

Commissioner of Customs and Vs. Datar Switchgear Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-2003

Reported in : (2004)(177)ELT1085Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Customs and

Respondent : Datar Switchgear Ltd.

Judgement :

1. Application 2204/02 has been filed by the Commissioner seeking to rectify the figure "Rs. 7.77 lacs" mentioned in order No.CII/2718/WZB/2002 dated 4.9.2002 passed in Appeal No. E/1482/97-Bom to be read as Rs. 13,76,598/-.
2. Application 2205/02 has been filed by the assessee seeking to recall the said Order made by the Tribunal in said Appeal No. E/1482/97-Bom bearing order No. CII/2718/WZB/2002 dated 4.9.2002 modifying the order by granting relief's as stated in the Memorandum of Appeal after referring to the points urged in the said Memorandum of Appeal.
3. In our above Order dated 4.9.2002 at paragraph 1 describes the facts of the case. At paragraph 3 of the same, refers to Board's Circular No.3/92 dated 14.05.92 and 9/97 dated 27/2/97. The said paragraph also deals with provisions of Sections 11A, 11B, 11AC of the Central Excise Act. Subsequent paragraph of the Order deals with the merits of the case and the Order provides for allowing of the

appeal in part, in that penalty imposed under Sections 11AC and 11A of the Central Excise Act have been remitted. The present application has been filed praying to allow the said appeal in that, duty confirmed and demanded by the Order-in-Original may also be remitted.

4. Taking the application filed by the department namely Rectification of Mistake Application No. 2204/02, we find that in the Order-in-Original the modvat credit which was disallowed has been indicated as Rs. 13,76,598/-. The impugned order dated 4.09.2002 mentioned the duty as Rs. 7.77 lacs in line 4 of the 1st paragraph.

This is our view is a mistake which is apparent on the face of the record and hence it is ordered to be so i.e. figure Rs. 7.77 lacs appearing in the 1st paragraph of the impugned order is ordered to be changed to be read as Rs. 13,76,598/-. Application No. E/2204/02 is allowed.

5. Let us take up the points made by the assessee for rectifying the defects in the Order passed by us. The learned advocate for the assessee mainly raised the points of jurisdiction and competence of the Superintendent signing the show cause notice. As far as these points are concerned, in paragraph 3 of the impugned order, the same has been referred. The fact of the Board's Circular has been taken note of by us when we had referred to the arguments of the learned DR. The same thing has been are reiterated in the Application for ROM by the assessee.

When we go through the grounds of appeal there is no specific reference to Board's Circular in the grounds reflected in pages 7 to 25 of the Memorandum of Grounds of Appeal. However since we have already referred to the Board Circular in paragraph 3 of the Order we do not think that, the Tribunal in the guise of exercising jurisdiction of rectifying mistake apparent on the face of the record under Section 35C(2) of the Central Excise Act, cannot treat this application as the power of review under Order 47 of the CPC nor can it exercise the power of Review of a Civil Court under Section 114 of the Civil Procedure Code, because the power of Review of its own order has not been given by the Central Excise Act to the Tribunal. Nor can the Tribunal act as Appellate forum against the order

made by itself in a circuitous way.

6. As far the other point is concerned namely, limitation point, which the learned counsel raised at the time of arguing ROM application, we find in the grounds of appeal it is not specifically taken that point.

Unless this point is specifically raised in the Memorandum of Grounds the application for ROM has to be rejected. It is true that there is a specific reference to the case of Padmani Products v. CCE 1989 (43) ELT 195 at paragraph 6.6 of the grounds of Appeal and that does not speak of limitation point specifically but it only refers to words like intention to evade. Moreover we did not remember that at the time of hearing of the Appeal no argument regarding applicability of the larger period was made by the counsel. Having considered all aspects of the matter, we are of the view that in the present circumstances of the case we cannot exercise our power to rectify the mistake made in our order disposing of the appeal. Application No. E/ROM/2205/02 is dismissed.

7. Application filed by the assessee is dismissed. The application filed by the department is allowed.

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