(2015) 09 SC CK 0168

In the Supreme Court Of India

Case No : Civil Appeal No. 4920 of 2006

Commissioner of Central Excise APPELLANT

Vs

Radhaballabh Silk Mills Pvt. Ltd. RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Citation : (2015) 325 ELT 4

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By the impugned order the Tribunal has classified the goods in question viz. Yarn manufactured by the Assessee, under Heading 5402.61 and 5401.62, rejecting the contention of the Revenue that these goods are classifiable under Heading 5402.31 and 5401.32. These proceedings were initiated as a result of one letter written by the Revenue to the Assessee asking the Assessee to classify the goods under Heading 5402.31 and 5401.32. At the same time, we find that the Department had also issued show cause notice dated 31-3-2001 to classify the goods as textured yarn and the same is still pending adjudication. In view of the fact that the show cause notice is pending adjudication, we dispose of this appeal with a direction to the Adjudicating Officer to decide the said show cause notice. We may point out at this, stage that Mr. Yashank Adhyaru, learned senior counsel appearing for the Revenue has referred to certain material which is mentioned in the memo of appeal and has tried to argue on the basis that this material though was before the Tribunal, the Tribunal did not consider the same. On the other hand, Learned Counsel appearing for the Assessee has also pointed out that samples of the yarn from the Assessee''s premises were collected number of times and test reports from the different laboratories were obtained thereupon and these test reports concluded that the samples drawn were not considered to be textured yard. We make it clear that it would be open to both the parties to rely upon the respective material which, according to them support

their respective case and on that basis the Adjudicating Authority shall decide the matter on merits.

2. The appeal is disposed of in the above said terms.

