# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## TAX APPEAL NO. 915 of 2016

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE M.R. SHAH**
**and**
**HONOURABLE MR.JUSTICE B.N. KARIA**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

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LILADHAR T KHUSHLANI....Appellant(s)
Versus
COMMISSIONER OF CUSTOMS....Opponent(s)

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Appearance:
MR HARDIK P MODH, ADVOCATE for the Appellant(s) No. 1
MR JAIMIN A GANDHI, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
**HONOURABLE MR.JUSTICE B.N. KARIA**

**Date : 25/01/2017**

**ORAL JUDGMENT**
**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

[1.0] Feeling aggrieved and dissatisfied with the impugned order passed by the learned Central, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad *(hereinafter referred to as "CESTAT")* dated 18/08/2015 by which the learned CESTAT has dismissed the rectification application on the ground that the said application has been preferred beyond the date of six months from the date of passing the original order, appellant has preferred the present Tax Appeal.

[2.0] It is the case on behalf of the appellant that from the date of service of notice of the order, which was sought to be rectified, within six months the rectification application was filed. However, the learned CESTAT dismissed the said application considering the starting point of limitation of rectification as the date of the order sought to be rectified, and therefore, the short question, which is posed for the consideration is, whether for the purpose of filing the rectification application, period of limitation of six months would commence from the date of the order, which is sought to be rectified or from the date of receipt of the order sought to be reviewed /rectified by the concerned assessee?

[2.1] While passing the impugned order the learned CESTAT has relied upon the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Customs, Central Excise Vs. M/s. Hongo India (P) Ltd. & Anr*** reported in ***(2009) 236 ELT 417 (SC)***. However, on considering the facts /questions before the Hon'ble Supreme Court in the said decision, it appears that the controversy was whether despite

the specific provisions not to condone the delay beyond the period of limitation provided under the statute, whether High Court was justified to condone the delay in filing the rectification application or not, and therefore, as such, the learned CESTAT has wrongly relied upon the decision of the Hon'ble Supreme Court in the case of ***M/s. Hongo India (P) Ltd. & Anr (Supra)***. As such, the question involved in the present Appeal is now not *res integra* in view of the decision of the Division Bench of this Court in the case of ***Vadilal Industries Ltd. Vs. Union of India*** reported in ***2006 (197) ELT 160 (Gujarat)***. In the said decision while considering the provisions of the Central Excise Act, 1944, more particularly, Section 37C, the Division Bench has held that the period of limitation to file the rectification application is to be computed from the date of receipt of order by the party and not at any time within six months from the date of the order. While holding so, in paragraph nos.14 to 16 the Division Bench has observed and held as under;

> *"14. There is one more aspect of the matter. The Technical Officer of CESTAT vide communication dated 23/08/2005 has returned the papers of ROM Application on the ground that the same was barred by limitation. Section 35C(2) of the Act provides for the period of limitation coupled with the powers of the Tribunal to rectify any mistake apparent from the record or amend any order passed under Section 34C(1) of the Act. At the first blush it appears that the period of limitation has to be computed at any time within six months from the date of the order. However, when one reads the*

*latter portion of the provision, it becomes abundantly clear that the period of six months from the date of order is in relation to the power of rectification that the Tribunal may exercise suo motu. The Section is divided into two parts. The first part grants discretion to the Tribunal to take up any order made under Sub Section (1) of Section 35C of the Act for rectifying any mistake apparent from record or amending any order within six months from the date of the order. The second part of the Section requires that the Tribunal shall make such amendments if the mistake is brought to its notice by either party to the appeal before it. The party to the appeal can bring the fact of apparent mistake on record only after going through the order made by the tribunal. Therefore, to read that the period of limitation has to computed at any time within six months from the date of the order does not fit in either with legislative intent or the language employed by the provision.*

*15. There is another angle from which the matter can be approached. It is only the party to the appeal who finds that the order contains a mistake apparent from the record and is aggrieved by such mistake, would be in a position to move an application seeking rectification of the order. Therefore also, unless and until a party to the appeal is in a position to go through and study the order it would not be possible, nor can it be envisaged, that a party can claim to be aggrieved*

*by the mistake apparent from the record. Hence, even on this count the period of limitation has to be read and understood so as to mean from the date of the receipt of the order.*

*16. Therefore, the action of the Technical Officer to return the papers of ROM Application without even placing the same before the Bench concerned is not only bad in law, but is not supported by the provisions of the Act."*

[2.3] Some what similar question came to be considered by the learned Single Judge in the case of ***Ritaben Kamleshbhai Mehta, Through P.O.A. Devang Kamleshbhai Mehta & Ors. Vs. State of Gujarat & Ors.*** reported in ***2015 (2) GLR 1664***. Before the learned Single Jude the question was whether the period of limitation to file the Appeal against the order of Deputy Collector, which was 90 days is required to be computed from the date on which the order of first adjudicatory authority communicated to the affected person or from the date of the order and considering the decision of the Hon'ble Supreme Court in the case of ***D. Saibaba Vs. Bar Council of India*** reported in ***AIR 2003 SC 2502,*** it is observed and held that the period of limitation shall commence from the date of dispatch of the order and not from the date of actual passing of the order. In view of the above, the learned CESTAT has committed a grave error in rejecting the rectification application on the ground that the same has been preferred beyond the period of limitation prescribed under the Act. It is reported that the rectification application was submitted within the period of six months from the date of receipt of the order /dispatch order, and therefore, the

impugned order passed by the learned CESTAT cannot be sustained and the same deserves to be quashed and set aside and the matter is required to be remanded to the learned tribunal to consider the rectification application in accordance with law and on its own merits treating the same to have been filed within the period of limitation provided under the Act.

[3.0] In view of the above and for the reasons stated hereinabove, the impugned order passed by the learned CESTAT is hereby quashed and set aside. The matter is remanded to the learned CESTAT to decide the rectification application afresh in accordance with law and on its own merits treating the same to have been filed within the period of limitation. The question of law is answered in favour of the assessee and against the revenue.

The present Tax Appeal stands disposed of accordingly.

**(M.R. SHAH, J.)**

**(B.N. KARIA, J.)**

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