\206AITEM NO.105 COURT NO.4 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(s). 96 OF 2000

WORKWELL ENGG.CO Appellant (s)

VERSUS

COLLECTOR OF CENTRAL EXCISE, VADODARA Respondent(s)

(With office report)

WITH Civil Appeal NO. 7598 of 1999
(With appln. for ex parte stay)
(With office report)

Date: 20/04/2005 This Appeal was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s)
Ms. Meenakshi Arora,Adv.

For Respondent(s) Mr.Rajiv Dutta,Sr.Adv.
Mr.Ravinder Aggarwal,adv.
Mr. B. Krishna Prasad,Adv.
Mr. P.Parmeswaran,Adv.

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

In CA No.96/2000

The appeal is allowed.

In CA No.7598/1999

In view of the order passed in CA No.96/2000 this appeal is allowed and disposed of in the same terms.

[SUMAN WADHWA]
COURT MASTER

[ANAND SINGH]
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 96 OF 2000

Workwell Engg. Co. .. Appellant

vs.

Collector of Central
Excise, Vadodara .. Respondent

WITH

CIVIL APPEAL NO. 7598 OF 1999

O R D E R

In CA No. 96/2000

The issue in this appeal relates to the classification of an electric flour mill under the Central Excise Tariff Act 1985. According to the appellant the machine is classifiable under Tariff Heading 8437 and according to the Revenue it is classifiable under 8509.

The Revenue after issuing a show cause notice had affirmed the demand against the appellant for Rupees one lakh nine hundred and eighty four. Penalty of Rupees two thousand and six hundred was also imposed under Rules 9(2) 52A and 173Q of the Central Excise Rules 1944.

The Tribunal rejected the appellant's appeal solely on the ground that in an earlier year when the classification was in dispute, the Tribunal had in the assessee's own case by a judgment reported in 1994 (72) E.L.T. 222 held that the flour mill was classifiable under Tariff Heading 8509.

The Tribunal also noted that the appeal preferred by the appellant from the decision of the Tribunal was dismissed by this Court. Learned counsel appearing

on behalf of the appellant has stated that the order of dismissal simply recorded that the appeal was dismissed without any reason in support thereof.

The grievance of the appellant is that the Tribunal erred in relying upon its earlier decision in view of the fact that the earlier decision had been rendered prior to the issuance of a circular by the Central Board of Excise and Customs on 5.12.1994 in which it had been clarified that:

> ".The Board has examined the matter in depth. As per HSN explanatory Note to heading 84.37 various kinds of machinery used in the milling industry for the working of cereal of dried leguminous vegetables have been specified. In group III at (page No.1221 of HSN) Sr.No. 5
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> grinding machines for milling cereals are specified. In view of specific description of grinding machines for milling cereals in HSN, the Board is of the view that domestic flour mill is appropriately classifiable under heading 84.37 of the Schedule to the Central Excises and Tariff Act, 1985.

It is stated by learned counsel appearing on behalf of the appellant that it was not open to the respondent authorities to take a stand contrary to this circular.

Learned counsel appearing on behalf of the respondent has on the other hand, submitted that in

view of the fact that the earlier decision had been affirmed by this Court, the Circular did not have any

relevance.

In our opinion this appeal must be allowed as contended by the learned counsel for the appellant.

In the earlier decision the Tribunal had noted that the Gujarat High Court had held in the appellant's own case that the goods manufactured by the appellant were not classifiable under Tariff Entry 33-C of the Central Excise and Salt Act, 1944, as it stood prior to its amendment 1985, which related to domestic appliances and was classifiable under the residuary Tariff Entry 68. It also noted that Tariff Entry 33-C was substantially the same as Tariff Heading 8509. In these circumstances, logically the Tribunal should have followed the decision of the Gujarat High Court and affirmed that the appellant's goods were not classifiable under Tariff Heading 8509. However, the Tribunal relied upon the decision of this Court in Nat Steel Equipment Pvt. Ltd. vs. Collector of Central Excise reported in 1988 (34) E.L.T. 8 and held that the machines were properly classifiable as a domestic appliance under Tariff Heading 8509. It is not for us to question the correctness of the earlier decision of the Tribunal since the appeal therefrom

has already been dismissed by this Court. Nevertheless, we can certainly hold as we do, that the advent of the circular in 5.12.1994, after the earlier decision was rendered, was a relevant factor which should have been considered by the Tribunal untrammeled by the earlier decision rendered by the

Tribunal. Furthermore, it may be noted that the Revenue ought to have considered the issue of classification on the basis of relevant material adduced by the parties. It does not appear from the records as produced before us that any such evidence was adduced.

For the reasons stated, we allow the appeal and set aside the decision of the Tribunal. The matter is remanded back to the appropriate Assistant Commissioner Central Excise, Anand to decide the question of the classification of the appellant's goods in the light of the observations contained in this order. It is made clear that this Court is not expressing any view on the merits of the case.

In CA No. 7598/99

In view of the order passed in Civil Appeal no. 96/2000 this appeal is also allowed and disposed of in the same terms.

.....J.
(RUMA PAL)

.....J.
ARIJIT PASAYAT)

.....J.
(C.K.THAKKER)

New Delhi;
April 20, 2005.