

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

NEW DELHI

PRINCIPAL BENCH

Customs ROM Application No. 50266 of 2020

(On Behalf of Assessee)

in

Customs Appeal No. 361 of 2010 [SM]

[Arising out of Final Order No.A/50155-50157/2020 dated 15.01.2020 passed by this Tribunal, Delhi Bench.]

M/s. A.V. Agro Products Ltd.

51/58A, Shakkar Patti,
Kanpur, U.P.

...Appellant

VERSUS

Commissioner of Customs & Central Excise

Delhi-I, New Delhi

...Respondent

Customs ROM Application No. 50267 of 2020

(On Behalf of Assessee)

in

Customs Appeal No. 362 of 2010 [SM]

[Arising out of Final Order No.A/50155-50157/2020 dated 15.01.2020 passed by this Tribunal, Delhi Bench.]

M/s. Genex Foods Pvt. Ltd.

Industrial Area, Bullandshahr Road,
Ghaziabad (U.P.)

...Appellant

VERSUS

Commissioner of Customs & Central Excise

Delhi-I, New Delhi

...Respondent

Customs ROM Application No. 50268 of 2020

(On Behalf of Assessee)

in

Customs Appeal No. 363 of 2010 [SM]

[Arising out of Final Order No.A/50155-50157/2020 dated 15.01.2020 passed by this Tribunal, Delhi Bench.]

Shri Rohit Aggarwal, Director

M/s. Genex Foods Pvt. Ltd.

Industrial Area, Bullandshahr Road,
Ghaziabad (U.P.)

...Appellant

VERSUS

**Commissioner of Customs & Central Excise
Delhi-I, New Delhi**

...Respondent

APPEARANCE:

Mr. R.Santhanam, Advocate for the Appellant
Mr.Mahesh Bhardwaj, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 12.11.2021
PRONOUNCED ON : 05.01.2022

MISCELLANEOUS ORDER Nos. 50002-50004/2022

RACHNA GUPTA

The present order disposes of Miscellaneous Application praying for rectification of mistake.

2. It is submitted by the appellant that the submissions filed by the appellants on 03.10.2016 alongwith supporting case laws, most of which have not been considered while passing the final order dated 15.01.2020. There have otherwise also been several mistakes as are impressed upon and have been highlighted in the impugned application. Ld. Counsel has laid emphasis upon the decision of Hon'ble Apex Court passed in the case of **M/s.Canon India Pvt. Ltd. vs. Commissioner of Customs reported in 2021(376) ELT 3 (S.C.)**, by virtue of which the impugned show cause notice stands *void ab initio*. Ld. Counsel has also relied upon the decision of Apex Court in the case of **Asstt. Commr., Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd. reported as 2008 (230) ELT 385 (S.C.)** to impress upon

the mandate of following the Supreme Court decisions even by giving the retrospective effect. Finally a decision of Supreme Court in the case of **Hridaynarayan Vs. Income Tax Officer reported as AIR 1971 SC. 33** has been relied upon about the power of rectification of mistake. The final order of 5th June, 2008 is accordingly, prayed to be rectified.

3. Per-contra, Id. D.R. has submitted that present is an application seeking review of the final order of 05.06.2018 under the garb of the application praying for rectification of mistake. The alleged mistake in the application are nothing but amounts to seeking a fresh hearing or at least a fresh consideration to not only to the facts of the record but also in view of the decision passed after passing of the impugned final order. The application is alleged to have been wrong on the face of it submitting that only patent and obvious mistake is rectifiable. Decision of Hon'ble High Court of Delhi in the case of **Krishan Madhan vs. Department of Customs reported as 2002 (140) ELT 52 (Delhi)** is relied upon. Another decision of Hon'ble Apex Court in the case of **Commissioner of Central Excise, Calcutta vs. ASCU Ltd. reported as 2003 (151) ELT 481 (S.C.)** has been relied upon. Application is accordingly prayed to be dismissed.

4. After hearing the rival contentions and perusing the record, the basic facts pertaining to present appeal appears to be as follows:-

The present adjudication began with Show Cause Notice dated 24.04.2007 as was served upon 13 persons with M/s. Pioneer Soap and Chemicals being the main notice and the applicant herein also as one among them. The Show Cause Notice was issued on the basis of the observation by the Department that all the co-noticees mentioned therein were found issuing the fake consignments/bills/invoices to show sale of washing soap without actually manufacturing the same. All the co-noticees were alleged to have wrongly availed the exemption of Notification No.21/2002 (at Sl. No.30 thereof). The short duty paid was proposed to be recovered alongwith the imposition of penalty upon all the co-noticees therein. The said proposal was confirmed vide the Order-in-Original No. 10/2010 dated 30th April, 2010 against which the appeal was filed before this Tribunal. The said appeal was decided by this Tribunal vide Final Order No. 52153-52155 dated 05.06.2018. It was observed in the said order that main noticee had already got settled its matter by the Settlement Commission.

5. The prayer for stopping the further proceedings against the remaining co-noticees including the present appellant was declined and the appeal was accordingly, rejected. However, the present applicant/appellant therein moved a Miscellaneous Application No. 50625 / 18 dated 09.07.2018 praying for his appeal to have been decided on merits. The said application was decided by Misc. Order No. 50123-50125 dated 21.02.2019 holding that in the Final Order dated 05.06.2018 even the merits have been discussed. Hence, no ground is made out for restoring

and re-hearing the appeal. The present appellant again filed a Misc. Application dated 06.03.2019 praying or re-calling not only of the final order dated 05.06.2018 but also the aforesaid Misc. Order dated 21.02.2019. The said application was decided vide Misc. Order No. 50578 – 50580 dated 26.07.2019 wherein the order of Hon'ble High Court dated 15.05.2019 was brought to the notice of this Tribunal based whereupon the re-hearing of appeal afresh was directed. It is after re-listing and re-hearing of the impugned appeal that the final order No.50155-50157 dated 15.01.2020 was passed the rectification whereof has been prayed by the impugned application.

6. Coming to the challenges to the said order dated 15.01.2020, it is observed that appellant is aggrieved of following:-

- i) Appellant has been wrongly treated as importer despite that they have nothing whatsoever to do with the CPO imported by main noticee i.e. M/s. Pioneer Soap and Chemicals (Mr.Lalit Goel as Proprietor)
- ii) The retraction of the statements of Mr. Lalit Goel & Mr. Harjinder Singh of H.G. Oil Carriers (Transporter) has not been considered based whereupon there remains no reason to proceed against the appellant more particularly when they had not been produced for being cross-examined by the appellant.
- iii) Since the show cause notice issued by Commissioner, Central Excise for re-opening of assessment in respect of

goods imported at Kandla and assessed to Customs duty therein is without jurisdiction in terms of decision of Supreme Court in the case of Canon India Pvt. Ltd. (supra)

iv) The power of rectification includes the power of Review.

7. Since all these challenges to the impugned final order has been vehemently objected on behalf of the Department. The challenge wise findings are as follows: -

Grievance (i) is appreciated in terms of the facts stated in the original appeal. Para (1) thereof recites as follows: -

“The appellant carried on the business of manufacture and sale of refined edible oils from its factory and there is no dispute whatsoever in regard to the goods manufactured and cleared by it and also the inputs purchased and utilized for the purpose. The order of Commissioner (Appeals) has been challenged on account of violation of natural justice, though the aforesaid ground was also taken before original adjudicating authority but the same was set aside observing a sufficient evidence for the imported CPO which was meant for use in manufacture of soap but was diverted to the other co-noticees who by issuing fake invoices of such soap have abated M/s. Pioneer.”

8. Coming to the submissions of the appellant, as were filed on 03.10.2016 the appellant himself has mentioned that case of the

application/the appellant rest on very same issues and allegations as already stands settled by the order of Settlement Commission dated 24.02.2008 with respect to CPO imported at Kandla by M/s. Pioneer Soap & Chemicals. Hence, the submission of the appellant that the final order has wrongly mentioned appellant to be connected with the CPO imported by M/s. Pioneer Soap & Chemicals is apparently a wrong as per appellant's own prior submissions. Actual facts have already been discussed not once but several times in the several proceedings as already mentioned above. Not even once the appellant had come forward with the plea that his case is different from M/s. Pioneer Soap & Chemicals. This submission is otherwise is not sustainable when he has already been held a conspirator/abator in the wrong availment of Customs duty by M/s. Pioneer Soap & Chemicals. Hence Grievance No. (i) is held 'not sustainable'.

9. With respect to Grievance No.(ii) the Final Order dated 15.01.2020 has discussed the merits in details. The retraction of the statements by Shri Harinder Singh of M/s. H.G. Oil and Carriers has not been considered due to the acknowledgement of the allegations and the alleged transactions to wrongly avail the benefit of Customs Duty by the main notice i.e. M/s. Pioneer Soap & Chemicals. In view thereof, it is held that the Grievance at point No.(ii) as above is wrong. Otherwise also considering the same again will not amount to rectification of an error which should be apparent on record, but would amount to rehearing the case which may result into a fresh and may be an altered

decision. The same is not permissible under in the name of rectification of mistake in the order.

10. Coming to the Grievance No. (iii), it is held that taking benefit of decision in **Canon India (supra)** case is nothing but an afterthought. The said benefit cannot be given to the appellant for the sole reason that decision of **Canon India** is dated 09.03.2021 whereas the Final Order which is prayed to have incorporated the said decision was already passed more than an year before i.e. on 15.01.2020. The decision in the case of **Saurashtra Kuch Stock Exchange Ltd. (supra)** permitting the retrospective application of a judicial decision is not applicable to the facts of the present cases as the said decision is discussing about one single judicial forum who can alters its own earlier decisions.

11. Finally for the last Grievance No.(iv), the rectification of mistake is altogether a different procedure / concept than the review of an order. The scope of rectification is that a patent manifest and self evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of record means an error which strikes on mere looking. Whereas, review needs a long drawn-out process or reasoning on points where there may be conceivably two opinions when some extraneous matter is prayed to be considered, the decision will fall in the scope of review as for rectification error should not be requiring any extraneous matter

to show its incorrectness and it should be so manifest and clear and that no Court would permit it to remain on record. The above discussion about various grounds for seeking rectification is clear enough to show that some extraneous consideration is required. An additional decision is impressed upon to consider. There is no apparent clarity but the submissions which may delve upon the different opinion due to accepting the prayer of the appellant will amount to re-appreciation of the entire facts and even the evidence, which may result a different conclusion. The same cannot be considered as rectification of mistake. Hon'ble Apex Court has already held that any order passed in pursuance of ROM which is different from the order challenged in the said ROM, such an order is bad in law and is liable to be quashed as the same will not amount to rectification of mistake. I draw my support from the decision of Hon'ble Apex Court in the case of **Commissioner of Central Excise, Belapur, Mumbai vs. RDC Concrete India Pvt. Ltd. reported in 2011 (270) ELT 625 (S.C.)**. In an earlier decision in the case of **Satyanarayan Laxminarayan Hegde & Ors. v. Mallikarjun Bhavanappa Tirumale reported in (1960) 1 SCR 890**, the Court observed as follows: -

"34. The Court observed;

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such

an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ".

12. In view of the entire above discussion, it is held that vide the impugned application, the appellant is trying to bring a new case despite that his grievances have been settled not once but on several other occasions where he himself has admitted him to have same facts as that of M/s. Pioneer. He cannot be allowed to take a summersault after passing a Final Order based upon his submissions, that too, under the garb of rectification. The above discussed conduct of the appellant of coming up with Miscellaneous Applications time and again is sufficient for me to hold that appellant is just gaining time by keeping alive a Show Cause Notice of more than 14 years old with the sole intention to not to make good the deficiency of the duty which was less paid by him at that relevant time.

13. In totality of this discussion, the applications in hand are hereby dismissed.

[Order pronounced in the open Court on 05.01.2022]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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