

**La-bel Laminates Ltd. Vs. Cce**

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

**Decided On :** Aug-31-2004

**Reported in :** (2004)(117)LC1005Tri(Mum.)bai

**Judge :** K Kumar, A M Moheb

**Appellant :** La-bel Laminates Ltd.

**Respondent :** Cce

**Judgement :**

1. At the behest of the Revenue an early hearing in this case was granted and the matter was posted for hearing on 10.2.2004.

Subsequently at the request of the appellant the matter was adjourned 19.3.2004, on which date the Ld. Chartered Accountant appearing for the appellant informed the Bench that he was withdrawing his Vakalatnama.

Finally the matter was again posted for regular hearing on 31.8.2004.

None appeared on behalf of the appellant.

3. The matter pertains to a demand of differential duty which arose out of a classification dispute way back. Paper Based Laminated sheets manufactured by the appellant according to him are correctly classifiable under Chapter Heading No. 4818.90 and according to the Revenue, the goods fall under Chapter Heading No. 3920.31. In appeal the Tribunal held that the goods are classifiable under

Chapter 48 of CETA. The Revenue went in appeal to the Apex Court. The Apex Court decided the matter in favour of the Revenue classifying the said goods under Chapter 39. In the meanwhile on the directions of the Hon'ble High Court of Gujarat, the department paid Rs. 1,78,44,949/- by way of cheque and Rs. 46,40,116/- by way of credit being refund of excess duty paid by the appellant. The Revenue however kept the demand alive by issuing show cause notices claiming the amounts so refunded. As a result of the Apex Court's decision in the case of Baklelite Haylam and Ors. v. CCE which included the Civil Appeal filed by the Revenue against the order of the CEGAT holding the goods classifiable under Chapter Heading No. 48, the Hon'ble High Court of Gujarat decided the Special Civil Appeal filed by the appellant before them in favour of the department and ordered the appellants to pay back the amount refunded to them within four weeks with interest at the rate of 18% till payment. As a result of the above two decisions the Assistant Commissioner of Central Excise Div-II Rajkot demanded a sum of Rs. 2,24,85,064/- under Section 11A of the Central Excise Act, along with interest at the rate of 18% in terms of the above said order of Gujarat High Court's dt. 10.1.2000. Against this order of the Assistant Commissioner the appellants went in appeal before the Commissioner (Appeals).

4. The Commissioner (Appeals) rejected the appeal on the grounds that refund was granted in pursuance of Hon'ble Gujarat High Court's interim, direction; that after granting refund the department issued show cause notices for erroneous refund; that once Hon'ble Gujarat High Court finally directed the appellants to deposit back the amount refunded along with the appropriate interest the appellant should not have objected thereto; that if the appellants are aggrieved by the order of the Hon'ble Gujarat High Court they should have preferred an appeal; that even though the appellants claim that they have appealed against the High Court's order they have not obtained any stay and that the classification of the impugned goods has attained a finality against the appellant. He thus rejected the appeal before him. This appeal is against the order of the Commissioner (Appeals).

5. The appellants contended that they have indeed preferred an appeal against the order of Hon'ble Gujarat High Court dismissing their Civil Appeal. We observe that even though the appeal memorandum says that a copy of the review petition

filed before the Hon'ble Gujarat High Court against the dismissal of their civil appeal would be produced no such copy has been placed before us. The appellant also did not file any stay obtained by them against the order of the Hon'ble high Court of Gujarat. The Revenue refunded the amount when the classification issue went against them as per the directions of the High Court of Gujarat.

The Apex Court has finally decided the issue in favour of the Revenue when the latter preferred an appeal to the Apex Court against the order of the Tribunal. The appellant is bound to pay back whatever he has been refunded in pursuance of the order of the High Court/CEGAT. The Supreme Court in the case of Commissioner of Central Excise, Shillong v. Woodcrafts Products Ltd. held that reversal by the Supreme Court of the Tribunal's order on classification would itself require the assessee to make restitution of the sum that the Revenue had refunded to it pursuant to the Tribunal's order. The decision of the Supreme Court was rendered by a Three Member Bench. In the present case the Department is not only fortified by the Apex Court's decision in their favour but were also strengthened by the Hon'ble Gujarat High Court order whereby the appellant was directed to deposit the amounts paid to him by way of refund. The Hon'ble Supreme Court decision cited supra would squarely apply to the present case. Applying the ratio of the above decision we hold that the appellant is bound to deposit the money sanctioned to him by the department. The appeal is rejected and the order of the lower authority is upheld.

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