CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

Miscellaneous Application (ROM) No. 10183 of 2025
(On behalf of Respondents)
in

CUSTOMS Appeal No. 10288 of 2022 - DB

[Arising out of Order-in-Appeal No. OIA-MUN-CUSTM-000-APP-310-21-22 dated 07.03.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

Amanta Healthcare Limited **.... Appellant**
5th Floor Heritage Near Gujarat Vidyapith Off Ashram Road Ahmedabad, Gujarat

VERSUS

Commissioner of Customs-Mundra **.... Respondent**
Office of the Principal Commissionerate of Customs, Port User Buld. Custom House Mundra, Mundra Kutch, Gujarat- 370421

APPEARANCE :

Shri Vipul Khandhar, Chartered Accountant for the Applicant
Shri R. Kumar, Superintendent (AR) for the Respondent

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Misc. ORDER NO. 10315/2026

DATE OF HEARING/ DECISION : 22.04.2026

MR. SATENDRA VIKRAM SINGH :

Revenue has filed Misc. Application bearing No. 10183 of 2025 for bringing certain mistakes in the notice of this tribunal which have crept in the Final Order No. 11550/2024 dated 12.07.2024 passed in Customs Appeal No.10288/2022. It has been mentioned that the above order was passed by considering the certificate dated 20.07.2020 of the Chartered Engineer which was neither produced during passing of the Order-in-Original nor at the time of passing of Order-in-Appeal. It has been pointed out that for producing additional evidence, the procedure prescribed in CESTAT (Procedure) Rules, 1982 has to be followed. Rule 23 of the said Rules clearly provides that parties to the appeal shall not be entitled to produce any additional evidence either oral or documentary, before the Tribunal but if the Tribunal is of opinion that any document should be produced or any witness should be examined or any affidavit should be filed to enable it to pass order or for any sufficient cause or if Adjudicating Authority or the Appellate or Revisional authority has decided the case without giving sufficient opportunity to any party to adduce evidence on the points specified by them or not specified by them, the Tribunal may, for reasons to be recorded, allow such documents to be produced or witnesses to be examined or affidavits to be filed or such evidence to be adduced.

1.1 They have cited the decision in the case of **M/s. Warner Hindustan Limited – 1999 (113) ELT 24 (SC)** wherein it was held that it is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before the authorities below. They have also relied on the decision of Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Nagpur** vs. **Ballarpur Industries Limited** – **2007 (215) ELT 489 (SC)** wherein it is held in para 21 that the Show Cause Notice is the foundation to levy and recovery of duty, penalty and interest. This view was further reiterated in the case of **Gas Authority of India Limited – 2008 (232) ELT 7 (SC)**.

2. The Revenue's case was that the imported goods were like injection moulding machine and hence were classifiable under CTH 8477100 instead of CTH 84773000 declared by the appellant. The appellant pleaded that the imported machine is a combination of two machines where primary purpose is Blow moulding and hence, classifiable under CTH 84773000. They have correctly declared classification of imported goods.

2.1 Revenue has pleaded that Hon'ble Courts have held as to what constitutes the apparent mistake on record. They rely on the following cases:-

(i)M/s. RPG Life Sciences Limited vs. UOI–2005 (187) ELT 433 (Guj.)

(ii) Commissioner of Customs, Bangalore-I vs. Wipro Limited - 2012 (280) E.L.T. 174 (Kar.)

(iii) Assistant Commissioner, Income Tax, Rajkot vs. M/s. Saurashtra Kutch Stock Exchange Limited – 2008 (230) ELT 385 (SC)

In view of above, Revenue pleaded for rectification of mistake and recalling the order dated 12.07.2024 passed by this Tribunal.

2.2 It has been held in following decisions that rectification of mistake would be justified wherein prejudice had resulted to the party, which prejudice is attributable to the Tribunal's mistake:-

(a) M/s. Honda Siel Power Products Limited– 2008 (221) ELT 11 (SC)

(b) NTB International P. Limited – 2014 (302) ELT 481 (Bom.).

2.3 During arguments, learned AR mentioned that third party evidence in the form of certificate given by the Chartered Engineer was not produced either before the Adjudicating Authority or before the Appellate Authority and therefore, Tribunal by relying on such a certificate, has erred in granting relief to the appellant. They prayed for rectifying the mistake apparent on face of record.

3. Countering the argument, learned Chartered Accountant mentioned that the Chartered Engineer certificate dated 20.07.2020 was submitted in the office of Commissioner of Customs, Mundra. As a proof, he produced a letter which bears stamp of the office of Principal Commissioner of Customs, Mundra dated 21.07.2020. In view of this, he pleads that the so-called 3rd party evidence was very much in the knowledge of the Adjudicating Authority and the Appellate authority but why that was not discussed in the impugned orders, is a matter of concern to be looked into by the Revenue. He therefore, pleads that it is not a third party evidence and therefore, rectification of mistake application filed by the Revenue is not tenable.

4. We have heard both sides. We find that the said certificate of Chartered Engineer was submitted in the office of Principal Commissioner of Customs, Mundra on 21.07.2020. In the covering letter, is is mentioned that the appellant were granted license for import of 'Injection Stretch Blow Moulding Machine (ISBM)' by the Joint Director, DGFT which is classifiable

under CTH 84773000. The Chartered Engineer has also certified that from the technical perspective, this ISBM, having HS Code 84773000 is different than the Injection Moulding Machine of HS Code 84771000. He has certified that after examining the appellant's requirement with respect to their nexus and after referring the technical aspects of the machine in the context of manufacturing process and its related stage of its utilization, it can be said that the said machine is a kind of Injection Stretch Blow Molding Machine.

5. We find that this Tribunal, in the final order has relied on this certificate and thereafter decided the issue in appellant's favour by setting aside the impugned order. We find that the Chartered Engineer certificate was very much submitted in the office of the Principal Commissioner, Mundra Customs in the year 2020 itself and so relying on the said certificate while passing final order is not a mistake apparent on face of record. We therefore, do not find any merit in the miscellaneous application filed by Revenue for rectification of mistake and accordingly, the same is dismissed.

(Dictated and pronounced in the open court)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

KL