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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-28-1999

Reported in : (2000)(115)ELT794TriDel

Appellant : Eddy Current Control Pvt. Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. The issue involved in this appeal is whether the demand for past 6 months can be made under Section 11A of the Central Excise Act, when the classification list filed by the appellants has been approved.

2. Shri Tarun Gulati, learned Advocate submitted that this issue has been settled by the Larger Bench of the Supreme Court in the case of C.C.E., Baroda v. Cotspun Ltd. - 1999 (113) E.L.T. 353 (S.C.). We also heard Shri A.K. Jain, learned DR.3. We find that the show cause notice was issued on 6-3-1989 demanding duty for the period from October, 1988 to February, 1989. It is clearly mentioned in the adjudication order dated 1-1-1990 passed by the Asstt.

Collector that the classification list No. 1/88, dated 1-3-1988 classifying Electro Magnetic Variable Speed Drives (Dynodrives) is classifiable under Heading 85.05 of the Schedule to the Central Excise Tariff Act and Dynodrive with motor under Heading 85.01 and parts and accessories thereto under 85.48 was approved by the proper officer. The Hon'ble Supreme Court in the Cotspun case has held that levy of excise duty on the basis of approved classification list is the correct levy,

atleast until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice.

4. The levy of excise duty on the basis of an approved classification list is not short levy and differential duty cannot be recovered on the grounds that it is a short levy. As this is not disputed by the Revenue that classification list was approved by the proper officer, in view of the Cotspun decision, no demand for the past 6 months can be raised.

Accordingly the appeal filed by the appellants against the demand is allowed.

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