

Wavin India Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-2005

Reported in : (2005)(186)ELT90TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Wavin India Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This is an application by M/s. Wavin India Ltd. for rectification of mistake in Tribunal's Final Order No. A/709/03-NB(C), dated 28-11-2003 [2004 (164) E.L.T. 269 (Tri. - Del.)].

2. Sh. Lajja Ram, learned Advocate, submitted that it has been the case of the applicants from the very beginning that the matter relates to abatement of duty in respect of damaged and deteriorated goods under Section 22 of the Customs Act and as such provisions of unjust enrichment under Section 27 of the Customs Act are not applicable; that, further, in any case the issue regarding abatement of duty on damaged or deteriorated goods had been settled and the Department had allowed abatement of duty by reducing the value of imported goods to the extent of 30%; that, thus, there is an acceptance that the matter, in fact, related to the abatement of duty under Section 22 of the Customs Act and by recording a finding that the matter does not relate to abatement of duty, a mistake has crept in the final order.

3. On the other hand, Sh. B.L. Goyal, learned SDR, countered the arguments by submitting that the Final Order, in question, was passed by the Tribunal after considering all the submissions made by the learned Advocate; that the Tribunal has clearly held that the issue of abatement had been settled and the issue now relates to refund of the duty which had been paid by them in excess before the abatement was allowed; that in view of this, the provisions of Section 27 of the Customs Act regarding unjust enrichment are applicable.

4. We have considered the submissions of both the sides. The applicants, through the present application, are challenging the findings given by us in our Final order dated 28-11-2003 which is not permissible under Section 129B(2) of the Customs Act. The scope of an application for rectification of mistake has been considered by the Larger Bench of the Tribunal in the case of *Dinkar Khindria Dinesh Khindria v. CC, New Delhi* [2000 (118) E.L.T. 77 (Tri. - LB) : 2000 (38) RLT 442 (CEGAT-LB)] wherein it has been held that the power of rectification of mistake under Section 129B of the Act is a limited power and this power is restricted to rectification of mistakes apparent from the record calling for amendment of the order. It has been held by the Supreme Court in the case of *S. Balram, Income-tax Officer Company v. Volkart Brothers*, AIR 1971 SC 2204 that a mistake apparent on record must be an obvious and patent mistake not something which can be established by a long drawn process or reasoning on points on which there may conceivably be two opinions. Through an application for rectification of mistake, it is not open to the applicants, herein, to challenge the Tribunal's Order. The right course of action available to the applicant is to file an appeal against the Order passed by us in the Appellate Forum because rectification of mistake is by no means an appeal in disguise whereby an Order even if it is not valid is re-heard and re-decided. In view of this, we find no merit in the application which is rejected.