
(2010) 07 SC CK 0111

In the Supreme Court Of India

Case No : Civil Appeal No. 174 of 2003

Commissioner of C. Ex.

APPELLANT

Vs

Oswal Petrochemicals Ltd.

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 194, 226
Central Excises and Salt Act, 1944 — Section 35C(2)

Citation : (2010) 180 ECR 1 : (2010) 12 SCC 758

Hon'ble Judges : Mukundakam Sharma, J; Anil R. Dave, J

Bench : Division Bench

**Advocate : Rahul Kaushik and Anil Katiyar, for the Appellant; S. K. Bagaria
Rupesh Kumar, Nitya Barjaria and Tara Chandra Sharma, for the Respondent**

Final Decision : Allowed

Judgement

1. The present appeal is directed against the judgment and order dated 26-3-2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, as "CEGAT"), whereby the CEGAT rejected the application filed by the appellant herein seeking rectification of the mistake in the final Order No. 216/2000-C dated 20-4-2000.

2. Counsel appearing for the appellant has submitted that one of the issues which was initially involved in the case was regarding non-compliance of the requirement under Rule 194 read with Rule 226 of the Central Excise Rules, 1944, as also with the requirement of statutory form on the RG.16 Register which was specifically raised before the Collector of Central Excise.

3. It was further contended that although the said issue was taken before the Collector, Central Excise, it was not decided at any stage. According to the counsel for appellant, the said issue arises for consideration in the present appeal and since the said issue has now been referred to a larger Bench by order dated 3-10-2005 passed in The Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal etc., , the present appeal should also be referred to a Larger

Bench.

4. Counsel appearing for the respondent has refuted the aforesaid statement contending inter alia that no such issue could be raised for the first time in the present appeal. It is also submitted by him that the same was never an issue raised in the application seeking for rectification of mistake which was also dismissed and therefore, no such issue could be raised at this stage. He has even submitted that the present appeal itself is not maintainable in view of the fact that it does not involve determination of any issue relating to the question as regards rate of duty of excise or the question of value of goods.

5. The issue which is sought to be raised regarding non-compliance of Rule 194 of the Central Excise Rules as also non-compliance of statutory form on the RG 16 Register, if allowed to be argued, would necessarily involve questions relating to shortage of the quantity of Raw Naptha in the factory, and therefore, the same may or could involve a question relating to value of goods. Therefore, we do not deem it proper to dismiss the appeal on this ground of maintainability. However, if we look into the facts of the present case we would find out that the said issue although raised before the Collector of Central Excise, was neither decided by the said authority nor was the same an issue before the Tribunal.

6. The order of the Tribunal which forms part of the record would show that such an issue was neither raised nor argued, and therefore, there is no such discussion in the said order.

7. The appellant filed an appeal before this Court as against the initial order of the Tribunal and the said appeal was withdrawn on the ground that a review would be filed. The statute does not provide any remedy by way of review, and therefore, as against such order no review was permissible, and the appellant rightly filed an application seeking for rectification of mistake.

8. We have carefully perused the said application seeking for rectification of mistake but the said application is confined only to one issue, namely that the contents of file No. 6 were brought to the notice of the respondent and that the Tribunal has wrongly held that it was not brought to the notice of the Respondent by way of show cause. The issue in question which is now raised with regard to non-compliance of statutory provisions was not raised explicitly or even impliedly before the Tribunal on the said application.

9. Therefore, the point that arises for our consideration in the present appeal is as to whether the issue sought to be raised by the appellant regarding the non-compliance of the provisions of Rule 194 of the Rules read with statutory form could be raised at this stage. Unless it could be shown that the said issue was raised in the application seeking for rectification of mistake and was urged before the Tribunal, we cannot possibly allow it in the present appeal.

10. In this regard, we find that no such issue was raised before the Tribunal, nor does the impugned order reflect the same. The issue with regard to shortage of

goods, i.e. raw Naptha, was concluded by the finding of fact arrived at by the original authority, namely, Collector of Central Excise and by the Tribunal on an appeal filed against the said order. In this case, an application for rectification of mistake has been filed u/s 35C(2) of the Central Excise Act, 1944. Such an application could be considered only if there is a mistake apparent on the face of record. As has been held by this Hon'ble Court in Commissioner of Central Excise Vs. A.S.C.U. Ltd., , the scope of an application for rectification of mistake is very limited and restricted.

11. This Court has also held in Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd., : Assistant Commissioner of Income Tax Vs. Saurashtra Kutch Stock Exchange Ltd., (sic) that:

An error apparent on the face of record means an error which strikes on mere looking and does not need a long drawn out process of reasoning on points on which there may be conceivably two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record.

12. In the present case, the only mistake alleged to have been committed by the Tribunal was its pronouncement that the contents of file No. 6 were never shown to the Respondent. The issue in question was never the subject matter of the application and therefore, was never considered.

13. The issue of non-compliance of the provisions of Rule 194 read with statutory form having not been raised in the application for rectification of mistake, the same cannot be raised in the present appeal.

14. Having considered the above, we find that the present appeal has no merit. The appeal is accordingly dismissed.