(1997) 07 SC CK 0145

In the Supreme Court Of India

Case No : Civil Appeal No''s. 1978-79 of 1988

Collector of Central Excise, Bombay-I APPELLANT

Vs

Giridhara Supply Co. RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Citation : (1998) 79 ECR 515 : (1997) 94 ELT 14 : (1998) 7 JT 463 : (1998) 9 SCC 177

Hon'ble Judges : S. C. Agrawal, J;D. P. Wadhwa, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The respondent is the manufacturer of Carbon Paper and Carbonised Adding Machine Rolls. It had submitted a classification list on 1-9-1979 stating that the products were classifiable under Tariff Item 68 of the erstwhile Central Excise Tariff. The said classification list was approved by the Assistant Collector of Central Excise on 4-9-1979. The said approval granted by the Assistant Collector was subsequently rescinded and a show-cause notice dated 29-12-1979 was issued by the Superintendent of Central Excise calling upon the respondent to show cause as to why the products should not be classified under Tariff Item 17(2), after change in the definition of Tariff Item 17 of Central Excise Tariff. The respondent submitted its reply to the said show-cause notice. By order dated 13-5-1980 (which was issued on 2-7-1980) the Assistant Collector, Central Excise held that the products are rightly classifiable under Tariff Item 17(2) and called upon the respondent to pay the duty for six months prior to the issue of show-cause notice dated 29-12-1979. The appeal filed by the respondent against the said order of the Assistant Collector was dismissed by the Collector of Central Excise (Appeals) by order dated 2342-1983 with certain modifications. The Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") by the impugned judgment dated 12-2-1987 has partly allowed the appeal of the respondent. The Tribunal has held that Carbonised Adding

Machine Rolls were classifiable under Tariff Item 17(2) but Carbon Paper was classifiable under Tariff Item 68 of the erstwhile Central Excise Tariff. The Tribunal has further held that the demand of duty in respect of Carbonised Adding Machine Rolls was barred by limitation in respect of the demand preceding six months from the date of the show-cause notice dated 1-9-1980 raising the demand. Feeling aggrieved by the said judgment of the Tribunal the Department has filed these appeals.

2. The finding of the Tribunal that Carbonised Adding Machine Rolls are classifiable under Tariff Item 17(2) has not been assailed by the respondent-assessee. As regards the classification of Carbon Paper, the matter now stands concluded by the judgment of this Court in CCE v. Krishna Carbon Paper Co., : 1988(37)ELT480(SC) wherein this Court has laid down that Carbon Paper is classifiable under Tariff Item 17(2) of the erstwhile Central Excise Tariff. In view of the said decision, the view taken by the Tribunal that Carbon Paper was classifiable under Tariff Item 68 of the Central Excise Tariff cannot be upheld and it is accordingly set aside.

3. The other question is with regard to the bar of limitation. The Tribunal, as indicated above, has held that the demand in respect of the period six months prior to the issue of show-cause notice, raising demand on 1-9-1980 is barred by limitation. On behalf of the appellant it has, however, been submitted that since the Assistant Collector in his order dated 2-7-1980 had directed that the party should pay a duty for six months prior to the issue of show-cause notice dated 29-12-1979, the demand in respect of the period of six months prior to the notice dated 29-12-1979 is not barred by limitation. We are unable to accept the said contention urged on behalf of the appellant. Till the order dated 2-7-1980 was passed it had not been decided that the products manufactured by the respondent were classifiable under Tariff Item 17(2) of the erstwhile Central Excise Tariff. All that had happened was that the approval of the classification list submitted by the respondent as granted by the Assistant Collector on 4-9-1979 had been rescinded by the Superintendent of Excise, who was an officer subordinate to the Assistant Collector and a show-cause notice had been issued on 29-12-1979 requiring the respondent to show cause as to why the said products should not be classified under Tariff Item 17(2) of the Central Excise Tariff. No decision has been taken by the Assistant Collector, Central Excise tilt the passing of the order dated 13-5-1980 which was issued on 2-7-1980 and only thereafter the notice raising demand was issued on 1-9-1980. The Tribunal was, therefore, right in holding that the demand in respect of the period of six months preceding the date of the issue of notice dated 1-9-1980 is barred by limitation.

4. The appeals are disposed of accordingly. No order as to costs.

