B.D. Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-07-2006

Reported in : (2006)(111)ECC191

Judge : M Ravindran

Appellant : B.D. Industries

Respondent : Cce

Judgement :

1. This application for rectification of mistake is filed the applicant in pursuance to the order of the Hon'ble High Court of Judicature at Allahabad in writ-petition No. 4082 (MS) 05.

2. The Hon'ble High Court while disposing of the writ-petition has directed the Tribunal in the following terms: Accordingly, the writ petition is finally disposed of with a direction to the opposite party No. 3 to consider and dispose of the applications submitted by the petitioner on 20/05/2005, a copy of which has been annexed as Annexure No. 13 of this writ petition, within two weeks from the date of production of a certified copy of this order, if it has not already been disposed of.

3. As can be seen from the direction of the Hon'ble High Court, the High Court had directed the Tribunal to consider and dispose of the applications filed by the petitioner (applicant before me) on 20^th May, 2005.

4. The learned Counsel appearing on behalf of the applicant submits that the application for rectification of mistake dated 20^th March, 2005 was disposed of by the Tribunal for non-prosecution. It is also his submission that the hearing notice of the said application was not received by the counsel. He submits that the Hon'ble High Court's direction is to hear the application of 20^th May, 2005 and dispose the same.

5. Learned DR submits, on the other hand, that the application has already been disposed of vide order 17/10/2005 and does not require any interference.

6. Considered the submissions made at length by both sides and perused records. This Tribunal vide its order dated 17/10/2005 disposed of the application for rectification of mistake filed by the appellant on 20^th May, 2005 in the following terms: 2. None present for the applicants and from the record it is seen that the notice of hearing has been received back with the remark "Incomplete address.

3. Heard learned DR who submits that this miscellaneous application is for review of earlier ROM application which should not be accepted as it amounts to seek to argue the appeal itself.

4. Considered the submissions made by learned DR and perused the record. It is seen that the address given on the notice of hearing by the Registry is the same as it is mentioned on the face of the miscellaneous application moved by the applicants. If the address is incomplete it was for the applicants to give proper and full address in order to get notice served upon him. In the absence of any proper address the notice sent to the applicants on the address mentioned on the miscellaneous application is considered as service of notice.

Further, I find that the applicants' appeal was rejected by our Final Order No. A/580/03-NB (SM) dated 11/06/2003 against which the applicants preferred a ROM application on 03/11/2003. When this ROM dated 03/11/2003 was listed for hearing none appeared and many adjournments were sought and when finally this ROM came up for hearing, none appeared and the ROM was dismissed for want of prosecution.

5. In my opinion the applicants are filing ROM and not pursuing the same for delaying the implementation of Final Order of this Tribunal. Even today the present ROM is listed before us but there is nobody present on behalf of the applicants. It seems that the applicants are not serious to pursue their ROM application.

Therefore, miscellaneous application filed by the applicant is dismissed for non-prosecution.

7. From the above, it can be seen that the appellant/applicant in this case had never given the proper address to the Tribunal to intimate the hearing of their matters. It is a fact that the application dated 20^th May, 2005 was already disposed of, by the time the applicants could serve the certified copy of the order of the Hon'ble High Court. I find that the Hon'ble High Court had directed the Tribunal to hear and dispose of the application for rectification of mistake within two weeks from the date of service of certified copy of the order. I find from the records that the applicant received the copy of the Hon'ble High Court's order on 26/07/2005 but had not served to the Tribunal till today.

8. Despite this, respectfully following the order of Hon'ble High Court, I take up the miscellaneous application filed by the appellant on 20^th May, 2005 for disposal.

9. I find that the applicant wants to rectify the mistake in the order dated 11/06/2003. It is the applicant submission that the final order dated 11/06/2003 had not recorded the correct and the factual position, as regards the confirmation of the demand of the duty, subsequent to the closure of the appellant's/applicant's unit. I find from the order dated 11/06/2003 that the counsel appearing for the appellant/applicant made detailed submissions, and those were dealt in detail by the Tribunal in its order dated 11/06/2003. The said order dated 11/06/2003 is a detailed and speaking one. The mistake which is sought to be rectified by the applicant is not apparent on the face of the record of the order. The Hon'ble Supreme Court in the case of Commissioner of Central Excise v. A.S.C.U. Ltd. as reported as as refers the application for rectification of mistakes had ordered as under: Rectification of mistake - Mistake apparent on the face of the record must be an obvious and patent mistake and not something which has to be established by a long drawn process of reasoning or where two opinions are possible -

Decision on debatable point of law also cannot be treated as "mistake apparent from the record.

Rectification of mistake - More than one material relied upon by the Tribunal out of which some material may be irrelevant or which could not have been used and without such irrelevant material Tribunal may have given the same decision - Test reports not relevant to assessee's product relied by Tribunal besides other material including assessee's literature - HELD: No mistake apparent from record in Tribunal's order as it could be based on the other material which was relevant, however, if decision is based only on material which is irrelevant or which could not have been used then possibly there could be a mistake apparent from records - Tribunal's order recalling its order set aside - Section 35C(2) of Central Excise Act, 1944.

10. Accordingly, the miscellaneous application dated 20^th May, 2005 and miscellaneous application dated 1^st June, 2006 as filed by the appellants/applicants are devoid of any merits and hence are dismissed.