

**Associated Switch Gears and Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/36158](http://sooperkanoon.com/36158)

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

**Decided On :** Aug-06-2004

**Reported in :** (2004)(117)LC364Tri(Delhi)

**Judge :** S Kang, Vice, N T C.N.B.

**Appellant :** Associated Switch Gears and

**Respondent :** Cce

**Judgement :**

2. The brief facts of the case are that the appellants are engaged in the manufacture of LT/HT Panel, Bus Duct and parts thereof. The appellant filed classification list in respect of Bus Ducts manufactured by them claiming the classification under Heading No.8538.00 the tariff. The classification list was approved and appellants were paying duty as per the classification list and RT-12 returns were also assessed under the approved classification. On 6.12.1993 the Board issued a circular clarifying that the Bus Ducts are classifiable under Heading No. 8544.00 the tariff. The rate of duty under Heading 8544.00 was 35%, whereas the appellants were paying duty under Heading 8538.00 at the rate of 20%. The Supdt. of Central Excise issued a letter asking for differential duty for the period 1.4.1993 to 28.2.1994 on 18.1.1999. The appellants paid differential duty on 21.1.1999 under protest and challenged the letter issued by the Supdt. The Commissioner (Appeals) vide order dated 2.8.1999 set aside the demand of duty on the ground that the duty was demanded without issuing any show cause notice. The Commissioner (Appeals) remanded the matter to the Assistant Commissioner

with the decision to issue show-cause notice and decide the case on merits. Thereafter a show-cause notice was issued on 7.12.1999 demanding duty for the period 1.4.1993 to 28.2.1994. The adjudicating authority held that this demand is clearly time-barred and after verifying the record as the duty was paid under protest as a consequential relief ordered the refund of the amount of differential duty paid. The Revenue filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) in the present impugned order set aside the adjudication order whereby the refund was allowed by way of consequential relief on the ground that issue of refund was not before the adjudicating authority.

3. The contention of the appellant is that as the duty was paid under protest and the demand was clearly time-barred, which is not contested by the Revenue, therefore, the order passed by the adjudicating authority granting the refund as a consequential relief is justified and Commissioner wrongly held that that issue of refund was not before the adjudicating authority.

4. The contention of the Revenue is that the show-cause notice was in respect of demand of duty, therefore, the appellant are not entitled for the refund in respect of amount in dispute.

5. We find that undisputed facts are that the appellant paid differential duty under protest on 21.1.1999 for the period 1.4.1993 to 28.2.1994. The adjudicating authority while setting aside the demand on the ground of limitation, allowed the refund of differential duty which was paid under protest as consequential relief. As the demand was set aside, therefore, the appellants were entitled for the consequential relief as the duty was paid under protest in the year 1999 for the period 1993-1994 and the duty was paid only at the direction of Supdt.

which was also set aside by the Commissioner (Appeals). Therefore, the appellants are entitled for the differential duty paid, under protest, as the demand is time-barred and the time bar issue is not contested by the Revenue in the present appeal. The impugned order is set aside and we restore the order passed by the adjudicating authority whereby the consequential relief was granted. The appeal is allowed.