

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1757 of 2005

PRECISION RUBBER INDUSTRIES (P) LTD. Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, MUMBAI Respondent(s)

O R D E R

We have heard learned counsel for the parties.

The assessee is engaged in the manufacture of Synthetic Rubber Aprons and Synthetic Rubber Cots.

According to the assessee, the manufactured goods are classifiable under Chapter Heading 4009.99 of the Central Excise Tariff Act, 1985. The classification list in this regard was approved by the Assistant Commissioner.

Against the approval granted by the Assistant Commissioner, the Revenue preferred an appeal before the Commissioner (Appeals) in which it was contended that the goods were actually classifiable under Chapter Heading 4016.99. The appeal filed by the Revenue before the Commissioner (Appeals) was rejected and thereafter an appeal was filed by the Revenue before the Central Excise & Service Tax Appellate Tribunal at Mumbai (for short 'the Tribunal').

In the meanwhile, the Revenue issued seven show cause notices to the assessee seeking to classify the goods under

Chapter Heading 4016.99 and demanding consequential duty. Our concern is with these seven show cause notices.

The Tribunal at Mumbai heard the assessee as well as the Revenue. Instead of deciding whether the goods fall under Chapter Heading 4009.99 as contended by the assessee and approved by the Assistant Commissioner or Chapter Heading 4016.99 as sought to be contended before the Commissioner (Appeals), the view taken was that the goods fall under Chapter Heading 8448.00. This conclusion was arrived at on the basis of an order passed by the Tribunal at Bangalore in the case of the assessee itself.

Feeling aggrieved by the decision rendered by the Tribunal at Mumbai, the assessee is before us in appeal.

The only contention urged by the appellant is that since the show cause notices were issued for classification of the goods under Chapter Heading 4016.99, the Tribunal could not have directed the classification of the goods under Chapter Heading 8448.00. This was not even the case of the Revenue and it came up for the first time before the Tribunal.

Learned counsel for the appellant has referred to *Warner Hindustan Ltd. v. Collector of Central Excise, Hyderabad* [1999 (113) ELT 24 (SC) wherein goods falling under Chapter Heading 3003.30 as per the assessee therein were sought to be classified under Chapter Heading 3003.19 as per the Revenue. The goods were, however, classified by the Tribunal under Chapter Heading 17.04. This Court

expressed the view that the Tribunal was wrong in allowing the appeal of the Revenue and classifying the goods as items of confectionery under Heading 17.04. The correct course for the Tribunal to have followed was to have dismissed the appeal of the Revenue making it clear that it was open to the Revenue to issue a fresh show cause notice on the basis that the goods were classifiable under Heading 17.04.

Our attention has also been drawn to *Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd.* [2007 (215) ELT 489 (SC)] wherein this Court held in para 21 that it is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. This view was reiterated in *Commissioner of Central Excise v. Gas Authority of India Ltd.* [2008 (232) ELT 7 (SC)] in para 7 of the order.

In so far as the present appeal is concerned, it is the case of the Revenue in the show cause notices that the goods are classifiable under Chapter Heading 4016.99. Therefore, no new case could have been set up or decided contrary to the show cause notices that the goods fall under Chapter Heading 8448.00 without issuing a fresh show cause notice to the assessee in this regard.

In these circumstances, and following the decisions of this Court, we would have ordinarily permitted the Revenue to issue a fresh show cause notice to the assessee seeking to classify the goods under Chapter Heading 8448.00.

however, due to the passage of time, we are of the opinion that it would not be advisable (or permissible under the provisions of the Central Excise Tariff Act) to permit the Revenue to reopen the entire proceedings and classify the goods under Chapter Heading 8448.00.

Accordingly, while setting aside the impugned order passed by the Tribunal, we remand the matter to the Tribunal to take a decision on whether the goods manufactured by the assessee are classifiable under Chapter Heading 4009.99 as claimed by the assessee or 4016.99 as claimed by the Revenue. The order of remand is limited only to this issue.

The appeal is disposed of on the above terms.

.....J.
[Madan B. Lokur]

.....J.
[N.V. Ramana]

NEW DELHI
FEBRUARY 25, 2016

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(s). 1757/2005

PRECISION RUBBER INDUSTRIES (P) LTD.

Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, MUMBAI

Respondent(s)

(With appln. (s) for stay and permission to file additional documents and office report)

WITH

C.A. No. 1453-1458/2001

(With Office Report)

Date : 25/02/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s)

Mr. Alok Yadav, Adv.

Mr. Somnath Shukla, Adv.

Mr. Udit Jain, Adv.

Ms. Bina Gupta, Adv.

For Respondent(s)

Mr. K. Radhakrishnan, Sr. Adv.

Mr. Shankar Divate, Adv.

Ms. Kiran Bhardwaj, Adv.

Mr. B. Krishna Prasad, Adv.

Mr. Jitendra Singh, Adv.

Mr. Ritwik Kumar, Adv.

For M/s. AP & J Chambers

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

Civil Appeal No(s). 1757/2005

We have heard learned counsel for the parties.

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

C.A. No. 1453-1458/2001

List the matters after two weeks.

(Meenakshi Kohli)

Court Master

(Jaswinder Kaur)

Court Master

[Signed order is placed on the file]