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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-02-2005

Judge : S T T.V.

Appellant : Cce

Respondent : Gajra Gears Ltd.

Judgement :

1. This Rectification of Mistake application has been filed by the Revenue under Section 35-C(2) of Central Excise Act, 1944 on the ground that while passing its final order on 21.06.2005 "it appears" that this Tribunal had not considered the supplementary/additional grounds filed subsequently by the appellants, CCE, Indore, on 21.5.2004. It is contended here that the Commissioner (Appeals) vide his order dated 20.02.2003 had wrongly allowed Modvat Credit on HSD prior to the amendment of Rule 57B on 2.3.1998, keeping in view the Apex Court's judgment in the case of CCE, Hyderabad v. ACC Ltd. While delivering the said judgment, the Apex Court had not taken into consideration the validation of the denial of credit of duty paid on HSD from 16.03.1995 onwards. It is also contended that while filing the appeal, the appellants had not appealed against the order of the Commissioner (Appeals) on this particular issue. As the said matter was not appealed, they filed supplementary/additional grounds on 21.05.2004, which "appears" to have not been considered by the Tribunal while passing its final order dated 21.06.2005.

2. The learned representative for the Respondents armed with the following cases laws, contests the rectification attempt vehemently :Om Prakash Bhatia v. CC, New Delhi , wherein it was held that mistake apparent from the record cannot be spelled out on the ground that all the grounds mentioned in the memo of appeal were not dealt with by the Tribunal when it pronounced the final order.New Decent Footwear Indus. v. CCE, Kanpur , wherein it was held that so long as Tribunal examined every aspect agitated at hearing appeal and passed appropriate orders, the order not rendered void by the fact merely of absence of specific reference to each and every submission.

(c) State Insurance Provident Fund Department v. CCE, Jaipur 2001 (138) ELT 1032, wherein it was held that Tribunal is not competent to review its own order - Only mistake apparent on the face of the record are to be rectified.C.M. Abdul Razak v. CC, Cochin , wherein it was held that Tribunal's order cannot be recalled for re-hearing and only arithmetic mistakes can be corrected - Impugned order having been passed after conceding the position by Departmental representative that the Deputy Commissioner has no pecuniary jurisdiction to decide the matter - ROM not accepted.

3. I have heard both sides and perused the records. In my view, the provisions under Section 35-C(2) have been carved out to provide avenues for correction of mistakes which can either be apparent from the record or arithmetical in nature. What this section envisages is a kind of cosmetic treatment, rather than a major surgical intervention.

In the present case, the mistake sought to be rectified by the Revenue is not apparent enough in the order passed by the appellate authority which merits a surgical intervention which, in my opinion, would amount to review of the order passed by the appellate authority. If one starts such a practice of re-opening the orders validly passed in this manner, ends of justice may turn out to be endless, perhaps remaining only as distant dreams. This cannot certainly be the intention of the rule-makers. It is also not clear from the appeal whether the appellant brought to the notice of the appellate authority about the supplementary/additional grounds during hearing.

4. Having regard to the facts and circumstances of the case and relying upon the ratio adopted by the Larger Bench in the case of Dinkar Khindria v. CCE which held that the Tribunal's order cannot be recalled for rehearing and only arithmetic mistakes can be correct. The ROM filed by the Revenue is rejected.

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