(2015) 09 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No. 4918 of 2006.

Commissioner of C. Ex., Mumbai-III - Appellant @HASH R.D.C. Concrete (India) Ltd.

Date of Decision : 08-09-2015

Acts Referred:

Citation : (2015) 324 ELT 26

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

Bench : Division Bench

Advocate : S/Shri A.K. Panda, Sr. Advocate, Ms. Aruna Gupta and B. Krishna Prasad, Advocates, for the Appellant; S/Shri V. Lakshmikumaran, M.P. Devanath, Ms. L. Charanaya, R. Ramchandran, Aditya Bhattacharya, Hemant Bajaj and Anandh K., Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. The issue involved in the present case is whether the product manufactured out of stone aggregates, cement, water, sand is ''dry mixture'' or ''ready mix concrete'' and the classification thereof is under Heading 3823 (now 3824).

2. The issue has been decided by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'') in favour of the respondent-assessee. We find that it was so held by CESTAT in the case of ''Associated Cement Co. Ltd. v. Commissioner of Central Excise, Mumbai'' by its decision dated 17-11-2000 reported in 2001 (138) E.L.T. 911 (Tri.-Mumbai). We, further, find that the aforesaid view of the CESTAT was affirmed by this Court [2001 (132) E.L.T. A106 (S.C.)] Commissioner v. Associated Cement Co. Ltd., holding that the classification of ready mix concrete was under Chapter Heading 68 for the period prior to 1-3-1997. After the affirmation of the view of the CESTAT by this Court as aforesaid, the Department not only accepted the said view but Central Board of Excise and Customs, New Delhi, issued Circular No. 601/38/2001-CX, dated 20-11-2001 affirming the aforesaid classification of this product.

3. We fail to understand as to what was the necessity in preferring the present

appeal which was filed in the year 2006, i.e., much after the clarification issued by the even the Central Board of Excise and Customs, New Delhi. It was, thus, a total mindless exercise on the part of the Revenue in filing such an appeal which is misuse and abuse of the process of law.

4. The appeal is, accordingly, dismissed.

