

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. D.23763 OF 2008

Commnr. of Central Excise-II, Thane

.. Appellant(s)

Versus

Daisy Trading Corporation

.. Respondent(s)

ORDER

Delay condoned.

This appeal by the revenue under Section 35L(B) of the Central Excise Act, 1944 ('the Act' for short) is directed against order dated 21st February, 2008 passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, at Mumbai (for short 'the Tribunal'). By the impugned order, the Tribunal has dismissed the application preferred by the revenue for rectification of its final order No.A/514/2007/C-I(EB) dated 23rd July, 2007, which is not questioned in this appeal.

The application for rectification was preferred by the revenue on the ground that in the light of the order dated 23rd August, 1991 passed by the Commissioner of Central Excise, *inter-alia*, holding that the subject goods, namely, canvas cloth and tarpaulin cloth fall for classification under Chapter heading 52.07 of Schedule II to CETA, 1985, a mistake apparent from the record had crept in the order of

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the Tribunal, requiring rectification. Rejecting the application, the Tribunal has come to the conclusion that the stated ground cannot be said to be a mistake apparent from the record, falling within the ambit of Section 35(c)(2) of the Act, inasmuch as the subject goods falling under both the headings, viz., 52.07 and 52.08 are not leviable to basic excise duty as the levy of such duty is exempt and the said goods are leviable only to additional duty of excise, for which confiscation is not permissible.

Be that as it may, apart from the fact that the scope of Section 35(c)(2) of the Act is very limited, the finding of the Tribunal that there is no mistake apparent from the record in its order dated 23rd July, 2007 is a pure question of fact, giving rise to no question of law requiring consideration by this Court.

The Civil Appeal is dismissed accordingly.

.....J.

[D.K. JAIN]

.....J.

[R.M.

LODHA]

NEW DELHI,
MARCH 16, 2009.