

Aps Associates Pvt. Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-10-2005

Reported in : (2005)(188)ELT83TriDel

Judge : A T V.K., P Bajaj

Appellant : Aps Associates Pvt. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The COD application seeking condonation of delay in filing the ROM application, has not been pressed by Id. Counsel and as such the same is dismissed.
2. The ROM application had been admittedly filed after the expiry period of six months and as such is time-barred.
3. The contention of the Counsel that the ROM application is to be governed by the earlier law under which the period of limitation was four years, cannot be accepted as no such saving clause has been provided -under the amended provision prescribing period of limitation as six months for filing the ROM application. All ROM applications after the amendment, against the final order seeking rectification, are required to be filed within a period of six months. Therefore, the ROM application of the appellants must be held to be time-barred.

4. Apart from this, on merits also, the ROM application of the appellants deserves to be dismissed. No apparent mistake of fact or law has been pointed out in the final order. The ground for recall of the order put forth in the ROM application is that the certificate of Chartered Engineer produced by the appellants that the capacity of their furnace was 2.6 m.t. had been not accepted wrongly by the Tribunal. But this no ground to recall the order and to rehear the matter, as it cannot be said to be a mistake of fact apparent on the record. The plea of the appellants that the capacity of their furnace was 2.6 m.t. had been considered and discussed in paras 9 and 10 of the Final Order. The reappreciation of the evidence is not permissible and order for that purpose can be recalled on the ROM application moved by the appellants.

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