Chinttapurni Engineering Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/32836

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-29-2003

Reported in : (2003)(158)ELT535TriDel

Judge : S Kang, a T V.K.

Appellant : Chinttapurni Engineering

Respondent : Commissioner of C. Ex.

Judgement :

1. This is an application filed by M/s. Chinttapurni Engineering Works for rectification of mistake in Tribunal's Final Order No. 95/2003-B, dated 14-2-03 [2003 (154) E.L.T. 427 (Tri. - Del.)]. Shri K.K. Anand, learned Advocate, submitted that in their Memorandum of Appeal, the Applicants have challenged the decision both on merits as well as on the ground that the extended period is not invocable; that though the plea of limitation has been raised in the Appeal as well as orally argued before the Hon'ble Tribunal, no finding has been recorded on the said aspect resulting in an error apparent on the face of the record which merits to be rectified. In support of his submissions, the learned Advocate, has relied upon the decision in the case of Surjeet Singh and others v. Union of India [1997 (10) SCC 592] wherein it has been held that "when the patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct with grace its mistake of law."

2. We also heard Shri V. Valte, learned Senior Departmental Representative, who relied upon the decision in the case of CCE, Calcutta v. A.S.C.U. Ltd. [2003 (151) E.L.T. 481 (S C.)] wherein it has been held that "a mistake apparent on the face of

the record must be an obvious and patent mistake. Mistake apparent from the record cannot be something which would have to be established by a long drawn process by reasons on points which there may conceivable be two opinions.

3. We have considered the submissions of both the sides. In this matter, the demand of duty has been confirmed against the Applicants for the period 1994-2000. A perusal of the Memo of Appeal reveals that the Applicants had specifically taken the plea of demand being time-barred; that in fact it was there as ground No. 1 in grounds of Appeal. As the time-bar aspect has not been dealt with in the impugned Order, there is a mistake apparent on the face of the record.

Therefore, we recall our final Order No. 95/2003, dated 14-2-2003 only for considering the plea of demand being time-barred. The matter is posted for regular hearing on 11-12-2003.