

Workwell Engineering Co. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-10-2001

Reported in : (2001)(74)ECC215

Judge : P Chacko, B T K.K.

Appellant : Workwell Engineering Co.

Respondent : Commissioner of Central Excise

Judgement :

1. This application prays for waiver of pre-deposit of Central Excise Duty of Rs. 1,01,796.50, the demand whereof as raised in the Department's show-cause notice was upheld by the lower Appellate authority, which has set aside the orders of the Asstt. Commissioner, whose decision on such demand was in favour of the assessee on the basis of classification of the product in question under Chapter Heading 84.37 with effect from 5.12.94.
2. We have carefully examined the grounds of the stay application and connected records and have heard Ld. Consultant Shri K.A. Sindhi for the applicants and Ld. JDR Shri J.M. George for the Revenue.
3. Ld. Consultant submits that the Tribunal had, in the applicants' own cases, decided in favour of the Revenue upholding classification of the same product under Chapter Heading 85.09 of the Central Excise Tariff.

There were two such decisions of the Tribunal. The earlier one among them was taken in appeal by the party before the Supreme Court, but the Apex Court dismissed the same. Against the second decision of the Tribunal also, this applicant went in appeal before the Apex Court, and that appeal is still pending. Meanwhile, there was a circular issued by the Board on 5.12.94, which clarified that the appropriate classification of the product would be under Chapter Heading 84.37 of the Tariff. Ld. Consultant particularly submits that the Board's circular was considered by the Tribunal in the second one of the aforesaid two cases, but the Tribunal preferred to follow its earlier decision classifying the product under Chapter Heading 85.09, without taking into account the Board's circular. It is the further submission of the Ld. Consultant that the Revenue cannot argue against the view taken by the Board on the classification matter. He further submits that the rulings of the Apex Court are to this effect. Ld. JDR has, on the other hand, submitted that the decision of the Tribunal holding the classification under Chapter Heading 85.09 became final when the assessee's appeal against the same was rejected by the Apex Court, and therefore, that decision must prevail over the Board's circular. We, however note that the Board's circular was very much before the Tribunal in the second case when it rendered the decision in favour of the Revenue by following its own earlier decision. We further note that the assessee's Appeal against that decision of the Tribunal has been admitted by the Apex Court and is pending before it. This being the position, we cannot, prima-facie accept the Ld. JDR's submission.

Prima-facie, it is the Board's circular which holds the ground, and therefore, the applicants have a strong prima-facie case. Accordingly, we allow this application unconditionally. The appeal shall arise for regular hearing in the due course.

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