

Commissioner of Central Excise Vs. Acme Engg. Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-19-2004

Reported in : (2005)(182)ELT361Tri(Mum.)bai

Judge : A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Acme Engg. Works

Judgement :

1. This ROM application is filed by the Revenue. None appeared for the respondents. Heard the Ld. DR and perused the records.

2. This application for rectification of mistake is directed against the Order of the Tribunal's Final Order No. C-IV/530/WZB/2004, dated 31-12-2003. In its final Order the Tribunal observed that the larger period of limitation is not invocable and remanded the matter to the adjudicating authority for passing fresh Orders within three months from the date of the Order by taking the normal period of limitation into consideration. The Tribunal thus allowed the Revenue's appeal by way remand and set aside the Order of the lower authority. Collector of Central Excise v. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)] held that provisions of Section 11A of Central Excise Act have no application to any action taken under Rule 57-1 prior to amendment of this Rule on 6-10-1998. The Supreme Court held that the provisions of Rule 57-I prior to the amendment are not in any manner subject to the provisions of Section 11A. Therefore the limitations under Section

11A are not applicable to demands under Rule 57-I of the Central Excise Rules, 1944. The Tribunal while passing the final Order held that larger period cannot be invoked while demanding the credit wrongly taken under Rule 57-I. This decision of the Tribunal is contrary to the law laid down by the Supreme Court in Raghuvar (India) Ltd. 4. I have considered the submissions made by the DR and perused the impugned Order of the Tribunal. The Tribunal remanded the matter to the original authority for taking into consideration normal period of limitation for calculating the credit to be denied. This appears to be not in conformity with the decision of the Supreme Court in the above cited case. The ROM application needs to be allowed. The matter be listed again for the purpose of determining the correct legal. The registry is accordingly directed to re-list the appeal for a fresh decision.

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