KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR/ROM-02/2021 **DATE: 30-06-2021**

Sl. No	Name and address of the applicant	M/s Parker Hannifin India Pvt Ltd, Plot No 320 P2, Near APC Circle, Bommasandra Jigani Link Road, Industrial Area, JiganiHobli, Anekal Taluk, Karnataka 560105
1	GSTIN or User ID	29AAACP6820G1ZF
2	AAAR Order which is sought to be rectified	KAR/AAAR-07/2019-20 Dated: 10thJanuary 2020
3	Date of filing ROM application	15-04-2021
4	Represented by	Shri. Mayank Jain, Advocate and Authorised representative
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Bangalore South Commissionerate.
6	Jurisdictional Authority- State	LGSTO 025A Bangalore

PROCEEDINGS

(Under Section 102 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria*and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present matter is an application for rectification of mistake (ROM) filed by M/s Parker Hannifin India Pvt Ltd, Plot No 320 P2, Near APC Circle, Bommasandra Jigani Link

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE

PHIPL

Road, Industrial Area, JiganiHobli, Anekal Taluk, Karnataka 560105 (herein after referred to as Applicant)in terms of Section 102 of the CGST Act to rectify errors which apparently have occurred in the appeal order No KAR/AAAR-07/2019-20passed by us in appeal proceedings on 10th January 2020.

3. An appeal was filed under Section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by the Applicant against the advance ruling No. KAR/ADRG 54/2019 dated: 19th Sept 2019. The said appeal was heard and decided by us vide order KAR/AAAR-07/2019-20 dated 10th Jan 2020.

4. The Applicant vide the present ROM application has submitted that the order dated 10-01-2020 is incorrect in law on the basis of the recent judgment dated 8th March 2021 of the Larger Bench of the Hon'ble Supreme Court in Westinghouse Saxby Farmer Ltd vs Commissioner of Central Excise, Calcutta [2021-TIOL-121-SC-CX-LB] and therefore, the order passed by the Authority merits rectification in terms of Section 102 of the CGST Act. The submissions in this regard are as follows:

4.1 The Appellate Authority vide the impugned order has held that filters manufactured by the Applicant which are meant for use solely by Indian Railways, were liable to be classified under Heading 84.21 of the Customs Tariff as made applicable to GST and not under Heading 86.07; that in order to determine the classification of the filters, the Appellate Authority was required to determine the inter-play between Section Note 2(e) and Section Note 3 to Section XVII (Chapters 86-89) of the Customs Tariff; that Section Note 2(e), inter alia excludes articles of Heading 84.01 to 84.79 from Section XVII while Section Note 3 provides that goods meant for sole and exclusive use with articles of Section XVII (eg., railway locomotives) will remain classified in the same Section itself; that the Appellate Authority concluded in the impugned order that for application for Section Note 3, first it has to be shown that Section Note 2(e) is inapplicable; that effectively, Section Note 2(e) takes precedence over Section Note 3 of Section XVII; that on the above basis the Appellate Authority has held that since filters are specifically classified under Heading 84.21 and excluded by virtue of Section Note 2(e) of Section XVII, application of Section Note 3 would be incorrect and held that the filters, meant for sole and exclusive use of Indian Railways, would merit classification under Heading 84.21.

4.2. The Applicant submitted that the order of the Appellate Authority is incorrect in law on the basis that the recent judgment dated 8th March 2021 of the Larger Bench of the Supreme Court in Westinghouse Saxby Farmer Limited vs Commissioner of Central Excise, Calcutta [2021-TIOL-121-SC-CX-LB]; that the Hon'ble Supreme Court was concerned with classification of relays, which are parts of a railway signalling system; that the question for determination before the Hon'ble Supreme Court was *"Whether the "Relays" manufactured by the appellant used only as Railway signalling equipment would fall under Chapter 86, Tariff Item 8608 as claimed by the appellant or under Chapter 85 Tariff Item 8536.90 as claimed by the Department?";* that the Hon'ble Supreme Court was also concerned with the application of Section Notes 2 (specifically sub-note (f) and 3 of Section XVII of the Customs Tariff; that after a detailed analysis, the Supreme Court held that the said goods were correctly classifiable under Heading 86.08 by virtue of Section Note 3; that the Supreme Court held as follows:

> *"34. Though at first blush, Note 2(f) seems to apply to the case on hand, it may not, upon a deeper scrutiny.*
>
> *36. What is recognised in Note 3 can be called the "suitability for use test" or 'the user test'. While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signalling equipment, those parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3.*
>
> *37. It is conceded by the Revenue that the Relays manufactured by the appellant are used solely as part of the railway signalling / traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the "sole or principal user test" indicated in Note 3, is not justified."*

4.3. The applicant submitted that the *ratio decidendi* emanating from the said judgment of the Hon'ble Supreme Court is that the test of "predominant use" or "sole/principle use test" cannot be overlooked and if such sole/principle use test stands satisfied, classification will remain in Chapter 86 only. They submitted that the judgment applies squarely to their case as the judgment concerned itself with the same

Section Notes as was in the case of the applicant; that in terms of Article 141 of the Constitution of India, judgments of the Supreme Court are nothing but law and binding without demur on all courts and authorities in India; that by virtue of the same, the impugned order deserves to be rectified.

4.4. The applicant submitted that the judgments of the Supreme Court always operate retrospectively in nature unless explicitly stated so, for the reason that the judgments do not make law, but merely interpret a law or discover a principle of the law. They placed reliance on the judgment of the Supreme Court in Assistant Commissioner, Income Tax vs Saurashtra Kutch Stock Exchange Ltd [(2008) 14 SCC 171] wherein it was held as follows:

> "*42. In our judgement, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.*"

They also placed reliance on the decision of the Karnataka High Court in Mysore Cement Ltd vs Deputy Commissioner of Commercial Taxes [1994 (93) STC 464 (Kar)] wherein it was held that the effect of the judgment is to operate retrospectively from the date when the law came into effect.

4.5. The applicant also submitted that a judgment of a higher *fora* rendered subsequently is a mistake apparent on the face of the record and as such, a rectification application deserves to be allowed. They placed reliance on the following decisions in this regard:

a) V Guard Industries Ltd vs Commercial Tax Officer [2003 9158) ELT 806 (Mad)]

b) S.A.L. Narayana Rao vs Model Mills Nagpur Ltd [1967 (64) ITR 67 (SC)]

c) Hindustan Lever Limited vs Commissioner of Central Excise [2006 (202) ELT 177 (Tri-LB)]

In view of the above, the applicant submitted that an order which is found to be erroneous by applying a subsequent judgment of the Supreme Court could be rectified and the Appellate Authority has the jurisdiction to do so under Section 102 of the GST Act; that the Appellate Authority in cognizance of the law laid down by the Hon'ble Supreme Court should rectify the order and hold that the filters manufactured and supplied by the Applicant for sole use by the Indian Railways are correctly classifiable under Heading 86.07.

4.6. The applicant also submitted that the present application for rectification of mistake is within the statutory period of limitation of six months as prescribed under Section 102 of the CGST At; that in view of the order dated 8th March 2021 of the Supreme Court in *Re: Cognizance for extension of limitation [Suo Motu Writ Petition (Civil) No 3 of 2020]* in terms of which the period from 15th March 2020 to 14th March 2021 is required to be excluded for the purpose of calculating limitation, the present application of the applicant is well within the statutory period of limitation.

4.7. In view of the above, the applicant has prayed that the present application for rectification of mistake be allowed and the Appeal order No KAR/AAAR/Appeal-07/2019-20 dated 10th January 2020 be amended to hold that the filters manufactured and supplied by the Applicant for sole/exclusive use of the Indian Railways are correctly classified under Heading 86.07.

5. The appellant was called for a virtual hearing on 25th June 2021 which was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Applicant was represented by Shri. Dinesh Agrawal and Shri. Mayank Jain, Advocates and Authorised representatives.

5.1. The Advocate explained the background of the case and pointed out that the present application is seeking a rectification of the impugned AAAR order consequent to the decision of the Supreme Court dated 8th March 2021 in the case of Westinghouse Saxby Farmers Ltd. They submitted that the decision of the Supreme Court makes it clear that the sole/principle user test as given in Note 3 to Section XVII will take precedence over the application of Note

2(f) of the said Section. They submitted that in their case, the product in question was 'filters' which were exclusively used for Indian Railways; that this contention of exclusive use for Railway locomotives has not been contested by the Department. Therefore, applying the ratio of the Supreme Court decision, the 'filters' manufactured by the applicant being solely used for the Railway locomotives should merit classification under Chapter 86.07 and not under Chapter Heading 84.21 as held by this Authority.

5.2. On the issue whether the subsequent decision of the Supreme Court can warrant a rectification action by this Authority, they relied on the Karnataka High Court decision in the case of Mysore Cements Ltd vs Deputy Commissioner of Commercial Taxes (Assessment-V), City Division 2, Bangalore wherein it was specifically held that an order found to be erroneous by applying the subsequent decision of the Supreme Court will amount to a 'mistake apparent on record'. In view of the above, they prayed that the order of the Appellate Authority may be rectified and the 'filters' manufactured by them be held as classifiable under Chapter Heading 86.07.

DISCUSSIONS AND FINDINGS

6. We have gone through the ROM application filed by the Applicant and also taken into consideration the submissions made at the time of personal hearing and the citations relied upon by the Applicant.

7. Section 102 of the CGST Act provides that the Appellate Authority may amend any order passed by it under Section 101 so as to rectify any error apparent on the face of the record if such error is brought to its notice within six months from the date of the order. The impugned appeal order has been passed by us on 10th Jan 2020.Any errors apparent on the face of the record of the said order should have been brought to our notice on or before 9th July 2020. In this case, the application for rectification of mistake has been filed on 15th April 2021 after a period of 15 months from the date of the order.The Applicant has submitted that the ROM application is within the statutory period of limitation of six months as prescribed under Section 102 of the CGST Act in view of the exclusion of the period 15th March 2020 till 14th March 2021 by the Supreme Court in its suomotu order on extension of limitation dated 8th March 2021.

8. We have perused the Supreme Court order dated 8th March 2021 in suomotu WP (Civil) 3/2020 and its order dated 27th April 2021 in Miscellaneous application No 665/2021 in SMW (C) 3/2020.Due to the onset of COVID-19 pandemic, the Supreme Court took suomotucognizance of the challenge faced by the country and accordingly on March 23, 2020, passed an order extending the limitation period for petitions, applications, suits, appeals and all other proceedings under the general or special law, both under central and/or state legislations, in all courts and tribunals across the country with effect from 15th March 2020 till further orders. When the situation seemed to be improving during early 2021, the Apex Court on March 8, 2021, revisited their earlier order dated March 23, 2020. The Apex Court observed that although the pandemic had not ended, there was significant improvement in the situation basis which the lockdowns had been lifted in most places and the country was returning to normalcy. The Apex Court also noted that majority Courts and Tribunals had already started functioning either physically or virtually. Accordingly, the Supreme Court lifted the extension that had been granted on the limitation period, with the following directions:

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period between March 15, 2020 and March 14, 2021 shall stand excluded. It would be considered that the limitation period had stopped running from March 15, 2020 till March 14, 2021 and would resume from March 15, 2021 with the remaining balance period of limitation as on March 15, 2020.
2. In cases where the limitation would have expired during the period between March 15, 2020 and March 14, 2021, irrespective of the remaining balance period of limitation, litigants would be allowed a period of 90 days from March 15, 2021. In the event the actual balance period of limitation remaining is greater than 90 days, that longer period would apply with effect from March 15, 2021.
3. The period from March 15, 2020 till March 14, 2021 would also be excluded in computing the limitation periods prescribed under specials laws such as Sections 23(4) and 29A of the Arbitration Act, Section 12A of the Commercial Courts Act and provisos (b) and (c) of Section 138 of the NI Act, that prescribe periods of limitation for instituting proceedings,

outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

9. However, India saw the beginning of the second wave of the pandemic in April 2021. The Supreme Court Advocate on Record Association filed an interlocutory application highlighting the daily surge in Covid-19 cases in Delhi and the difficulties faced by the advocates and the litigants in instituting cases in Delhi and prayed for the restoration of the order of the Supreme Court dated March 23, 2020.Accordingly, the Apex Court vide its order dated 27th April 2021, once again invoked their powers under Article 142 read with Article 141 of the Constitution of India and restored their earlier order dated March 23, 2020, to be read in consonance with their order dated March 8, 2021. The Court directed that the period of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, would stand extended till further orders. The Apex Court also directed that the order passed in exercise of the powers under Article 142 read with Article 141 of the Constitution of India shall be binding on all Courts/Tribunals and Authorities. Therefore, in view of the above directions of the Supreme Court, the present ROM application filed on 15th April 2021 is within the statutory time limit and hence is admitted.

10. Coming to the merits of the ROM application, the applicant has filed this application stating that the order passed by the Appellate Authority is incorrect in law basis the recent judgment dated 8th March 2021 of the Larger Bench of the Supreme Court in Westinghouse Saxby Farmer Ltd vs Commissioner of Central Excise, Calcutta reported in 2021-TIOL-121-SC-CX-LB wherein the Apex Court while determining the question whether the "Relays" manufactured and used only as Railway signalling equipment would fall under Chapter 8608 or under Chapter 8536.90, held that the test of "predominant use" or "sole/principle use test" cannot be overlooked and if such sole/principle use test stands satisfied, classification will remain in Chapter 86 only. The applicant has submitted that the judgment of the Supreme Court squarely applies to their case and since judgments of the Supreme Court always operate retrospectively, the same is in conflict with the decision dated 10th Jan 2020 rendered by this Authority. The applicant also submitted that any order which is in conflict with a subsequent judgment of the Supreme Court constitutes mistake apparent on record. In this regard, they

have relied on the decision of the Karnataka High Court in the case of Mysore Cements Ltd vs Deputy Commissioner of Commercial Taxes reported in [1994 (93) STC 464 (Kar)].

11. We have gone through the decision of the Hon'ble Karnataka High Court in Mysore Cements case *supra.* The relevant para of the said decision is extracted here below:

> *"Therefore, in the final analysis, what is a 'mistake apparent from the record', capable of being rectified? A mistake, either of fact or of law, glaring and obvious from the record itself, capable of identification, without a detailed investigation or enquiry or elaborate arguments, in regard to which there could reasonably be no two opinions is a 'mistake apparent from the record'. If it relates to a fact, it should be possible to say 'this is obviously a mistake'. A decision on a debatable point of law will not, however, be a mistake apparent from the record. A point on which there is no decision of the Supreme Court or of the concerned High Court, and in regard to which two or more views are possible, is a debatable point of law. A point of law on which there are divergent views of other High Courts, is a debatable point of law. Hence, there cannot be a rectification of an order, merely on the ground that a contrary decision was rendered on the point involved by a High Court other than the High Court of the concerned State. It is needless to point out that when a point is covered by a decision of the Supreme Court or concerned High Court, either rendered prior to or subsequent to the order proposed to be rectified, then the point ceases to be a debatable point; it also ceases to be a point requiring elaborate arguments or detailed investigation/enquiry. To encapsulate, the following will be 'mistakes apparent from the record' relating to a question of law :*
>
> *(a) An order made, ignoring or overlooking : (i) a binding decision of the Supreme Court or the concerned High Court rendered prior to the date of such order; and/or (ii) a relevant provision of existing law;*
>
> *(b) An order, found to be erroneous : (i) by applying a subsequent enactment given retrospective effect; and/or (ii) by applying a subsequent decision of the Supreme Court or concerned High Court."*

12. The above decision of the Hon'ble High Court was rendered in the context of a rectification order passed by the assessing authority under Section 25-A of the Karnataka Sales Tax Act, 1957, wherein the assessing authority held that the assessment orders holding that packing charges are to be deducted from the taxable turnover was a 'mistake apparent from the record' having regard to the decision of the Supreme Court in Ramco Cement Distribution Co Pvt Ltd vs State of Tamil Nadu. The Supreme Court categorically declared in Ramco's casethat packing charges should also be included in the taxable turnover for both CST and TNST. The petitioner had challenged the rectification order stating that the

subsequent decision of the Supreme Court holding that packing charges are to be included in the taxable turnover will not render the assessment order as having a 'mistake apparent from the record'. In this background, the Hon'ble High Court embarked on a discussion as to what constitutes 'mistake apparent on record' and made the above observations while upholding the rectification order passed by the assessing authority.

13. We find that that the Supreme Court had occasion to examine a similar situation in the case of Mepco Industries Ltd vs Commissioner of Income Tax [2009 (248) E.L.T 3 (SC)] wherein the Apex Court deliberated on the meaning of the words 'rectifiable mistake'. The facts of the case before the Apex Court was that the Commissioner of Income Tax had rectified his own order in terms of Section 154 of the Income Tax Act, 1961 on the basis of a later judgment of the Apex Court. The Commissioner of Income Tax had issued an order holding that the Power subsidy received by the party Mepco Industries was a capital receipt and hence not liable to be taxed. Subsequent to this order, the Apex Court in the case of Sahney Steel and Press Works Limited held that incentive subsidy was a revenue receipt and hence liable to be taxed. Following the judgment of the Apex Court in Sahney Steel case, the Commissioner of Income Tax passed an order of rectification holding that Power subsidy was not a capital receipt. The matter was taken to the Supreme Court by the party, and the Court examined whether there existed a 'rectifiable mistake' enabling the Department to invoke Section 154 of the Income Tax Act. The relevant extracts of the Supreme Court decision in Mepco Industries Ltd *supra* is reproduced below:

> **"7.** On the facts of the present case, we are of the view that the present case involves change of opinion. In this connection, it must be noted that Government grants different types of subsidies to the entrepreneurs. The subsidy in *Sahney Steel and Press Works Limited* (supra) was an incentive subsidy linked to production. In fact, in *Sahney Steel and Press Works Limited* (supra) [at page 257], this Court categorically stated that the Scheme in hand was an incentive Scheme and it was not a Scheme for setting up the industries. In the said case, the salient features of the Scheme were examined and it was noticed that the Scheme formulated by the Government of Andhra Pradesh was admissible only after the commencement of production. In Income Tax matters, one has to examine the nature of the item in question, which would depend on the facts of each case. In the present case, we are

concerned with power subsidy whereas in the case of *Commissioner of Income Tax* v. *Ponni Sugars and Chemicals Limited*, reported in [2008] 306 I.T.R. 392, the subsidy given by the Government was for re-paying loans. Therefore, in each case, one as to examine the nature of subsidy. This exercise cannot be undertaken under Section 154 of the Act. There is one more reason why Section 154 in the present case was not invokable by the Department. Originally, the Commissioner of Income Tax, while passing orders under Section 264 of the Act on 30th April, 1997, had taken the view that the subsidy in question was a capital receipt not taxable under the Act. After the judgment of this Court in *Sahney Steel and Press Works Limited* (supra), the Commissioner of Income Tax has taken the view that the subsidy in question was a revenue receipt. Therefore, in our view, the present case is a classic illustration of change of opinion." (Emphasis supplied)

14. The Supreme Court after examining the relevance of various judicial decisions went on to hold as follows:

"... The judgment of this Court in *Sahney Steel and Press Works Limited &Ors.* (supra) was on its own facts; so also, the judgment of this Court in *Ponni Sugars and Chemicals Limited* (supra) . The nature of the subsidies in each of the three cases is separate and distinct. There is no straight-jacket principle of distinguishing a capital receipt from a revenue receipt. It depends upon the circumstances of each case. As stated above, in *Sahney Steel and Press Works Limited &Ors.* (supra) , this Court has observed that the production incentive scheme is different from the Scheme giving subsidy for setting up industries in backward areas. In the circumstances, the present case is an example of change of opinion. Therefore, the Department has erred in invoking Section 154 of the Act."

10. Before concluding, we may state that in *Deva Metal Powders (P) Limited* v. *Commissioner, Trade Tax, Uttar Pradesh*, reported in 2008 (2) S.C.C. 439 a Division Bench of this Court held that a 'rectifiable mistake' must exist and the same must be apparent from the record. It must be a patent mistake, which is obvious and whose discovery is not dependant on elaborate arguments.

11. To the same effect is the judgment of this Court in the case of *Commissioner of Central Excise, Calcutta* v. *A.S.C.U. Limited* [2003] 151 E.L.T. 481, wherein it has been held that a 'rectifiable mistake' is a mistake which is obvious and not something which has to be established by a long drawn process of reasoning or where two opinions are possible. Decision on debatable point of law cannot be treated as "mistake apparent from the record".

15. The decision of the Supreme Court in the Mepco Industries case was relied upon by the Kerala High Court in the case of Malabar Regional Co-op Milk Producers Union Ltd vs CCE, Cochin [2020 (372) ELT 708 (Ker)] where the question agitated was whether a subsequent declaration of law through decision of the Apex Court can be considered as a mistake apparent on the face of the record, enabling a rectification by the Tribunal under Section 35(2) of the Central Excise Act. In the case before the Kerala High Court, the Tribunal has passed an order (referred to as Annexure A order) setting aside the imposition of penalty under Section 11AC of the Central Excise Act since duty was paid before issue of SCN. The Tribunal had observed that the Apex Court had set aside the penalty on similar grounds in the case of RashtriyaIspat Nigam Ltd vs Commissioner of C.Ex, Visakhapatnam [2004 (163) ELT 113 (Tri)]. However, in view of the later decision of the Supreme Court in the case of UOI vs Dharamendra Textile Processors and Others [2008 (231) ELT 3 (SC)] wherein it was held that there is no scope for any discretion with respect to imposition of penalty and that levy of penalty is mandatory under Section 11AC, the Tribunal proceeded to reopen the decided appeal as a 'rectification of mistake' and went on to decide that the appellant was liable to pay penalty equal to the duty evaded. In view of the finding of the Tribunal, the Hon'ble Kerala High Court examined on the substantial question of law *"Whether the Tribunal was right in reopening a concluded appeal under the guise of rectification of a mistake apparent on the face of record, based on a subsequent decision of the Hon'ble Supreme Court, by treating that the subsequent declaration of law is a reasonable ground to reverse its earlier decision in the appeal and to decide the matter afresh against the applicant?"*

16. The Hon'ble Kerala High Court made the following observations:

"12. It is always a sound principle that the Courts while pronouncing a judgment is not creating a new Rule. Nor it does not make law; but only declare the correct position of law. In that respect it has to be accepted that a judicial decision acts on retrospective basis. But the question mooted for decision is whether a subsequent judicial decision settling the correct interpretation of law, which unsettles the earlier precedents, can be considered as a mistake apparent on the face of record, which enables rectification of an earlier decision which had attained finality between parties *inter se*. In other words, whether a change of opinion declared in a subsequent judicial decision can be treated as a mistake apparent on the face of record to unsettle a decision which had attained finality. Further, it is a question as to whether such subsequent change of opinion will enable the authority to reopen the settled proceedings and to decide it afresh."

After analysing several judicial decisions including the Supreme Court decision in the Mepco Industries case *supra,* the Hon'ble Kerala High Court held in favour of the assessee-appellant stating that *"when the appeal was decided by the Tribunal through Annexure A order, the decision was taken based on the law as it stood then. In a subsequent decision of the Hon'ble Supreme Court, the law was declared as otherwise, based on a change of opinion. Such change of opinion of law cannot be taken as 'mistake apparent on the face of record' which could be rectified by invoking Section 35C (2) of the Central Excise Act. Further, such material such material cannot be used for unsettling the settled position attained through disposal of the appeal, alleging that there occurred any mistake apparent from the face of the record. It cannot be utilized for reopening a concluded decision, which had attained finality between parties inter se. Therefore we are of the opinion that the above appeal has to succeed."*

17. On an analysis of the principle underlying the above decisions of the Supreme Court and the High Courts, we find that in this case the impugned order was passed by us based on the facts of the case. The product whose classification was determined by us in the impugned order was "Filters" and the correct classification was held to be Chapter Heading 84.21 as against the Chapter Heading 86.07 canvassed by the applicant. To determine the classification, we had examined in detail the Section Notes 2(e) and 3 of Section XVII and also followed the principle laid down by the Tribunal in the case of CCE, Chennai vs Best

Cast Pvt Ltd (2001 (127) ELT 730). We had also noted that the civil appeal filed against the Tribunal's decision in Best Cast case was dismissed by the Apex court as reported in 2001 (133) E.L.T. A.258 (S.C). It is trite law that dismissal of a Civil Appeal, results in merger of the decision of the Tribunal, with the order passed by the Supreme Court and, thereby, elevates the judgment of the Tribunal to the status of the pronouncement of the Supreme Court. In this context, we rely on the law laid down by the Apex Court in *Kunhayamedv. State of Kerala,*2001 (129) E.L.T. 11 (S.C.). Therefore, the decision taken by us in the impugned order was based on the law as it stood then. In the later decision of the Supreme Court in the case of Westinghouse Saxby Farmer Ltd *supra,* the law was declared as otherwise, based on a change of opinion. As held by the Hon'ble Kerala High Court in Malabar Regional Co-op Milk Producers Union Ltd case *supra,* such a change of opinion of law cannot be taken as a 'mistake apparent on the face of the record' which could be rectified by invoking Section 102 of the CGST Act.

18. We also take note that the product whose classification was being examined by the Supreme Court in the Westinghouse Saxby Farmer Ltd case *supra,* was "Relays" and the competing Tariff heading was 8536.90 and 86.07. Further, the relevant Section Notes examined by the Apex Court in the said decision was Section Note 2(f) and 3. Therefore, the product and the relevant Section note was different in the case before the Apex Court when compared to the case decided by us in appeal. The judgment of the Supreme Court in Westinghouse Saxby Farmer Ltd case was on its own facts; so also, the decision rendered by this Authority in the impugned order. If we do however, accept the applicant's plea and rectify our order based on the later decision of the Supreme Court in Westinghouse Saxby Farmer Ltd case, we would be guilty of demonstrating what the Supreme Court held as "a classic illustration of change of opinion" (in the Mepco Industries Ltd case *supra*).

19. In view of the foregoing discussion, we hold that there is absolutely no question of any error apparent from the face of record in the impugned appeal order, as is being made out by the Applicant. Accordingly, we pass the following order:

ORDER

We reject the ROM application filed by M/s Parker Hannifin India Pvt Limited, under Section 102 of the CGST Act seeking rectification of the AAAR order No 07/2019-20 dated 10th Jan 2020.

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

To

The Applicant

Copy to

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