

**Collector of Central Excise Vs. Simplex Chemopack (P.) Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-13-1997

**Reported in :** (1997)(93)ELT811TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Simplex Chemopack (P.) Ltd.

**Judgement :**

1. After hearing the misc. application for early hearing, we find that the main appeal itself can be disposed of since the issue involved is in narrow compass. Accordingly, the misc. application is allowed.

2. In appeal, the dispute relates to classification of HDPE/PP strips, tapes and fabrics. The Assistant Collector has decided the issue holding that the items, in question, are classifiable under Chapter 54 and Chapter 59 respectively. According to the department, these items are classifiable under 63.01. The department has filed an appeal before the Collector (Appeals), aggrieved by the order passed by the Assistant Collector. The Collector (Appeals), while examining the issue, has remanded the matter to decide the issue of classification in the light of the decision of the Madhya Pradesh High Court in the case of Raj Pack Well Ltd. v. Union of India, reported in 1990 (50) E.L.T. 201 (M.P.).

The department has come before us by way of appeal against the order passed by the Collector (Appeals) on the ground that the Collector (Appeals) has exceeded his jurisdiction in remanding the matter. We are not convinced with this plea taken

by the department. The issue with reference to the fresh classification can be considered even at the appellate stage and this was the view precisely taken by the Tribunal in the case of Roots Auto Products (P) Ltd. v. Collector of Customs, reported in 1988 (38) E.L.T. 310 (Tribunal). The High Court of Calcutta has taken the similar view in the case of Orient Paper & Industries Ltd. v. Special Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi and other, reported in 1987 (30) E.L.T. 67 (Cal.) that classification of goods, being a mixed question of law and facts that can be raised at any stage. In these circumstances, we do not find any infirmity in the impugned order passed by the Collector (Appeals) in remanding the matter. Accordingly, the appeal filed by the department is, hereby, dismissed.

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