(2004) 01 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal Nos. 7080 of 1996

Flex Industries Ltd. APPELLANT

Vs

Collector of Central Excise, Meerut RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A
Finance Act, 2000 — Section 110

Citation : (2004) 92 ECC 502 : (2004) 164 ELT 397 : (2004) 4 SCC 244

Hon'ble Judges : V. N. Khare, C.J;S. H. Kapadia, J;S. B. Sinha, J

Bench : Full Bench

Advocate : V. Lakshmikumaran and Rajesh Kumar, for the Appellant; N.K. Bajpai, Dileep Tandon and B. Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. In this appeal, we are concerned with the two questions which are as follows:

(1)Whether the amendment to Section 11A of the Central Excise Act, 1944 by Section 110 of the Finance Act, 2000 is a valid piece of legislation?

(2)Whether after the appellate authority had decided the appeal of the appellant herein and that having obtained finality, is it permissible for the Department to issue a show cause notice on the basis of a circular issued by the Board dated 5-5-1989 subsequently revised by Board's circular dated 13-7-1989?

2. So far as the first question is concerned, the same stands concluded by the decision of this Court in ITW Signode India Ltd. Vs. Collector of Central Excise, .

3. As regards the second question, it is not disputed that although the appellant claimed NIL duty, however it paid the duty under Tariff Item No. 39.23 in Chapter 39 of the Central Excise Tariff. The appellant herein being not satisfied with the assessment, filed an appeal before the Collector.

4. In the meantime, the Board by Circular dated 5-5-1989 provided that the

classification of goods in which the appellant dealt with, will be under Chapter 49 prior to 16-1-1989. Subsequently, the said circular was modified by another Circular dated 13-7-1989 holding that the classification of the goods in which the appellant dealt with, will be under Heading 39.20 as per decision of the Collectors' conference. Armed with this circular, the Department sent show cause notices to the appellant herein initiating proceedings u/s 11A of the Central Excise Act alleging short levy and demanding differential duty. The appellant contested the show cause notice. However, the Assistant Collector confirmed the demands by his order dated 28-5-1992. Thereafter, the appellant filed an appeal before the Collector (Appeals) which was dismissed. An appeal filed before the Tribunal against the order of the Collector, was also dismissed. The aforesaid facts show that before the appellant could file an appeal, show cause notices on the basis of the revised classification list were issued to it. That was an independent proceeding and the appeal filed by the appellant and the orders passed thereon, have no bearing on that proceeding. Under such circumstances, we do not find any merit in the appeal. It, accordingly, fails and is dismissed. There shall be no order as to costs.