

ivp Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-1998

Reported in : (1998)LC787Tri(Delhi)

Appellant : ivp Ltd.

Respondent : Collector of Central Excise

Judgement :

2. The appellants herein filed a classification list No. 5/86-87 effective from 1-3-1986 for goods manufactured by them and claimed classification of one of their products, namely, alumina products under Tariff sub-heading 8485.90. The said classification list was duly approved by the authorities.

2.1 Later on the Revenue had a rethinking and they addressed a letter to the appellant on 30-1-1987 for changing the classification list of the aforesaid product under Chapter 69 but the appellants did not agree to the said request. Hence a detailed show cause notice setting out the grounds for change in the classification of the aforesaid goods was issued to the appellants on 11-2-1987 which was received by them on 19-2-1987. The classification list was changed as proposed by the Revenue under Chapter 69 for the aforesaid product. The appellants herein did not succeed before the lower appellate authority. Hence this appeal before the Tribunal.

3. Learned Counsel, Shri Gopal Prasad has submitted that the show cause notice was only for proposing a change in classification of alumina products. He submits

that classification list can only be changed prospectively. For this proposition he relies on Apex Court judgment in the cases of Elson Machines Pvt. Ltd. v. Collector [1988 (38) E.L.T.571 (S.C.) and Plasmac Machines Manufacturing Co. Ltd. v. Collector [1991 (51) E.L.T. 161 (S.C.)]. In the said judgments he submits that Supreme Court has held that classification and price lists can be approved only prospectively. Refund or recoveries on change of classification would, however, be subject to limitation provided in the Act. Since the issue involved is regarding change in classification list as already approved by the Revenue, it will take effect only from the prospective date i.e. from the date 19-2-1987 when the show cause notice was received by the appellants herein. In view of the aforesaid submission, he prays for allowing the appeal. He, however, states on a query from the Bench that he does not challenge the classification of alumina products made by the lower authorities on merits.

4. Learned SDR, Shri A.K. Agarwal submits that such a plea was not taken by the appellants before the lower authorities regarding the date from which the classification list can be changed by the Revenue. He, therefore, submits that no finding to this has been given by the lower authorities. He, however, reiterates the findings of the lower authorities regarding the classification of the alumina products under Chapter 69.

5. We have carefully considered the pleas advanced from both sides. We observe that the learned Advocate for the appellants is not challenging the classification of the goods made by the authorities below for the alumina product under Chapter 69. He is only contesting the date of its effect of the change made by the authorities. He stated that it is well settled in view of the Supreme Court's judgment referred to above. We agree with this submission of the learned Advocate that the change of classification can only be made prospectively. Recoveries as a result of such change in classification will, however, be subject to limitation laid down in the Act. Since the show cause notice proposed only the change in classification, therefore, the change in classification of the goods would be applicable from the date of receipt of the show cause notice w.e.f. 19-2-1987. Appeal is allowed only to this extent.