

Himachal Oxygen (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2003

Reported in : (2003)(90)ECC27

Judge : A T V.K., P Bajaj

Appellant : Himachal Oxygen (P) Ltd.

Respondent : Cce

Judgement :

1. This is an application by M/s. Himachal Oxygen (P) Ltd. for rectification of mistake in Tribunal's Final Order No. 47/2002-C, dated 7.2.2002.

2. Shri G.N. Srinivasan, learned Advocate, submitted that the Tribunal's Final Order was passed on 7.2.2002 and the ROM. application has been filed by them on 6.4.2003 which is within 4 years of passing the Tribunal's Final Order; that as directed by the Registry they have also filed an application for condonation of delay though, according to them, there is no delay as the period of 4 years from the date of Final Order would be available to them for filing the application for rectification of mistake and the amendment made in Section 35C(2) by Finance Act, 2002 w.e.f. 11.5.2002 would be applicable only to those orders passed on or after 11.5.2002. A preliminary objection was raised at this stage that the application for rectification of mistake itself is not maintainable as the applicants had filed an appeal before the Supreme Court which stands dismissed by the Supreme Court as reported' in 2003 (152) ELT A197. The learned Advocate for

the applicant further contended that it is settled law that when there is an error apparent on the face of the record, the fact whether error occurred by the reasons of Counsel mistake or it crept in by reasons of oversight on the part of the Court is not a circumstance which could effect exercise of jurisdiction of the Supreme Court to review its decision. He relied upon the decision in the case of *Mt. Jamna Quer v. Lal Bahadur*, AIR (87) 1950 Federal Court 181. We also heard Shri Vikas Kumar, learned SDR.3. The fact which is not in dispute is that on an appeal filed by the Applicants against the Tribunal's Final Order No. 47/2002-C, dated 7.2.2002 the Supreme Court after condoning the delay dismissed the appeal on 2.12.2002 as reported in 2003 (152) ELT A197. Once the Supreme Court has dismissed the appeal filed by the applicants the order of the Tribunal merges with the order of the Supreme Court. It is not permissible to the parties to move the Tribunal for rectification of mistake in the order passed by the Tribunal. It has been held by the Supreme Court in the case of *Kunhayammed v. State of Kerala*, 2000 (72) ECC 681 (SC) : 2001 (129) ELT 11 (SC) that "once the superior court having jurisdiction has disposed of the lis before it either way--Whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or authority below." The Supreme Court has further held that it is no longer permissible to move High Court by review and no court, tribunal or authority can express any opinion contrary to the view taken by the Supreme Court "because permitting to do so would be subversive of judicial discipline and affront to the Order" of the Supreme Court. As in the present matter the Supreme Court has dismissed the appeal filed by the appellants after condoning the delay no application for rectification of mistake lies with the Tribunal. We, therefore, reject the application filed by the applicants on the aspect of maintainability itself without going into merits.