

**Voltas Ltd. Vs. Commr. of C. Ex. and Cus.**

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

**Decided On :** Aug-04-2000

**Reported in :** (2000)(121)ELT802Tri(Mum.)bai

**Appellant :** Voltas Ltd.

**Respondent :** Commr. of C. Ex. and Cus.

**Judgement :**

1. The appellant imported at Bangalore goods such as fire damper, grilles, air volume boxes etc. for setting up air conditioning plant.

In the order impugned in this appeal the goods have been classified in the appeal under heading 84.15 of the Customs Tariff.

2. It is contended by the advocate for the appellant that the notice to show cause proposes classification of these goods not under heading 84.15 but under heading 84.14, which is for air ventilating machine.

The fact that during the hearing before the Asstt. Commissioner, the appellant was explained orally that the classification under heading 84.15 has to be applied does not fulfil the right given to the appellant to have notice issued in writing fulfilling the classification that is proposed to be determined. The decision of the Tribunal in *Tata Mills (UC) Bombay v. CCE -1988 (37) E.L.T. 284* is cited.

3. In the decision, the Tribunal held that where notice to show cause which was issued proposed classification of non-woven woollen fabrics and non-woven man-

made fabrics under items 68, the classification ordered under items 21 and 22 respectively was not in accordance with the principles of natural justice even though the Tribunal declined to accept the view expressed by the Collector (Appeals) that the fact that the assessee was given opportunity of hearing to explain its case was not sufficient to overcome this objection. Although the Tribunal based its final decision on merits, as also on this issue, the fact remains that it has found such a notice untenable. The decision of the Tribunal in *Virgo Steel & Anr. v. CC* (C/1994/92B2 and C/151/94-Bom), held that a notice demanding duty under section 28 of the Customs Act, 1962 cannot be oral and must be in writing and the decision of the Tribunal in *Saphai Saiv Mills & Veneer Unit v. CCE - 1997* (20) RLT 64 that the notice demanding duty under Section 11A of the Central Excise Salt Act must be in writing and cannot be oral, add support to the proposition expressed by the advocate for the appellant unless there is specific provision in the statute for issue of notice (orally) as for Section 124 of the Customs Act or the provisions of the relevant part of the statute are themselves capable of being interpreted to mean that an oral notice cannot be issued and a notice must be in writing.

Therefore, it is not very clear what exactly is explained to the appellant by the Asstt. Commissioner.

4. We accordingly hold that, in absence of a notice in writing proposing classification of the goods under the heading determined by the Asstt. Commissioner, confirmed by the Collector (Appeals), the principles of natural justice had not been applied. On that ground, we allow the appeal and set aside the impugned order.

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