

Ramply (India) Ltd. Vs. Cce

Ramply (India) Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/39807

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-26-2005

Reported in : (2005)(190)ELT94Tri(Mum.)bai

Judge : K Kumar, S T Chittaranjan

Appellant : Ramply (India) Ltd.

Respondent : Cce

Judgement :

1. Heard both sides at length. The appellants manufacture Plywood, Flush Doors and Blockboard on which they have been claiming small scale exemption. It is the case of the department that they have used a monogram "Ram's" belonging to and registered by M/s Ram Decorative and Industrial Laminates Ltd., and hence they are not eligible for small scale exemption . Shri Hitesh Shah, learned SDR appearing for the Department contends that on merits, the Department's case is squarely covered by the decision of the Honourable Supreme Court in the case of CCE, Trichy v. Grasim Industries Ltd. - 2005(68)RLT 11(SC) : (2005-TIOL-69-SC-CX-LB). He further states that even in the appellant's own case, the Apex Court has merely sent the matter for re-decision on the matter on the issue of limitation and not on merits.

2. It is the contention of the appellants that under Board's Circular no. 88/88-CX.6, dated 30.12.1988, small scale exemption is available to different manufacturers using the brand name provided the brand name is for different goods. As such,

they were under the bonafide belief that they were entitled to small scale exemption as the owner of the brand name "Ram's" was not manufacturing the same goods as was being manufactured by the appellants. Hence, they claim that there was no need for making a declaration in the classification list regarding use of brand name belonging to the aforesaid manufacturer and that for failure to make such a declaration, extended time period cannot be invoked. They also cite in their support the ratio of the Tribunal's decisions in the case of Intercity Cable System (P) Ltd. v. Collector of C.Excise, New DelhiVora Products v. CCE, Pune-II 3. On the other hand, the learned SDR cites the following decisions of the Tribunal under which it has been held that extended period of limitation is invokable if the use of brand name of another person is not disclosed in the classification list/declaration :-Applied Electronics v. CCE 4. We, thus, find that different views have been expressed by different Benches on the question as to whether the omission to declare the use of brand name of another person in the classification list can lead to application of extended period of time.

5. As such, we are of the opinion that the matter needs reference to a Larger Bench for resolving this question. Accordingly, the matter is placed before the Hon'ble President for constituting a Larger Bench.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com