

Dass and Co. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-1998

Reported in : (1999)(105)ELT154TriDel

Appellant : Dass and Co.

Respondent : Collector of Central Excise

Judgement :

1. These 3 appeals involving common issues have been filed by M/s. Dass & Co. against confirmation of the demand of central excise duty in respect of the product known as quick lime and hydrated lime.

2. Shri K.K. Anand, learned Advocate, submitted that the Department has approved their classification list No. 59/90 classifying the product under Chapter 25 of the Schedule to the CETA against which no appeal was filed by the assesseees. He, however, submitted that non-filing of the appeal against the approval of the classification list will not debar the appellants from raising the issue while challenging the confirmation of the demand. He relied upon the decision in the case of Rajasthan Spinning and Weaving Mills Ltd. v. CCE reported in 1990 (45) E.L.T. 654 in which it was held by the Appellate Tribunal that "when the whole issue is open before us, the matter of classification also falls for determination, and this we are competent to do, irrespective of the fact that the appellants failed for whatever reasons, to agitate the matter at the right stage by adopting the remedy of appeal." In this regard he also relied upon the decision of the Calcutta High Court in the case of ITC v. Union of India reported in 1988 (34) E.L.T. 473 (Cal.) in

which it was held that Sections 11A and 11B of the Central Excises and Salt Act are applicable even if no appeal has been filed against the approval of price list or classification list. He, therefore, submitted that it is open to the appellants to challenge the excisability of the product in these proceedings. On merits, he submitted that the Tribunal in the case of Himalaya Chemicals v. CCE, Chandigarh Order Nos. 444-445/91-C, dated 16-5-1991 has held that quick lime and hydrated lime are not chargeable to duty. This decision of the Tribunal has been upheld by the Supreme Court in the case of CCE v. Nuchem Industries P. Ltd. reported in 1998 (99) E.L.T. 197 (S.C.). He, therefore, submitted that all the appeals may be allowed.

3. Shri Satnam Singh, learned SDR reiterated the findings contained in the order appealed against.

4. We have considered the submissions of both sides. We agree with the submissions of the learned Advocate that the issue regarding excisability of the product which are chargeable to duty can be raised by the appellants at the time of contesting the demand. Further as the Apex Court has held that both quick lime and hydrated lime are not chargeable to duty, the question of demanding any duty from the appellants on these products does not arise. Following the ratio of the Supreme Court decision, we allow all the three appeals.

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