(1993) 04 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 2400/93

Decent Laminates (P) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-04-1993

Acts Referred:

Citation : (1993) 65 ELT 479

Hon'ble Judges : S. Nainar Sundaram, C.J;Sharad D. Dave, J

Bench : Division Bench

Advocate : Vijay Nair, for the Appellant; Haroobhai M. Mehta, Senior Central Government Standing Counsel, for the Respondent

Judgement

S. Nainar Sundaram, C.J.—We heard Mr. Vijay Nair, learned counsel for the petitioner and Mr. Haroobhai M. Mehta, learned Senior

Central Government Standing Counsel for the respondents. We also considered the pleadings in the case and the documents placed by the parties.

2. There is a controversy with regard to the classification under Tariff Entry No. 4823.90. There is also a controversy as to the entitlement of the

benefit of the Exemption Notification No. 135/89-C.E., dated 12-5-1989. The questions in general are admittedly awaiting resolution in an appeal

preferred before the Customs, Excise and Gold (Control) Appellate Tribunal in brief called ""CEGAT"", preferred by the petitioners in Special Civil

Application No. 16 of 1993, which we disposed of on 16-3-1993. There we found it just, fair and equitable to adopt the formula followed in

Special Civil Application No. 1778 of 1992, order dated 26-6-1992, until the CEGAT renders a decision in the appeal preferred by the

petitioners in Special Civil Application No. 162 of 1993.

3. Here in the present case, the petitioner has gone before the Appellant Collector and its appeal has been heard by the said Appellate Collector,

but no order has been passed by him. In another case, namely Special Civil Application No. 163 of 1993, disposed of by us on 16-3-1993,

wherein the situation was found to be the same as in this case, we deemed fit to give directions as we gave in Special Civil Application No. 162 of

1993. We find no justification and warrant to depart from the said formula and we are adopting and implementing the same formula here also.

Accordingly, we give the following directions in this Special Civil Application :

(i) The respondents shall recover duty from the petitioners for the present on the product in question, on the basis, it is covered by Tariff Entry

4823.90 and further they are entitled to the Exemption Notification No. 135/89-C.E., 12-5-1989.

(ii) As regards difference in duty, the petitioner is directed to furnish bank guarantees.

(iii) The above arrangement shall govern until the CEGAT renders its decision in the appeal preferred by the petitioners in Special Civil Application

No. 162 of 1993.

4. The questions awaiting resolution, if answered by the CEGAT would pave the way for the parties to work out their rights and remedies, and the

CEGAT will do well to dispose of the appeal preferred by the petitioners in Special Civil Application No. 162 of 1993 with expedition so that all

the parties could work out their rights and remedies depending upon the decision at the hands of the CEGAT. We also make it clear that in case

the petitioner ultimately fails the question of recovery of interest on duty, as is permissible in law can certainly be agitated before the authority who

may be seized of the question at that time.

5. This Special Civil Application is disposed of in the above terms. We make no orders as to costs.

