

(2015) 10 SC CK 0031
In the Supreme Court Of India
Case No : Civil Appeal No. 5013 of 2007

Commissioner of C. Ex., Gurgaon

APPELLANT

Vs

Pashupati Spg. & Wvg. Mills Ltd.

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 325 ELT 479

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

Bench : Division Bench

Advocate : S/Shri S.K. Bagaria, Senior Advocate, Rajesh Kumar, K. Ajit Singh, Ms. Suvira Lal, R.K. Srivastava and Rajesh Kumar, Advocates, for the Respondent; S/Shri K. Radhakrishnan, Senior Advocate, P.K. Mullick, Ritesh Kumar, Surendra Kumar Gupta and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

1. The respondent is a manufacturer of various varieties of yarn. The respondent had been clearing yarn after paying excise duty in accordance with the classification approved by the competent excise officers. The rates of duty were a part of the approved classification lists. Three such classification lists were dated 17-5-1983, 17-2-1984 and 1-3-1984.
2. The respondent sought classification of Cellulosic Spun Yarn under Tariff Heading No. 18 III(i) and the classification was approved.
3. Subsequently show cause notices were issued alleging that the yarn consignment cleared was liable to be classified under Heading 18 III(ii) and were as a result, liable to pay a higher rate of duty.
4. The amount of short levy on account of the wrong classification was calculated to be Rs. 74 lakhs.
5. On 15-7-1985, vide its Order-in-Original, the adjudicating authority confirmed

the duty and the penalty.

6. Commissioner (Appeals) vide its Order-in-Appeal dated 24-4-1986 remanded the matter back to the Adjudicating Authority for a fresh adjudication.

7. Aggrieved, Respondent filed an appeal before Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") against the order dated 24-4-1986. On 12-7-1999, the re-adjudication was done by the Adjudicating Authority and Commissioner confirmed the duty and the penalty.

8. The assessee again challenged the aforesaid orders by filing appeal before the CESTAT which has been allowed by the CESTAT vide impugned judgment dated 8-1-2007. The CESTAT has rejected the contention of the Revenue that the yarn in question was manufactured out of fibres. The Department had relied upon certain test reports which have been rejected by the CESTAT holding that those test reports are not relevant as sample for it was drawn on April, 1985 and after that, there is no evidence on record to show that the goods formed part of the manufacture lot during the relevant period.

9. These are pure finding of facts arrived at by the CESTAT on the appreciation of material/evidence on record. We do not see any question of law which arises for consideration.

10. The appeal is, accordingly, dismissed.