

Commissioner of Central Excise Vs. Kinetic Engineering Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-07-2006

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Kinetic Engineering Ltd.

Judgement :

1. Revenue is an appeal against the order of Commissioner who had held that: (i) The ratio of case law relied upon by the Assessee is rightly applicable in their case.

(ii) Departments plea that reliance on Apex Courts decision in Indian Aluminium Co. being incorrect since the said judgment rendered in context of old tariff item, and not applicable to C.Ex.Tariff 1985 was not acceptable.

(iii) There is no material change in the definition of manufacture as container in Section 2(f) of the CT, PRIOR to 1.3.86.

(iv) "Ash Residue" covered under CSH 2620 of CETA 85 is not per se sufficient for determining whether the item came into existence as a result of manufacture.

(v) Boards Cir.Dt. 1.7.88 - CX 1 relied upon by the deptt. seems to be in consistent as classification therein relates to denying of exemption Notfn. No. 149/86 CE dt. 1.3.86 to brass rods/bars.

In view of the above observation Comm(A) has held that Department's appeal does not sustain as Aluminium dross & ash is non excisable, citation relied upon by the Assessee applicable to their case, and accordingly held that Assessee are entitled for Refund and that Assessee's case is covered under the Limitation Act, and 3 years time limit for filing refund is rightly applicable to them.

2. Heard the Ld.SDR. The respondent were absent. The issue of refund eligibility on the basis of a decision in another case is now well settled by the Apex Court Constitutional Bench in the case of Mafatlal Industries Ltd. wherein Para 99 (iv) of the reported decision before us held as follows: Para 99(iv) - It is not open to any person to make a refund claim on the basis of a (iv) decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only result in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund.

3. Since in this matter no evidence has been produced of any proceedings being negotiated by the present Respondent, to indicate that they have fought their own battle. Therefore, they cannot seek to re-open their classification and assessments and claim refund on the grounds of a decision in another person's case. Therefore, the orders of the Lower authority, to the contrary, granting relief based on the classification decisions of Hindalco Industries Ltd. and Indian Aluminium Co. Ltd. could not be upheld.4. The orders of the Lower authority are set aside and Revenue's appeal allowed holding the grant of refund not to be as per the Law. Revenue's appeal allowed in above terms.

