(2023) 09 CESTAT CK 0020

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Miscellaneous Application (Rom) No. 10170 Of 2023 In Service Tax Appeal No. 475 Of 2012

Raj Engineers — APPELLANT

Vs

C.C.E. & S.T Rajkot — RESPONDENT

Date of Decision : 12-09-2023

Acts Referred:

Citation : (2023) 09 CESTAT CK 0020

Hon'ble Judges : Ramesh Nair, Member (J);Raju, Member (T)

Bench : Division Bench

Advocate : Moiz Dhangot, P. Ganesan

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. This application for rectification of mistake filed by the applicant in this Tribunal's Final Order No. A/ 10093/2022 dated 23.01.2023.

2. Shri Moiz Dhangot, Learned Chartered Accountant appearing on behalf of the applicant submits that the main issue involved was whether the appellant was entitled for exemption Notification No 12/03-ST dated 20.06.2003. The appeal filed by the Appellant was against the order of the Commissioner (Appeals) whereby he had rejected the appeal by denying the exemption Notification No. 12/03-ST dated 20.06.2003. It is his submission that this Tribunal in the order under rectification allowed the Notification 12/03-ST however, in the operating part of the order in para 5 it was stated that "Order-in-Original was upheld and Order-in-Appeal is set aside and appeal is allowed with consequential relief".

2.1 He submits that since in the OIO the demand of Rs. 3,50,633/- was confirmed and the same was upheld by the Commissioner (Apepals), therefore, the recording of this Tribunal in the order dated 23.01.2023 that " Order-in-Original is upheld" is in contradiction of the order. Therefore, this is an apparent error which needs to be rectified.

3. Shri P. Ganesan, Learned Superintendent (AR) appearing on behalf of the Respondent supports the order of this Tribunal.

4. On careful consideration of the submission made by both sides and on perusal of record, We find that in respect of the total demand upheld by the learned Commissioner (Appeals), the issue involved is eligibility of exemption

Notification No 12/03-ST dated 20.06.2003. This Tribunal in the order dated 23.01.2023 held that appellant is eligible for the said Notification and Order-In-Appeal is set aside, therefore, mentioning that the 'Order-In-Original is upheld' is an apparent error in the order. Therefore, by rectifying the said order we substitute para 5 as under:-

"5. As per our above discussion and finding, the impugned Order-in-Appeal is set aside. Appeal is allowed with consequential relief."

4.1 Thus error apparent on record in the order dated 23.01.2023 stands rectified as above.

5. As regard prayer of the applicant for direction to the lower authority to grant the refund of service tax of Rs. 3, 50,633/- , Interest of Rs. 2, 59,511/-and penalty of Rs. 87,658/-, We are of the view that since the applicant is prima facie eligible for refund of any amount paid in this case as a consequential relief flowing from the order of this Tribunal. The appellant have liberty to approach the department by filing proper application for refund and the same shall be disposed of in accordance with law.

6. The ROM Application is allowed in above terms.