

(1997) 11 SC CK 0034

In the Supreme Court Of India

Case No : Civil Appeal No's. 2508, 2510 and 3864-65 of 1992

Collector of Central Excises

APPELLANT

Vs

Nuchem Industries Pvt. Ltd.

RESPONDENT

Date of Decision : 27-11-1997

Acts Referred:

Citation : (1998) 99 ELT 197 : (1998) 9 JT 149 : (1998) 9 SCC 656

Hon'ble Judges : S. P. Bharucha, J; S. C. Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bharucha, J.—The Customs, Excise and Gold (Control) Appellate Tribunal, in the judgments and orders under appeal, held that quicklime and hydrated lime were not exigible to excise duty. The conclusion was based upon Chapter Note 2 of Chapter 25 of the Central Excise Tariff as it read at the relevant time. Chapter 25 covered salt, sulphur, clay and stone, plastering materials, lime and cement. Chapter Note 2 read thus:

"2. Headings Nos. 25.01, 25.03 and 25.05 cover only products which have been washed (even with chemical substances, eliminating the impurities without changing the structure of the product), crushed, grounded, powdered, levigated, sifted, screened, or concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation), but not products that have been roasted, calcined or obtained by mixing."

2. It is not in dispute that the quicklime and hydrated lime is obtained by calcination. Apparently, therefore, it would fall outside the scope of the entries in Chapter 25. But learned counsel for the Revenue adopted as his argument the conclusions of the Collector of Customs and Central Excise in the order she passed on 3-1-1991 in the case of Nuchem Industries (P) Ltd., thus:

"The Chapter Note 2 referred to by the party excluded products which are "roasted, calcined etc." The note does not exclude products which are obtained

as a result of roasting of certain products. To be precise the chapter note would exclude calcium oxide which is roasted to obtain the form which would be classifiable under Heading 28.25."

It has been difficult for us to comprehend precisely what the Collector intended to say, nor could the counsel enlighten us.

3. In any event, where technical processes are concerned, the findings of the Tribunal should, ordinarily, not be disturbed, and in these cases we find no reason to do so.

4. The appeals are dismissed, with no order as to costs.