Commissioner of Central Excise Vs. Richardson and Cruddas (1972) Ltd.

Commissioner of Central Excise Vs. Richardson and Cruddas (1972) Ltd.

SooperKanoon Citation : sooperkanoon.com/29957

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-29-2003

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Richardson and Cruddas (1972) Ltd.

Judgement :

1. Richardson & Cruddas (1972) Ltd., the respondent to this appeal, manufactured various goods and filed classifying them in various headings of the Central Excise tariff. The notices issued to it proposed recovery of duty on goods that it cleared in June 1994 on the ground that the goods were correctly classifiable in headings of the tariff different from the ones claimed by the manufacturer. The Assistant Commissioner confirmed the proposal in the notice. The assessee appealed. The Commissioner (Appeals) found that the classification list having been approved by the department on 31.3.1992 and that classification having been changed only after the issue of the notice, the judgment of the Supreme Court in UOI v. Madhumilan Syntex 1988 (35) ELT 349 would apply and therefore the demands prior to 24.2.1994, when the order of changing the classification applied, were not sustainable. He therefore confirmed the demands for the period covered by the notices dated 19.7.1994 and 27.10.1994 and held the show cause notice dated 24.2.1994 not maintainable. Hence this appeal by the department.

2. We have heard the departmental representative. The representative of the respondent relies upon the submissions.

3. The departmental representative contends that, as a result of the amendment of Section 11A of the Act which, by virtue of the provisions of Section 110 of the Finance Act of 2000, would have retrospective applicability, the fact that classification has been approved would not stand in the way of duty being demanded as being short levied. This contention has to be accepted, and answers the objections raised by the respondent that any change in classification already approved is prospective in nature. However, while this may enable the department to demand duty, that does not mean that it is not required to pass an order explaining why duty is payable. This has not been done. In his order, the Assistant Commissioner has confirmed the classification proposed in the notice only on the ground that the respondent did not give the correct end use certificate from Bharat Heavy Electricals Ltd. This is hardly sufficient reason to confirm the duty.

4. In the result, we allow the appeal and remand the matter to the Assistant ommissioner for passing a reasoned order in accordance with law.