CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Rectification of Mistake Application No.70481 of 2019
(On behalf of appellant)
in
Customs Appeal No.70114 of 2019

(Arising out of Final Order No.A/71231/2019-SM[BR] dated 28.06.2019 passed by Customs Excise & Service Tax Appellate Tribunal, Allahabad)

Commissioner of Customs (Prev.), Lucknow .....Appellant
(3/194, Vishal Khand-3, Gomti Nagar,
Lucknow)

VERSUS

Shri Mohd. Rehan ....Respondent
(514, Mohalla Talib Saray, Thana Kotwali
Nagar, Unnao-209801)

APPEARANCE:

Shri Manish Raj, Authorised Representative for the Revenue
Absent on Call for the Respondent

WITH

Customs Appeal No.70555 of 2019

(Arising out of Order-in-Appeal No.16-CUS/APPL/LKO/2019 dated 21/01/2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Mohd. Rehan .....Appellant
(R/o, Asivan, Rasulabad, Unnao-241503, U.P.)

VERSUS

Additional Commissioner of Customs (Preventive), Lucknow ....Respondent
(5th Floor, Kendriya Bhawan, Sector-H,
Aliganj, Lucknow)

APPEARANCE:

Ms. Vedika Nath, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. - 70013/2023

FINAL ORDER NO. - 70019/2023

DATE OF HEARING : 07 August, 2023
DATE OF DECISION : 07 August, 2023

SANJIV SRIVASTAVA:

The Miscellaneous Application No.70481 2019 has been filed by the Revenue in terms of section 129B (2) of Customs Act 1962 for rectification of mistake apparent on the record in the Final Order No.A/71231/2019-SM[BR] dated 28.06.2019. By the impugned order the appeal filed by the Revenue was dismissed by the Tribunal holding as follows:-

> *"As the redemption fine in the present appeal is to the tune of around Rs.11 lakhs and the penalty is around Rs.3.5 lakhs and also Rs.25,000/-. I find that the said appeal of the revenue is covered by the litigation policy floated by the Government of India. Accordingly, the appeal is not maintainable and the same is dismissed under litigation policy."*

2. Revenue has filed this rectification of mistake stating as follows:-

> *"10. In this regard it is to bring to kind notice that value of absolutely confiscated Gold in the instant case is Rs.55,48,816/-. Even amount of redemption fine + penalties is Rs.14,75,000/-. In Customs cases, the Board vide Instruction contained in Circular F. No.390/Misc./163/2010-JC dated 17.12.2015, CBEC has fixed the monetary limit below which appeal shall not be filed in CESTAT as Rs.10,00,000/- (Rs. Ten lacs), and in the instant case the RF/duty/penalty involved is more than the limit prescribed by the CBEC for filing appeal in CESTAT. Hence the same is not covered under the litigation policy as the RF/duty/penalty involved in the*

instant case is more than the monetary limit prescribed by the Board.

10.1 Further, it is also to bring to your kind notice that in terms of Para 2 of the Instruction F.No.390/Misc./116/2017-JC dated 11.07.2018 issued by CBIC is applicable to legacy cases of Central Excise and Service Tax only, but not to Customs cases. The said Para 2 is reproduced below:-

> *"2. The instruction applies only to legacy issues i.e. matters relating to Central Excise and Service Tax and will apply to pending cases as well"*

In view of the above Circulars the case is not covered under litigation policy and the same may be decided afresh on merits."

3. Customs Appeal No.70555 of 2019 has been filed by the appellant challenging the order of confiscation of the gold with an option to redeem the penalty imposed. The same payment of redemption fine of Rs.11 lakhs (Rupees Eleven lakhs only) the penalty imposed. While disposing of the appeal filed by the Revenue this appeal was overlooked and not disposed of. Hence vide order dated 05.08.2021, while hearing the rectification of mistake application and this appeal, Bench directed as follows:-

> *"5. Accordingly, these appeals are adjourned. Both the appeals are tagged together. Put up this matter for further order as and when the Bench is available after three months."*

4. I have heard Shri Manish Raj learned Authorized Representative appearing for the Revenue and Ms. Vedika Nath learned Advocate appearing for the appellant.

5. In case of Prakash Chandra Shantilal [2013 (290) E.L.T. 125 (Tri.-Ahmd.)] Ahmedabad bench held as follows:-

> ***"9.*** *The observations reproduced above would clearly show that if the goods have been brought as baggage, they have to be treated as baggage only. This decision clearly*

provides that only when the goods are not brought as baggage, the other methods of assessment can be considered. In that case, it was held that the goods were not brought as baggage and therefore the Department should not levy tax treating diamonds as part of baggage. In this case, there is no dispute at all that the gold jewellery was brought as a part of baggage and not declared and therefore they remained imported goods since they were not cleared out of the Customs area on payment of duty nor were they smuggled out of Customs area to become smuggled goods without evidence put forth to show that they were a part of baggage.

10. *Under these circumstances, it is quite clear that the submissions made by ld. Counsel that the Tribunal has jurisdiction, cannot be accepted.*

12. *Since the detailed submissions were made about maintainability and appeal is found to be not maintainable, there is no need for considering the Stay Petition at this stage and postpone the final hearing to a later stage. In view of the above discussion, the appeal has to be rejected as not maintainable and is accordingly rejected and since the jurisdiction lies with Government of India, the Registry is directed to transfer the file to Government of India for necessary action."*

Following this order Allahabad bench as Final Order No.70014 of 2023 dated 26.07.2023 in case of Shri Krishna Pratap Singh has held as follows:-

"3. Following the above Division Bench order this appeal is rejected as not maintainable. The matter may be transferred to the Government Revisionary Authority if permissible in law. The appellant is at liberty to file an appeal with the Revisionary Authority notified by the Government of India."

5. In view of the above decision, I do not find the appeal filed by the appellant before this tribunal in case of seizure/confiscation of gold biscuits to be maintainable before this Tribunal. Accordingly the same is dismissed as non maintainable.

6. Same should have been the fate of the appeal filed by the Revenue which has been against the same order of Commissioner (Appeals). The appeal of the revenue was also filed before the wrong forum and could have been dismissed as not maintainable. However the bench dismissed the appeal on the ground that the amount involved in appeal is less than the threshold limit provided for by the litigation policy circular issued by the revenue. Against the order dismissing the appeal filed by revenue for the reason of amount involved, revenue has filed the application for rectification.

7. It is settled position in law that rectification application is maintainable only if it can be shown that

- ➢ an error has crept in the order which is apparent from the records;
- ➢ error is so obvious that the no Court or Tribunal will be in position to see that error as part of the order.

8. With above principles the miscellaneous application is taken up for examination along with the records of the appeal filed by the revenue which has been dismissed. I find that in Form No.C.A.-5 (Appeal Memo filed by the Revenue), at 14 (i) Revenue has stated as follows:-

14(i)	Amount of Duty demand dropped or reduce for the period of dispute	Not Available
(ii)	Amount of interest demand dropped or reduce for the period of dispute	Not Applicable
(iii)	Amount of refund sanctioned or allowed for the period of dispute	Not Applicable
(iv)	Whether no or less fine is imposed?	Not Applicable
(v)	Whether no or less penalty is imposed?	Yes
(vi)	Market value of seized goods	Not Applicable

9. When Revenue itself has stated in appeal as above they cannot claim any error apparent on record taken for which their appeal was dismissed. The grounds stated in the application for rectification of mistake are not the part of records before the tribunal for consideration. The new facts and grounds taken in the rectification application, which were never the part of the appeal considered cannot justify the rectification application. Accordingly, this rectification of mistake application can be dismissed on this ground itself. However, even if this is to be allowed the appeal has to be dismissed as non maintainable as discussed earlier in this order.

10. In view of the above discussion as above:

(i) Rectification of Mistake application filed by the Revenue is dismissed.

(ii) The appeal filed by the appellant is dismissed as not maintainable before this Tribunal. He may seek any remedy available to him by filing appeal before appropriate revisionary authority notified by the Government of India.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS