
(1999) 12 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeals No. 1905 Of 19971 With Nos. 601-02 Of 19982

J.B.A. Printing Inks Ltd.

APPELLANT

Vs

Collector of Central Excise, New Delhi

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Citation : AIR 2000 SC 607 : (2000) AIRSCW 35 : (2000) 67 ECC 216 : (2000) ECR 31 : (2000) 115 ELT 24 : (1999) 9 JT 479 : (1999) 7 SCALE 352 : (2000) 10 SCC 401 : (1999) 10 Supreme 74

Hon'ble Judges : S. P. Bharucha, J;R.C. Lahoti, J;N. Santosh Hegde, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.

Civil Appeal No. 1905 of 1997:

1. We have read the order under appeal and heard the learned Counsel. We are of the view that a more detailed consideration of the case on either side is required and that there should be categoric findings of the Tribunal in this behalf. Since counsel on either side are agreed that this is the appropriate course to follow, we do not elaborate.

2. The civil appeal is allowed. The order under appeal is set aside. The appeal (No. E/4106/89-C) is restored to the file of the Tribunal at New Delhi to be heard and disposed of afresh, after giving to either side the opportunity to file further evidence and a hearing. The appeal shall be disposed of expeditiously.

3. No order as to costs.

Civil Appeal Nos. 601-602 of 1998:

4. The appellants are manufacturers of radiatOrs. Their radiators were treated as accessories of internal combustion engines and classified under the residual

entry, subheading No. 84.79 of the excise tariff. On 16th July, 1992, a demand was raised in the show cause notice issued to them which recorded this fact. It stated:

On a review taken about the classification of the above goods, it appears that the present classification of 'Radiator Assembly' an accessory of I.C. Engines of various models, the product of M/s. Fine Automotive and Industrial Radiator Private Limited, appears to be incorrect and merits reclassification under chapter sub heading No. 8409.00 considering the function of the product as the Radiator assembly appears to be a part suitable for use solely or principally with engine, which attracts BED at 20% adv.

On this basis, the appellants were asked to show cause why the differential amount of duty in the sum of Rs. 4,12,172/- for the period 1st January, 1992 to 30th June, 1992 should not be paid by them "being the duty resultant due to reclassification...from chapter heading 8479.00 to 8409.00 of the Schedule to the Central Excise Tariff Act, 1985".

5. The first contention is, and it is not in dispute, that the demand made by this show cause notice must be quashed because the issue in this behalf is covered by the Constitution Bench judgment in Collector of Central Excise, Baroda Vs. M/s Cotspun Ltd., , where it was held:

13. The levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. It is only when the correctness of the approval is challenged that an approved classification list ceases to be such.

For the reason stated in para 13 above, the demands in the two subsequent show cause notices on the same basis, but for the subsequent periods of time, cannot be quashed.

6. This raises the issue of the correctness of the new classification. The classification was under Tariff entry 84.79 on the basis that what the appellants manufactured was an accessory of an internal combustion engine and it was sought to be changed to a classification under Tariff entry 84.09 on the basis that that radiator assembly was a part suitable for use solely or principally with such engines.

7. Tariff entry 84.09 covers "parts suitable for use solely or principally with the engines of heading No. 84.07 or heading No. 84.08". Entry 84.08 covers "compression-ignition internal combustion piston engines (diesel or semi-diesel engines)". The argument on behalf of the appellants is that radiator assemblies are not parts of internal combustion engines but accessories thereof and this had been accepted by the respondents earlier. It is difficult to accept this latter argument and the argument that an internal combustion engine can function without a cooling device. It cannot do so. If, then, the cooling device is water

based, being the radiator, that cooling device must be held to constitute a part of such engine.

8. In the result, except in relation to the demand made in the show cause notice dated 16th July, 1992, which stands quashed, the civil appeals are dismissed.

9. Any deposit that has been made by the appellants in respect of the demand that is quashed will now stand adjusted against the demands made by the two remaining show cause notices.

10. If the appellants claim any motivate benefit for themselves or their customers in this behalf, the claim shall be decided in accordance with law.

11. No order as to costs.