

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 1644/2008

(S) UNION OF INDIA & ORS. APPELLANT

VERSUS

T(S) RUBBER PRODUCTS LTD., THANE RESPONDENT

WITH

CIVIL APPEAL No. 1645/2008

O R D E R

These appeals pertain to classification of goods known as

by "Vacuum Brake Hose Pipe" which are manufactured
the assessee. According to the Revenue these goods are
to be classified under Tariff Heading 4009.92 whereas the assessee

contends that they are classifiable under Tariff
Heading 4009.99 of the Central Excise Tariff Act, 1985. It so happened

that in Civil Appeal No.1644/2008, show cause notice dated

25.03.1987 was issued. The Adjudicating Authority

had classified the goods under Tariff Heading 4009.92.

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The
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ASHWANI KUMAR

assessee filed appeal thereagainst before the Col
lector

Date: 2015.11.26

17:12:01 IST

Reason:

(Appeals) which was allowed and the plea of the assessee that

the goods were to be classified under Tariff Heading 4009.99

was accepted. The Department did not accept the aforesaid decision and filed further appeal before the Tribunal. This appeal was, however, dismissed on 12.01.1990 only on the ground that the same is time barred and there was no sufficient cause to condone the delay. The matter was not adjudicated upon merits.

The Revenue thereafter issued another show cause notice dated 16.01.1992 for the period July, 1991 to December, 1991 again classifying the goods under Tariff Heading 4009.92. Instead of challenging this order by filing appeal before the Collector (Appeals), the assessee filed Writ Petition No. 4411/1992 in the High Court of Bombay which has been allowed vide impugned judgment dated 04.05.2005 on the ground that when the Collector (Appeals) in the earlier round of litigation, arising out of show cause notice dated 25.03.1987, classified the goods under Tariff Heading 4009.99 this order was binding on the Adjudicating Authority.

The facts in the other appeal i.e. 1646/2008 are also almost identical. The only difference is that in the second show cause notice which was issued by the Assistant Collector, Central Excise, goods were classified under Tariff Heading 4009.92 and this order was challenged by the assessee in appeal before the Collector (Appeals), which was also dismissed. However, instead of filing further statutory appeal before the Tribunal, the assessee filed writ petition in the High Court which has been allowed by the High Court on the same grounds as contained in order dated 04.05.2005 passed in Writ Petition No. 4411/1992.

We are of the opinion that the aforesaid view taken by the High Court is unsustainable on two grounds. In the first instance, writ petition itself was not maintainable when there was alternate remedy available to the assessee under the

Date : 20/11/2015 These appeals were 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. Rupesh Kumar, Adv.
Mr. M. Rambabu, Adv.
Mr. Shankar Divate, Adv.
Mr. Jitin Singhal, Adv.
Mr. Pratik Raoka, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. Praveen Kumar, Adv.
Ms. Sunaina Kumar, Adv.

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

The civil appeals are allowed in terms of the signed order.

Interlocutory Application(s) pending, if any, shall stand
disposed of accordingly.

(Ashwani Thakur)
COURT MASTER

(Rajinder Kaur)
COURT MASTER

(Signed order is placed on the file)