



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 2178-2179 of 2001@@  
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Commissioner of Central Excise, Shillong ...Appellant (s)

Versus~

M/s. Woodcraft Products Limited ....Respondent (s)

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The Revenue is in appeal against an order of the Customs, Excise and Gold (Control) Appellate Tribunal.

The assessee manufactures block board. It submitted a classification list classifying block board under Tariff Entry 4410.90 attracting 'nil' rate of duty. The Assistant Commissioner did not accept that classification; he classified it under Tariff Entry 4408.90 attracting excise duty, which the assessee paid. The respondent's appeal against such classification was dismissed. The assessee then filed an appeal before the Tribunal. The Tribunal upheld the respondent's contention and allowed the appeal. The Revenue preferred an appeal to this court. Stay having been refused in that appeal, the Revenue refunded to the assessee the duty that it had paid. In respect thereof, the respondent gave an undertaking that the amounts refunded would be repaid within seven days in the event of this court reversing the Tribunal's

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order. This court, on 20th March, 1995, reversed the Tribunal's order [reported in 77 E.L.T. 23]. On 22nd June and 26th August, 1995, the Revenue called upon the assessee to repay the amounts which had been refunded as aforesaid, referring to the undertaking that the assessee had given. The assessee contended that the Revenue's claim for repayment of the refund was barred by limitation. This having been rejected, appeals were filed, which the Commissioner (Appeals) dismissed. Thereupon the assessee preferred appeals to the Tribunal, the order whereon is the subject matter of these appeals. The Tribunal said that the question that was required to be decided was "whether the refunds of duty paid on the block boards and already granted to the appellants can be recovered from them beyond a period of six months as envisaged under Section 11A of the Act". The only provision, in its view, for recovery of "alleged erroneous refund" was Section 11-A which envisaged service of show cause notice within six months from the date of refund. The demand for return of the refunds was, therefore, held to be not justified and was set aside.

Learned counsel for the assessee drew our attention to the notice requiring the assessee to make repayment of the amounts refunded. That notice was issued under Section 11 and, in learned counsel's submission, was out of time. We asked learned counsel whether the reversal by this court of ..3/-

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the Tribunal's order on classification would not, by itself, require the assessee to make restitution of the sums that the Revenue had refunded to it pursuant to the Tribunal's order. Learned counsel fairly stated that such restitution was requisite.

Plainly, the assessee is obliged to make restitution. The Revenue honoured the Tribunal's order and made the refund. Upon the reversal by this court of the Tribunal's order, the assessee was bound in law to reconstitute the amounts of such refund to the Revenue.

The approach of the Tribunal, we must say, was quite misconceived, more so, in the light of the undertaking which the assessee had given.

The civil appeals are allowed. The assessee shall pay to the Revenue the amounts refunded to it pursuant to the orders of the Tribunal within twelve weeks, with interest thereon at the rate of twelve percent per annum from 1st September, 1995 till payment or realisation. The assessee shall also pay to the Revenue the costs of these appeals.

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(Shivaraj V. Patil)@@  
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New Delhi,  
April 09, 2002.