

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2041 OF 2006

COMMNR. OF CENTRAL EXCISE, MUMBAI-III

APPELLANT(S)

VERSUS

M/S. ESSEL PROPACK LTD.

RESPONDENT(S)

O R D E R

The issue that has been raised in the present appeal relates to classification of flexible laminate foil of plastic and articles for packaging of goods and waste and scrap of plastic under appropriate Chapter Heading 39 meant for plastics. We find from the order dated 02.06.2005 passed by the Tribunal that it has followed its earlier judgment in the case of Commissioner of Central Excise, Calcutta Vs. India Foil Limited reported in 2001 (132) E.L.T. 737 while dismissing the appeal of the Revenue.

Mr. Arijit Prasad, learned counsel on behalf of the Revenue, has brought to our notice that the aforesaid judgment of the Tribunal in India Foil Limited, Calcutta (supra) has been reversed by this Court in Sharp Industries Ltd. Vs. Commissioner of Central Excise, Mumbai-III [2005 (188) E.L.T. 146 (S.C.)]. In a matter like this, we would have remitted the case back to the Tribunal for fresh adjudication. However, learned counsel for the respondent

has drawn our attention to the order passed by the Commissioner whereby the appeal of the respondent was accepted not only on merits but also on limitation, holding that the show-cause notice was time barred. This aspect is discussed by the Commissioner in the following manner:-

"From evidence produced by the assessee it appears that the assessing officers had indeed carried out some enquiries in the course of which the assessee had furnished the details of the composition of the products. That evidence is in the form of a letter dt.21.2.91, obviously in response to an enquiry by the Superintendent in which the relevant details are clearly mentioned. Besides, there was collateral material furnished with the price list/declaration, such as customers purchase orders which set out the specifications of the product. When all this material was made available to the department and the classification list have been approved and RT-12 returns assessed down the years, it is difficult to find any justification for upholding the allegation of misstatement or suppression of facts. I have to accordingly hold that the proviso to Section 11A cannot be applied to the present case and, therefore, the demand for duty is time barred.

Since the show-cause notice was barred by limitation and we do not find any error in the order of the Commissioner on this aspect, there is no need to refer the matter back to the

Tribunal.

This appeal is accordingly dismissed on the aforesaid ground only.

....., J
[A.K. SIKRI]

....., J
[ROHINTON FALI NARIMAN]

New Delhi;
August 13, 2015

ITEM NO.118

COURT NO.13

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 2041/2006

COMMNR. OF CENTRAL EXCISE, MUMBAI-III

Appellant(s)

VERSUS

M/S. ESSEL PROPACK LTD.

Respondent(s)

(With appln. for exemption)

Date : 13/08/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K. Radhakrishna, Sr. Adv.
Mr. Yashank Adhyaru, Sr. Adv.
Mr. P.K. Mullick, Adv.
Mrs. Rashmi Malhotra, Adv.
Mr. B. Krishna Prasad, Adv.
Mr. Arijit Prasad, Adv.

For Respondent(s)

Mr. V. Lakshmikumaran, Adv.
Mr. M.P. Devanath, Adv.
Mr. Vivek Sharma, Adv.
Ms. L. Charanaya, Adv.
Mr. R. Ramchandran, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Hemant Bajaj, Adv.
Mr. Anandh K., Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed order.

(Ashok Raj Singh)
Court Master

(Suman Jain)
Court Master