
(2003) 11 SC CK 0114
In the Supreme Court Of India
Case No : Civil Appeal No. 7133 of 1997

Nulon India Ltd.

APPELLANT

Vs

Commissioner of C. Ex., Meerut

RESPONDENT

Date of Decision : 27-11-2003

Acts Referred:

Citation : (2004) 91 ECC 9 : (2003) 111 ECR 1017 : (2003) 158 ELT 677

Hon'ble Judges : S. Rajendra Babu, J;G. P. Mathur, J

Bench : Division Bench

Judgement

1. The Commissioner who examined the facts arising in the case adverted to the reply filed by the appellant that the two products engine treatment and gear and differential treatment oils are added to different mineral oils for being used and are not capable of being used as lubricating oils by themselves, but are in the nature of additives. He noticed that they do not impart better lubrication along with other attributes of additives and hence, cannot claim benefit of Notification 120/84. The two products are classifiable under Heading 3811.00 of the Central Excise Tariff. On appeal against the said order, the Tribunal noticed as under :-

"The above mentioned facts show that products are not used as lubricating oils but added to as additives.

The process of manufacturing of the products in dispute is that imported PTFE is added/blended and mixed with mineral lubricating oil. Therefore, the products are not petroleum oils and oils obtained from bituminous as described under Heading 2710 of the tariff."

2. Hence, the view taken is based on facts arising in the case and calls for no interference.

3. When the matter was considered by the Commissioner, the demand raised in the show cause notice was confirmed for a period of six months from the date preceding issue of notice in respect of two items but not in respect of coolant. In

fact, he accepted the case of the appellant that declaration regarding coolant was a procedural lapse inasmuch as its value was included in the declaration without specifically mentioning the product. When there is no wilful suppression, the Commissioner should have confirmed demand with respect to coolant also for a period of six months from the date preceding the show cause notice. The order of Commissioner as affirmed by the Tribunal is modified to this extent and, except for this modification, this appeal is dismissed.