IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPLICATION NOS: C/ROM-85049 to 85052, 85054 & 85053/2018
IN
APPEAL NOS: C/564 to 567, 936 & 937/2008

[Arising out of Orders-in-Appeal No: GOA/CUS/MP/10/2008 dated 27/02/2008, GOA/CUS/MP/12 & 13/2008 dated 28/02/2008, GOA/CUS/MP/24 & 25/2008 dated 23/05/2008 passed by the Commissioner of Customs & Central Excise (Appeals), Goa.]

GKB Ophthalmics Ltd
GKB Vision Limited …***Applicant s***

versus

Commissioner of Customs & Central Excise
Goa ***…Respondent***

Appearance:

Shri C S Biradar, Advocate for applicants

Shri Chatru Singh, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 09/02/2018
Date of decision: 07/06/2018

ORDER NO: MO/85570-85575/2018

Per: C J Mathew

These applications for rectification of mistakes in the final orders of the Tribunal no. A/89965-89966/17-CB dated 14th September 2017 disposing of appeal nos. C/936/2008 and C/937/2008 and no. A/89748-89751/17/CB dated 13th September, 2017 disposing of appeal nos. C/564 to 567/2008 of the two applicants seeks total relief from duty liability on the ground that the norms of wastage had been revised in their case by the competent authority *vide* letters issued by Directorate General of Foreign Trade between 23rd September 2008 and 26th November 2008.

2. It is admitted by Learned Counsel for applicant that these communications had not been placed before the Tribunal during the hearing held on 14th September 2017 at the end of which the final order was dictated in court. Neither had any such plea of being in possession of such communications made during the hearing.

3. There is no mistake in the order pronounced in the Tribunal as the obligation of any adjudgement is to apply known law to established facts. As these facts now brought out were not established in the hearing, the order was passed on available record.

4. The failure on the part of applicant to make the Tribunal cognisant of the facts is not a mistake that can be corrected. To do so would be tantamount to review of our order and it would be a never-ending process of piecemeal introduction of records. That would bring about chaos which is not the ends of justice.

5. Undoubtedly, the Hon'ble High Court of Bombay did, as pointed out by Learned Counsel, in *Sarla Performance Fibres Ltd v. Union of India [2008 (226) ELT 45 (Bom)]*, that technicalities should not stand in the way of rendering justice by resort to inherent powers. While non-consideration of subsequent developments impacting on an outcome may be considered to be a technicality that should provide relief, if available, without having to knock on the doors of superior justice tardiness in not placing relevant facts known to the applicant and their representative at the time of hearing, if not at the time of filing of appeal, is not a technicality but a casual approach to their own grievance and a contemptuous disdain for the justice meted out by the Tribunal.

6. An appellant seeking justice should submit itself to the embrace of justice. While making this application, no explanation for their negligence has been brought to our notice.

7. For the above reasons, we fail to find any justification to allow this application. Applications are rejected.

(Pronounced in Court on 07/06/2018)

(Ramesh Nair)
Member (Judicial)

(C J Mathew)
Member (Technical)

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