

**Columbia Electronics Ltd. and Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-10-2003

**Reported in :** (2003)(86)ECC442

**Judge :** A T V.K., P Bajaj

**Appellant :** Columbia Electronics Ltd. and

**Respondent :** Cce

**Judgement :**

1. These are two applications filed by M/s. Columbia Electronics Ltd. and Shri M.L Khanna for rectification of mistake sought to have crept in Final Order No. A/42-44/2001-NB (DB) dated 27.11.2000.
2. Shri D.N. Choudhary, learned Departmental Representative, raised a preliminary objection about the maintainability of the present applications as these have been filed much after the time limit of six months specified under Section 35C of the Central Excise Act for filing applications for rectification of mistake.
3. Shri Gopal Prasad, learned Advocate, submitted that as the Final Order was passed in November 2000, the time specified for filing application for rectification of mistake under the law was four years; that this period has been reduced to six months with effect from 15.5.2002 and as the present applications have been filed in August 2002, these are within time limit of six months from 15.5.2002 when the new provisions came into effect. In this regard, he referred to Section 6 A of the

General Clauses Act which provides that where any Central Act or regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion, or substitution of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal. The learned Advocate contended that in view of these provisions of General Clauses Act, the Applications filed by the Applicants are within the time limit. Reliance has also been placed on the decision of the Larger Bench of the Tribunal in the case of Rajasthan Worsted Spinning Mills v. Commissioner of Central Excise, 1990 (26) ECC 344 (LB) : 1990 (47) ELT483 (Tri) wherein it has been held that "the controversy before us is as to whether in the absence of any saving clause or breathing time can be Rule making authorities suddenly extinguish the vested right of action by providing for a shorter period of limitation, even though by and large the law of limitation may be held to be a procedural law." Learned Advocate submitted that they have a vested right of filing the ROM application in four years which has been curtailed without any breathing time. The learned Senior Departmental Representative countered by submitting that the Applicants can file the applications for rectification of mistake earlier also and the amendment under Section 35C has been brought in May 2002 after introduction of Finance Bill on 28.2.2002.

4. We have considered the submissions of both the sides. Section 35C (2) provides for filing of the applications for rectification of mistake apparent from the record within six months from the date of Order. This amendment came into effect from 11.5.2002. The present applications have been filed in August 2002 for rectification of mistake in the Final Order of the Tribunal which was passed in November 2000. As such the applications are hit by time limit specified in Section 35C (2) of the Central Excise Act. The provisions of Section 6A of the General Clauses Act are not applicable to such situations.

Further, the decision of the Larger Bench in Rajasthan Worsted Spinning Mills is also not applicable to the facts of the present matter as the facts are different inasmuch as in that matter Rule 11 of the Central Excise Rules was substituted.

We, therefore, reject both the applications as time barred.

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