

Nihon Nirman Ltd. Vs. Commissioner of Central Excise

Nihon Nirman Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/12887

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-17-1998

Reported in : (1999)(110)ELT753TriDel

Appellant : Nihon Nirman Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The application for waiver of pre-deposit of duty and penalty and stay of recovery thereof arises out of the order of the Commissioner of Central Excise, Jaipur finalising provisional assessment of white cement manufactured by the appellants herein. The appellants had earlier been filing classification lists for white portland cement and the goods were cleared from the factory on payment of duty leviable under sub-heading 2502.90 of the Schedule to the Central Excise Tariff Act, 1985. Under their letter dated 28-9-1991, they submitted a revised classification list effective from 1-10-1991, wherein they described the product as 'Rapid Hardening Portland Cement (White)' under CET Heading 2502.20, claiming such classification in view of the order-in-appeal passed by the Commissioner (Appeals) in the case of another assessee, viz. M/s. J.K. White Cement Works. Pending approval of the classification list with Central Excise authorities, the appellants filed writ petition before the Hon'ble Rajasthan High Court seeking classification of their product under CET sub-heading 2502.20 and the High Court passed order dated 22-11-1991 directing that the appellants should pay the duty leviable provisionally under sub-heading 2502.20 and execute a bond in proper

form on payment of difference between the amounts of duty leviable under sub-heading 2502.20. The appellants initially complied with the direction of the Hon'ble High Court but later on there was some dispute, leading to detention of the goods by the departmental authorities. Against the detention, the appellants moved the High Court once again and by order dated 1-4-1994, the High Court directed finalisation of the classification issue. By order dated 13-4-1992, the Assistant Collector passed an order holding that white cement in question falls for classification under sub-heading 2502.90. The Commissioner (Appeals) upheld the order of the Assistant Collector and aggrieved by this order, the appellants have filed E/Appeal No. 5347/92-C which is pending before the Tribunal. The present demand arises as a consequence of the finalisation of classification under sub-heading 2502.20.

2.The learned Consultant, Shri K.L. Rekhi, submits that when the subject matter of the appeal before the Tribunal was the classification of the product in dispute and further when the issue of classification was before the Hon'ble Supreme Court in the case of other manufacturers of the same product namely Indian Rayon Industries and J.K. White Cement Ltd., [1998 (100) E.L.T. 327 (S.C.)] the departmental authorities ought to have waited for the classification issue to be finally decided by the Tribunal or the Hon'ble Supreme Court instead of hastening the process of confirmation of demand of duty. He submits that the appellants acted on the Ministry's circular under which the cement in question fall for classification under sub-heading 2502.20 and in this connection he relies on pages 48 and 49 of the paper book on the Board's Circular. On the question of financial hardship, he submits that even before the issue of the show cause notice in December, 1992, the department had seized the stock of duty paid white cement and further the appellant company has been closed since 5th March, 1994. Further the department has also enforced the bank guarantees. The appellant has been registered before the BIFR as case No. 33/97 and the accumulated loss of the appellant company is Rs. 44.80 crores. Under these circumstances, he submits that irreparable loss would be caused if the appellants are directed to deposit the duty demand. He therefore, prays for waiver of pre-deposit of the duty and the penalty of Rs. 1 lakh, and prays that the classification appeal and this appeal may be heard and disposed of together without insisting on pre-deposit.

3. Shri A.K. Madan, learned DR, reiterates the findings in the impugned order. He states that the Commissioner in the present case has rightly refrained from going into the classification issue since that has been decided by the order of the Commissioner (Appeals) and is the subject matter of Appeal No. E/5347/92-C and has only followed the direction of the Hon'ble High Court in confirming the differential duty as a result of classification of the product under sub-heading 2502.90. Regarding the financial position, he submits that the balance sheet itself would show that the appellants have current assets of Rs. 9 crores and therefore, it would not cause them undue hardship if asked to deposit the amount of duty and penalty involved.

4. We have considered the submissions of both the sides. We note that the present demand is as a consequence of the finalisation of classification under sub-heading 2502.90 and the Commissioner has called upon the appellants to deposit the differential duty arising from the higher rat

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com