
(2012) 02 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal No's. 4988 of 2003 and 2504-2505 of 2004

Commnr. of Central Excise, Bhopal

APPELLANT

Vs

Minwool Rock Fibers Ltd.

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Central Excise Rules, 1944 — Rule 173B, 173Q, 9(2)

Citation : (2012) 191 ECR 425 : (2012) 278 ELT 581 : (2012) 3 SCALE 37 :
(2012) 3 SCC 518

Hon'ble Judges : H.L. Dattu, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

C.A. No. 4988/2003:

1. This appeal is directed against the judgment and order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in Final Order No. 204/2002-D in Appeal No. E/964/2002-D dated 22.08.2002. By the impugned judgment and order, the Tribunal has accepted the Assessee's stand that the goods namely, Slagwool and Rockwool are to be classified under Chapter sub-heading No. 6807.10 by rejecting the stand of the revenue that it requires to be classified under sub- heading No. 6803.00.

2. The Assessee had filed the classification declaration before the adjudicating authority, under Rule 173 B of the Central Excise Rules, 1944 (for short `the Rule), inter alia, claiming that the goods, namely, Slagwool and Rockwool requires to be classified under Chapter sub-heading No. 6807.10 of Central Excise Tariff Act, 1985 (for short `the Act') with effect from 09.06.1998.

3. A show cause notice was issued to the Assessee directing them to show cause as to why the goods in issue should not be classified under Chapter sub-heading No. 6803.00 and duty of 18% should not be charged and recovered from them under Rule 9(2) read with Section 11A of the Act and as to why penalty should

not be imposed under Rule 173Q of the Rules. After receipt of the show cause notice, the Assessee filed its reply dated 16.11.1998, inter-alia, contending that they are manufacturing 'Min wool' using more than 25% of blast furnace slag by weight, right from 1993 onwards and they have been filing classification declarations mentioning this fact and such declarations so filed prior to 1997-98 are accepted by the department and, therefore, the goods in question requires to be classified under Chapter sub-heading No. 6807.10 of the Act.

4. The adjudicating authority, after accepting the stand of the Assessee, passed an order dated 31.01.2000, inter-alia, holding that the appropriate classification of the goods in issue should be under Chapter sub-heading No. 6807.10 of the Act. The revenue, being aggrieved by the classification so accepted by the adjudicating authority, had carried the matter by way of an appeal before the Commissioner (Appeals), Customs and Central Excise, who by its order dated 23.01.2002, allowed the revenue's appeal and, thereby, declared that the goods in question are to be classified under Chapter sub- heading No. 6803.00 and not under sub-heading No. 6807.10, as claimed by the Assessee.

5. The Assessee had carried the matter in appeal before the Tribunal. The Tribunal has allowed the Assessee's appeal by its order dated 22.08.2002 and, thereby, restored the order passed by the adjudicating authority. It is the correctness or otherwise of the aforesaid order passed by the Tribunal is the subject matter of present appeal.

6. We need to notice the relevant entries under Chapter 68 of the Act and the sub heading No. 6803.00 and sub-heading No. 6807.10 etc. The same reads as under:

Heading No.

Sub- Heading No.

Description of Goods

Rate of Duty

(1)

(2)

(3)

(4)

6803

6803.00

Slagwool, Rockwool and similar wools Goods, in which more than 25% by weight of red mud, press mud or blast furnace slag or one or more of these materials, have been used,

18%

6807

68.07

all other articles of stone, plaster, cement, asbestos, mica or of similar materials, not elsewhere specified or included.

6807.10

Goods, in which more than 25% by weight of red mud, press mud or blast furnace slag or one or more of these materials have been used.

8%

7. The rate of duty for the aforesaid goods if it is classified under sub-heading No. 6803.00 is at 18% and if it is classified under sub-heading No. 6807.10, is at 8%.

8. Sub-heading No. 6803.00 speaks of Slagwool, Rockwool and similar wools, whereas sub-heading No. 6807.10 speaks of goods in which more than 25% by weight, red mud, press mud or blast furnace slag or one or more of these materials is used.

9. Sub-heading No. 6807.10 was introduced after the Budget of 1997.

10. The period in question of this appeal is after 9th June, 1998.

11. Shri R.P. Bhatt, learned senior Counsel appearing for the revenue would submit that when there is a specific heading/sub-heading wherein the goods, such as Slagwool, Rockwool and similar wools are enumerated, that entry requires to be applied and not the general entry or a residuary entry. Learned Counsel also brings to our notice about the Circular issued by the Central Board of Excise and Customs (for short 'the Board') dated 17.09.2001 to substantiate that the Board, after a detailed consideration of the claim and the counter claim of the traders dealing in Rockwool and Slagwool, has specifically classified that the aforesaid goods requires to be classified under sub-heading No. 6803.00 and not under sub-heading No. 6807.10.

12. Per contra, Shri Alok Yadav, learned Counsel appearing for the Assessee, justifies the impugned judgment and order passed by the Tribunal.

13. We have already noticed the relevant entries to which we are concerned with in this appeal. No doubt there is a specific entry which speaks of Slagwool and Rockwool under Sub-heading No. 6803.00, but there is yet another entry which is consciously introduced by the Legislature under sub-heading No. 6807.10, which speaks of goods in which Rockwool, Slagwool and products thereof are manufactured by use of more than 25% by weight of blast furnace slag. It is not in dispute that the goods in question are those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag is used. If

that be the case, then, in a classification dispute, an entry which is beneficial to the Assessee requires to be applied and the same has been done by the adjudicating authority, which has been confirmed by the Tribunal. Alternatively, it can be said that Sub-heading No. 6807 is specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag is used. The heading is based entirely on material used on composition of goods. A tariff heading, based on composition of goods, is also specific heading like a heading based on commercial nomenclature. Therefore, we are of the view that the goods in issue are appropriately classifiable under Sub-heading No. 6807.10 of the tariff entry.

14. The learned senior Counsel Shri Bhatt invites our attention to the circular instructions issued by the Board. In our view, the departmental circulars are not binding on assessee or quasi judicial authorities or courts and therefore, in that view of the matter, the circular/ instructions issued by the Board, would not assist them.

15. We may also notice that the Full Bench of the Tribunal in the case of Commissioner of Central Excise, Raipur v. Punj Star Insulation Fiber Company has taken a view that the slagwool and rockwool would fall under sub-heading No. 6807.10 and not under sub-heading No. 6803.00. The judgment of the Tribunal has attained finality, since the revenue has not questioned the same before the appropriate forum. This fact has been noticed by this Court while disposing of Civil Appeal Nos. 60-61 of 2003 in the case of M/S. Rockwool (India) Pvt. Ltd. v. Commissioner of Customs & Central Excise, Hyderabad decided on 07.05.2008.

16. In view of the above, we are of the opinion that the Tribunal has not committed any error, whatsoever, which would call for our interference. Accordingly, the appeal is dismissed.

C.A. Nos. 2504-2505/2004:

These appeals are also disposed of, in terms of the observations and directions made by us today in the aforesaid order i.e. C.A. No. 4988/2003.

Ordered accordingly.