(1996) 01 SC CK 0218

In the Supreme Court Of India

Case No : C.A. No. 002233 / 1996 Arising out of SLP(C) No. 018531 / 1995

Collector of Central Excise, Calcutta APPELLANT

Vs

Pradyumna Steel Ltd. RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Citation : (1996) 64 ECR 21 : (1996) 82 ELT 441 : (2003) 9 SCC 234

Hon'ble Judges : J. S. Verma, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. An application for rectification was made by the Department to the Tribunal for rectification of its order dated 23-6-1987 deciding the appeal. In the main order, the only relevant part is contained in para 4 thereof, with which alone the other member of the Bench expressed his concurrence. In that part of the order, it was held that the provision mentioned in the show-cause notice being inapplicable, the show cause notice was invalid and the correct provision to show-cause could not be seen to support the validity of the notice. The application for rectification made by the Department was on the ground that the mere mention of an incorrect provision of law in the show cause notice was not sufficient to invalidate the same and a decision was relied on in support of this proposition to make out the ground of an error apparent on the face of the order. This application has been rejected by the Tribunal. Hence, this appeal by special leave.

3. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23-6-1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law.

4. The impugned order of the Tribunal dated 21-12-1989 rejecting the

Department's application is, therefore, set aside. This results in the Department's application for rectification being allowed, with the consequence that the main order dated 23-6-1987 passed by the Tribunal is also set aside. The Tribunal would now proceed to decide the appeal afresh on merits.

5. The appeal is disposed of. No costs.

