central Excise Act, 1944." The R.O.M. is allowed to the above extent.