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C.A.No. 864 OF 2000
ITEM NO.105

COURT NO.5

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 864 OF 2000

M/S. GENERAL RUBBER CO.PVT.LTD.

Appellant (s)

VERSUS

COMNR. OF CENTRAL EXCISE, DELHI-II

Respondent(s)

(With office report)

Date: 02/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE DR. JUSTICE AR. LAKSHMANAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s)Mr. Rupesh Kumar,Adv.
Mr. Tara Chandra Sharma,Adv.

For Respondent(s)Mr. K. Swamy,Adv.
Mr. T.A. Khan,Adv.
Mr. P. Parmeswaran,Adv.

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

The appeal is allowed in terms of the signed order.

There will be no order as to costs.

(Neena Verma) (Jasbir Singh)
Court Master Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.864 OF 2000

M/s. General Rubber Company Private Limited
...Appellant

Versus

Commissioner of Central Excise, Delhi-II
...Respondent

O R D E R

This Appeal is against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) dated 01.11.1999.

Briefly stated the facts are as follows:

The Appellants are manufacturers of Grooved Rubber Sole Plates. They filed the classification list classifying their products under Tariff Item 4008.29. The Respondent insisted that the classification of their goods must be under Tariff Item No.4016.99 and that the goods cannot be cleared until they are so classified. The Appellants, therefore, by their letter dated 21st December, 1991 agreed to classify the goods under Tariff Item 4019.99 under protest but claimed the benefit of Circular No.175/86.

The Board issued a clarificatory circular dated 20th April, 1992 clarifying that the goods were classifiable under Tariff Item 4008.29. After the Board's circular, the Appellants started clearing their goods under Tariff Item 4008.29 without filing a fresh classification list. The fresh classification list was only filed by them in November, 1992.

A show case notice was issued to them demanding duty on the ground that they cleared the goods without filing a fresh classification list. This demand was confirmed. However, the Collector (Appeals) set aside the demand on the ground that the Board's Circular made it clear that these goods were classifiable under Tariff Item 4008.29 and the goods were to be cleared at nil rate of duty.

The Respondent carried the matter in Appeal to the Tribunal. The Tribunal has, by the impugned Judgment, held that as a fresh classification list was not filed, the Appellants could only have the goods cleared under the old classification list. The Tribunal held that they were, thus, liable to pay the duty, as demanded.

We are unable to sustain the Order of the Tribunal on the facts of this case. The classification list had been revised under protest. Once the Board clarified that these goods were classifiable under Tariff Item 4008.29, the Appellant become entitled to clear the goods under that Tariff Item. At the highest, the Appellants could have been penalised for not filing a classification list under Rule 173. No duty could have been demanded from them under Rule 9.2.

In this view of the matter, the impugned Judgment is set aside. The Order of the Collector (Appeals) is restored.

The Appeal is, accordingly, allowed. There will be no order as to costs.

(S.N. VARIAVA)

.....J.

.....J.

(Dr. AR. LAKSHMANAN)

.....J.

(S.H. KAPADIA)

New Delhi,
March 02, 2005.