

(2015) 08 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No. 1218 of 2006 with C.A. No. 5821 of 2013.

**C.C.E., Nagpur - Appellant @HASH Hyundai Unitech Electrical
Transmission Ltd.**

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2015) 323 ELT 220

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri. K. Radhakrishnan, Senior Advocate, Ritesh Kumar, Ms. Sunita Rani Singh and B. Krishna Prasad, Advocates, for the Appellant; S/Shri. V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, Ms. L. Charanaya, R. Ramchandran, Aditya Bhattacharya, Hemant Bajaj and Anandh K., Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. The Respondent NO. 1 herein is engaged in the manufacture of Tower and Lasttice Masts of Iron and Steel and other structures and parts of Iron and Steel falling under Chapter 73 of the Central Excise Tariff Act. The respondent had filed classification declaration under Rule 173B of Central Excise Rules, 1944. The dispute is about the classification under the aforesaid Rules in which show cause notice dated 2-9-2003 was issued for the period from 1-3-2000 to 30-8-2000.

2. Since it was beyond the prescribed period of limitation contained in Section 11A of the Central Excise Act, longer period of limitation under proviso to Section 11A of the Act was invoked. The Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ?CESTAT?) has allowed the appeal of the Respondent herein not only on merits but on limitation as well holding that it would not be permissible for the Department to invoke the provisions of proviso to Section 11A of the Act inasmuch as there was no suppression or mis-statement by the respondent herein. Discussion in this behalf is contained in para 7 of the impugned judgment, operative portion whereof reads as under :-

"We also note that the reference to Larger Bench?s decision in the case of M/s.

Nizam Sugar Factory v. Commissioner of Central Excise reported in 1999 (114) E.L.T. 429 (Tri.-LB) by the adjudicating authority is not relevant, inasmuch as the issue before the Larger Bench in that case was entirely different. The Larger Bench was considering the question of invocation of longer period, where during the relevant period there was admittedly suppression, which came to the notice of the revenue subsequently and as to whether in such situation, subsequent knowledge on the part of the revenue would curtail down the longer period of five year otherwise available to the department. As such, we find that the reliance on the said decision is not appropriate."

3. We are in agreement with the aforesaid view and for this reason, it is not even necessary to go into the merit of the case as the show cause notice itself was hit by limitation.

4. This appeal is, accordingly, dismissed on this ground alone.

Civil Appeal no. 5821 of 2013

5. The question which falls for consideration in this appeal is as to whether windmill doors and electrical boxes are components and/or parts of wind operated electricity generators. If the answer is in the affirmative, the respondent would be entitled to the benefit of exemption Notification No. 06/2002-C.E., dated 1-3-2002. List 5 of the said notification lists certain items and we are concerned with Item No. 13, which reads as under :-

"13. Wind operated electricity generators, their components and parts thereof."

6. It is argued by Mr. K. Radhakrishnan, learned senior counsel appearing for the Revenue, that windmill doors and electrical boxes are not the components or parts of the electricity generators. It is not in dispute that as far as windmill doors or tower doors are concerned, it is a safety device which is used as security for high voltage equipments fitted inside the tower, preventing unauthorised access and preventing entries of reptiles, insects, etc., inside the tower. This, according to us, would be sufficient to make it part of the electricity generator. We further find that this was so held by the Commissioner of Central Excise and Customs, Raipur in Order-in-Original dated 28-2-2005 as well as by the Commissioner (Appeals), Raipur, vide his orders dated 10-2-2003. The said orders were accepted by the Revenue as it is recorded by the CESTAT that the Revenue could not produce any evidence to show that those orders were challenged by it. Further, since the tower is held as part of the generator, door thereof has to be necessarily a part of the generator. We, therefore, are of the opinion that there is no case of interference made out by the Department.

7. The appeal is, accordingly, dismissed.