(2005) 09 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 16180 of 2005

Chiripal Twisting and Sizing Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Citation : (2006) 198 ELT 340

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; J.M. Malkan and P.J. Malkan, for the Respondent

Judgement

D.A. Mehta, J.—Heard Mr. P.M. Dave, learned Advocate for the petitioner and Mr. J.M. Malkan for the respondents.

2. Rule. Mr. Malkan waives service of Rule. Considering the fact that the dispute lies in a very narrow compass the petition is taken up for final

hearing and disposed of today.

3. On 12.6.2003 an order came to be passed by Central Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai, whereby it

dismissed the appeal of the petitioner. The petitioner moved an application for rectification of mistake in the order dated 12.6.2003. This

application was filed on 17.10.2003. By order dated 11.2.2005 the Rectification of Mistake Application came to be rejected by the Tribunal in

the following terms:

2. The present application has been filed seeking rectification of Bench Order dated 12.6.2003. Such rectification has been sought on the grounds

that the Tribunal has not taken into consideration important grounds taken in the appeal and during the course of hearing including the applicants''

grievance regarding violation of principle of natural justice before the Original Authority. We find that the learned Advocate who had argued the

case before the Bench earlier is not present during the hearing of the R.O.M. application. Since the case was argued at length by the Advocate on

record on 29.4.2003 and the points argued by him have been taken into account while recording the earlier order of the Bench, the grounds taken

in the R.O.M. application lack substance. Moreover, the appellants are trying to seek a review of the earlier Bench order through an R.O.M.

application which is not permissible. As such, the R.O.M. application is rejected.

4. It is the contention of the petitioner that one of the principal grounds urged before the Tribunal was violation of principles of natural justice as the

petitioner was not given reasonable opportunity of defending itself and was not-granted personal hearing. It is submitted that this was taken as

ground of appeal when the appeal was filed before the Tribunal, the same was pressed at the time of hearing of the appeal before the Tribunal, and

yet the Tribunal has failed to deal with the same. In support of its stand the petitioner has placed on record affidavit dated 10.8.2005 of Shri V.M.

Doiphode, Advocate, who had conducted the appeal before the Tribunal. It was therefore urged on behalf of the petitioner that in the

circumstances, the Tribunal must be directed to deal with the Application of Rectification of Mistake and in turn the appeal to the aforesaid extent

so as to enable the petitioner to exercise its statutory right of appeal effectively and substantially.

5. Mr. Malkan, appearing on behalf of the respondent authorities read out from the impugned order of Tribunal dated 11.2.2005 pointing out that

the Rectification of Mistake Application had been rejected on three grounds:

Firstly, that the case was argued by an Advocate who was not present at the time of hearing of the application; secondly, all the points argued by

the Advocate who had appeared at the appeal hearing had been taken into consideration by the Bench; and thirdly, that the assessee was trying to

seek review of the earlier order of the Bench. He also tried to place reliance on the order of Commissioner to insist that the grievance regarding

violation of principles of natural justice was not correct, in as much as, the Commissioner had given an opportunity of hearing.

6. The Tribunal could not have recorded in its impugned order dated 11.2.2005, as one of the grounds for rejection, the absence of the Advocate

who had conducted appeal before it. If at all, it was found necessary to ascertain factually whether the said ground was in fact urged before it at

the time of hearing of the appeal or not, the Tribunal ought to have called upon the petitioner either to tender an affidavit of the Advocate

concerned or call upon the petitioner to ask the Advocate to remain present before the Tribunal. It is necessary to note that zerox copy of the

Rectification of Mistake Application which has been placed on record of these proceedings shows that the application was drafted by the learned

Advocate who had appeared before the Tribunal at the time of hearing of appeal, not only that, even verification has been countersigned by the

learned Advocate. In these circumstances, the Tribunal should have been slow in rejecting the application on this count.

7. The finding recorded by the Tribunal that it has taken into consideration all the points argued before it while passing the earlier order in appeal

and that the assessee was trying to seek review of the earlier order is not borne out from the record. Order dated 12.6.2003 made by the Tribunal

in appeal does not, on a cursory glance, show that the Tribunal had dealt with the grievance of the assessee regarding violation of principles of

natural justice. In the circumstances, non consideration of a specific ground raised before it and urged by the Advocate would amount to an

apparent error. The Tribunal ought to have dealt with the same on merits.

8. Though the petitioner has made a prayer to quash and set aside both the orders of the Tribunal, rendered in Appeal on 12.6.2003 (Annexure-

K) and rendered in Rectification of Mistake Application on 11.2.2005 (Annexure-M), in the view that the Court has taken, it is not necessary to

quash and set aside the earlier order in appeal and the relief is restricted to quashing and setting aside the subsequent order dated 11.2.2005 made

in Rectification of Mistake Application.

9. Accordingly, order dated 11.2.2005 (Annexure-M) made by the Tribunal in Rectification of Mistake Application is quashed and set aside and

the application is restored to file of the Tribunal. The Tribunal shall hear and decide the same on merits in accordance with law.

10. The petition is allowed accordingly to the aforesaid extent. Rule made

absolute. The respondent-revenue to pay cost quantified at Rs. 2500/- only.

