
(1990) 08 AHC CK 0019
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 141 and 293 of 1990

Kanpur Plastipack Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-08-1990

Acts Referred:

Citation : (1992) 57 ELT 225

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;R.A. Sharma, J

Bench : Division Bench

Advocate : None, for the Appellant; V.K. Singh for the Central Government, for the Respondent

Judgement

B.P. Jeevan Reddy, C.J.—In all these matters the question in issue to classification of goods produced by the petitioners. According to the petitioners, they are dutiable under Chapter 39 of VIII Schedule of Central Excise Tariff Act, whereas, according to the department, they are dutiable under Chapter 34.39 of the said Schedule. It is brought to our notice that Madhya Pradesh High Court has upheld the contention...by the petitioners in a similar matter. It is also brought to our notice that a number of High Courts have granted interim orders in writ petitions where identical questions were raised. On the other hand, it is contended by Shri V.K. Singh, learned Standing Counsel for Central Government that by virtue of the interim order, the Government is suffering substantial financial loss which it may not be able to recover in the cases of dismissal of the writ petitions and the rejection of the petitioners" case as the case may be.

2. Ordinarily speaking, classification is a matter which should be first decided by the Central Excise Authorities. It will not be done by this Court sitting as an original authority. In a majority of those cases, the concerned authority has not yet taken a decision in the matter, though in a few matters, it appears that the appropriate authority has already taken a decision in the matter. Since we are not inclined to go into the question of classification at this stage in a writ petition, we direct the parties to raise this question before the appropriate

authorities.

3. Accordingly, it is directed that in cases where the appropriate authority has not taken a decision on the question of classification of goods, the authority shall take such decision within four weeks from the date of presentation of a certified copy of this order. For a period of six weeks from today, the interim order granted by this Court in these cases shall continue. A certified copy of this order shall be produced before the appropriate authority by the petitioners within four days from today. In case of default of producing the certified copy as directed above, the above order of stay shall not be operative.

4. In cases where the authority has already decided the question of classification, the aggrieved party will have a right of appeal provided by law. They are free to adopt it. In case, however, where the period of limitation for filing the appeal has expired, it is directed that if the appeal is filed within ten days from today, it will be entertained treating the same as filed within time and will be decided according to law. The appeal shall be disposed of as early as possible, preferably within three months from the date of its presentation. This direction is given keeping in view the fact that a large amount of Revenue is involved to be paid in the matter. It is further directed that where appeals are filed, there shall be a stay of operation of order under appeal for a period of six weeks from today. Within that period, it will be open to the petitioners to apply to the authority for appropriate interim orders u/s 35F of the Act. If such an application is filed, it shall be disposed of forthwith according to law.

5. The writ petitions are disposed of with the above directions.

6. Certified copies of this order may be issued to the counsel for the petitioners within 24 hours on payment of usual charges.