(1995) 09 CAL CK 0027

In the Calcutta High Court

Case No : Matter No. 1702 of 1981

Indian Cable Co. Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Citation : (1997) 58 ECC 36 : (1997) 89 ELT 657

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : N.C. Roychowdhury, for the Appellant;J.C. Ghosh, for the Respondent

Judgement

Chief Justice

1. This appeal arises from the judgment of a learned Single Judge dismissing a Writ application filed by the appellant challenging the assessment of a substance called Hypalon under the Tariff item relating to Synthetic resin instead of Synthetic rubber. The judgment under appeal was passed on 18-2-1986. The same question was also raised in Matter No. 666 of 1983 (National Insulated Cable Co. Ltd. v. Collector). The writ application was allowed by another learned Single Judge holding that Hypalon was properly classifiable under Tariff heading of Synthetic rubber. A third writ application which raised the same question was also decided against the Customs Authorities. The Customs Authorities preferred two separate appeals from both these decisions. Those appeals as preferred by the Customs Authorities as well as this appeal were listed consecutively as all the three matters raised the same issue. The Custom''s appeal from the judgment in Matter No. 666 of 1983 was dismissed by a Division Bench of this Court on 7th May 1993. The judgment of the learned Single Judge was upheld holding that Hypalon was classifiable as Synthetic rubber and not as Synthetic resin. This decision was subsequently reported in Collr. of customs Vs. National Insulated Cable Co. Ltd., .

2. We were informed that no appeal has been preferred by the Customs

Authorities from the said judgment.

3. We are not persuaded to differ with the decision of the Division Bench in the case of National Insulated Cable Co. Ltd. We are accordingly bound by the decision and following the same we hold that Hypalon was not Synthetic resin but was classifiable under the Tariff heading of Synthetic rubber and the duty was leviable thereon on such basis.

4. For the aforesaid reasons the Appeal succeeds and is allowed.

5. The learned Counsel appearing for the appellants/petitioners also made a request for a direction to the Respondents to refund the amount which had been deposited by way of customs duty. For this, reliance had been placed on the following sentences of an interim order passed by a Division Bench of this Court on 30-3-1987 in this Appeal:

"The Court: At the instance of the appellants the following order is passed in addition to the order passed earlier on 25-3-1986 :

Without prejudice to their rights and contentions the appellants will pay to the Collector of Customs a further amount of Rs. 25,14,642.45p. being the balance of the impugned difference in duties by 31-3-1987. The Collector will refund forthwith the said amount to the appellants as also the sum of Rs. 13,00,000/- paid under the earlier order dated 25-3-1986 in the event the appeal succeeds."

6. We have gone through this order and also the relevant law. In our view, the appellant should move an application before the Assistant Collector of Customs for refund of the amount already deposited by way of customs duty. If such an application is made, the Assistant Collector of Customs shall dispose of the same within a period of 2 months from the date of moving of such application after giving the parties an opportunity of being heard and taking such evidence as may be necessary. If need not be said that the order passed by the Assistant Collector of Customs will be a reasoned order.

7. There will be no order as to costs.

8. All parties are to act on a signed xerox copy of this judgment and order counter-signed by the Assistant Registrar of this Court on the usual undertaking.