Mark Auto Industries Vs. Commissioner of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-03-2003

Judge : Author: V Agrawal

Appellant : Mark Auto Industries

Respondent : Commissioner of C. Excise

Judgement :
1. This is an application for rectification of mistake filed by M/s.

MARK AUTO INDUSTRIES LTD., for rectification of mistake in Tribunal's Final order No. 127-128 / 2002-D, dt. 18.4.2002.

2. Shri Harbans Singh, Learned Advocate, submitted that the appeals were filed against the withdrawal of sanction of Service Tax refund of the tax already deposited on account of services provided as goods transport operators, that though the refund claim filed by the Applicants had been sanctioned but the refund claims were not paid, that during the hearing, it was submitted and explained that the amount of refund had not been paid to the Applicants; that as such it is amply clear that the amount already paid as Service Tax has remained with the Department; that in view of this fact the decision of the Tribunal in Para 7 of the final order to the effect that "the Appellants are liable to pay the Service Tax and the same has been rightly remanded from them" is not correct in as much as the amount is not payable by them as Service Tax already stands paid. He, therefore, prayed that this is a mistake apparent from the record which requires rectification

and it may be ordered that the Service Tax is not required to be recovered again. We have also heard Mrs. Krishna Mishra, learned Senior Departmental Representative.

3. We have considered the submissions of both the sides. We observe that no mistake has crept in the Final Order as the Tribunal has only held that the Applicants were liable to pay the Service Tax and the same had been rightly demanded from them in as much as the refund had been sanctioned and the proceedings had been initiated against the Applicants to reject the refund claim in view of the validation of the provisions relating to imposition of Service Tax on the user of the Services. The Appeals filed by the Applicants against withdrawing the sanction of Service Tax were dismissed. As such there is no error on the face of the record in the Final Order passed by the Tribunal.

Accordingly, the ROM application is rejected.