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C.A.No. 5685-5686 OF 2000
ITEM No.103 Court No. 6 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.5685-5686/2000

COMMNR. OF CENTRAL EXCISE, VADODRA Appellant (s)

VERSUS

M/S. Steelco Gujarat Ltd. Respondent (s)

(With Appln(s). for taking addl. Document on record)
(With Office Report)

Date : 10/12/2003 This Petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE DR. JUSTICE P.VENKATARAMA REDDI

For Appellant (s) Mr. Raju Ramachandran,ASG.
Ms. Nisha Bagchi,Adv.
Mr. K.C.Kaushik,Adv.
Mr. B. Krishna Prasad,Adv.

For Respondent (s) Mr. V.Shridharan,Adv.
Mr. Alok Yadav,Adv.
Mr. V.Balachandran,Adv.

UPON hearing counsel the Court made the following
O R D E R

Appeals are allowed.
There will be no order as to costs.

(SUMAN WADHWA)(MADHU SAXENA)
COURT MASTERCOURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5685-5686 OF 2000

Commnr. Of Central Excise,Vadodara.. Appellant

vs.

M/s. Steelco Gujarat Ltd.... Respondent

O R D E R

The question which arises in this appeal is whether the Tribunal could have set aside the earl
ier order passed by it under Sec.35-C of the Central Excise Act, (for short 'the Act').

The demand relates to an alleged quantity of Cold Rolled Coils alleged to have been wrongfully suppressed by the respondent from its returns filed under the Act. A show cause notice was issued and after hearing the assessee the Commissioner upheld the demand and imposed a penalty of Rs. 1.50 crores. The respondent preferred an appeal to the Tribunal. The

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Tribunal in paragraph 12 of its judgment upheld the particular demand for Rs.1,47,00127 but reduced the penalty from Rs.1.50 crores to Rs.75 lakhs. The respondent made an application for rectification of the Tribunal's order under Sec.35-C of the Act claiming that the Tribunal had not considered its submission that the evidence relied upon by the Department, namely, the plant performance report could not show that the respondent had actually despatched the like amount because the plant performance report merely showed a stage in the manufacture of the Cold Rolled Coils and that the material would have to undergo further processes before it could be said that Cold Rolled Coils were complete. It is said that the RGI register would only reflect the subsequent stage when the finished product was available for being removed from the factory. There was in fact no discrepancy between the plant performance Report and the entry of RGI register if this fact was taken into consideration and therefore no suppression.

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The Tribunal accepted the application for rectification and set aside the demand by upholding the plea of the respondent, it said.
"It has therefore on balance to be held that the department has not produced sufficient material to successfully establish beyond the reasonable doubt that the figures of production entered in the RGI register are incorrect. The demand for duty on this score cannot be confirmed. Consequently the penalty imposed on this score of Rs.75 lakhs has also to be set aside."
The learned counsel appearing for the appellant has submitted that the Tribunal had clearly erred in exercising such jurisdiction under Sec.35-C of the Act. It is submitted that the power to amend as granted under that Section did not allow the Tribunal to rehear and redecide the matter after an appreciation of the evidence.

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The decisions of this Court in T.S.Balaram Income Tax Officer Company Circle IV, Bombay vs. M/s. Volkart Brothers, Bombay reported in 1971(2) SCC 526, Commissioner of Income Tax (CNTL) Ludhiana vs. Hero Cycles Pvt. Ltd. Ludhiana reported in 1997 (8) SCC 502 and Commissioner of Central Excise Calcutta vs. A.S.C.U.Ltd. Reported in 2003 (151) E.L.T. 481 9S.C.) have been relied on to contend that the power to amend a mistake was limited to correct an error which did not require investigation either into the law or into the facts.
Learned counsel appearing on behalf of the respondent has on the other hand submitted that paragraph 12 of the Original order of the Tribunal clearly showed that although the contention of the respondent was noted by the Tribunal, in disposing of the matter the Tribunal did not address itself to that contention at all. It is submitted that the contention would go to the root of the matter and as such the Tribunal had correctly rectified its earlier

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omission by the order which has been impugned before us. Learned counsel has referred to several orders passed by this Court in proceedings where this Court has remanded the matter back for reconsideration by the Tribunal when it was pointed out to this Court that the Tribunal had omitted to consider all points. In addition it is submitted that the Tribunal had inherent j

urisdiction to rectify such an obvious error since no litigant should suffer by reason of the action of the Tribunal.
The power of review is not an inherent power and must be expressly granted. It has not been so granted under the Central Excise Act to the Tribunal. What has been given is a limited power under Sec..35-C(2) which provides as follows:
(2)The Appellate tribunal may, at any time within (six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the (Commissioner of Central Excise) or the other party to the appeal:

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provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.
(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed."(Emphasis added)

Although the ground for rectification, namely, an error on the face of the record may be common to a power for review, the nature of the power to be exercised in the two cases is distinct. The power of review is not limited to rectification and is wider than the power conferred under Sec.35C(2). We are unable to hold that the error was a manifest one which could admit of no dispute. It was a debatable point which was raised, and the conclusion of the Tribunal in the impugned order clearly shows that it has considered the question from the point of view of the sufficiency of the material to justify the demand

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raised. In the circumstances of the case we allow the appeals and set aside the impugned order of the Tribunal. We are told that the respondent has in the meanwhile filed a reference application under Sec.35-G of the Act before the Tribunal. In view of our order, the Tribunal can now hear and dispose of that application as expeditiously as is conveniently possible. There will be no order as to costs.

.....J. (RUMA PAL)

.....J.
(P.VENKATARAMA REDDI)
New Delhi;
December 10, 2003.