

(1991) 09 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1277 of 1991

Shanti Plywood Products (P) Ltd.

APPELLANT

Vs

Additional Collector, Central Excise and Others

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Citation : (1993) 45 ECR 367

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;K. Narayan, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—Heard the Chief Standing Counsel for Central Government.

2. The petitioner says that it is a manufacturer of block boards and that without knowing the correct legal position, it filed a classification list with effect from 1.4.1990 classifying the block boards under tariff sub-heading 4408.90. It was approved. The petitioner says that he realised the mistake later when he found that other manufacturers are claiming that the said products are to be classified under tariff sub-heading 440.90 and not under 4408.90 and accordingly he filed a revised classification list on 21.8.1991 which has been rejected by the Assistant Collector by his order dated 21.8.1991. It is the said order which is questioned in this writ petition.

3. Ordinarily, the question of classification is not a matter to be considered by this Court at this stage. The hierarchy of appeals and other remedies provided by the statute are to be pursued before approaching this Court, as repeatedly held by the Supreme Court. However, it is contended by the petitioner that in the case of similar manufacturers several High Courts in the country have granted interim orders permitting them to pay duty under tariff sub-heading 4410.90 and unless such an order is granted in favour of the petitioner his products would not be able to compete in the market.

4. The counsel for the petitioner states (on instructions) that an appeal has

already been preferred against the order dated 21.6.1991. In the circumstances, the writ petition is disposed of with the following directions:

5. In the appeal already filed by the petitioner, it shall be open to the petitioner to file a stay application, if not already filed.
6. The said stay application whether already filed or to be filed hereinafter shall be disposed of within two months from today.
7. Pending disposal of the stay application the petitioner is permitted to pay duty of his product under sub-heading 4410.90.
8. The stay application if not already filed, shall be filed within one week from today along with a certified copy of this order.
9. In any case, a certified copy of this order shall be produced before the appellate authority within the week from today.
10. It is made clear that in case the appeal is not filed, as stated above, or the stay application is not filed, as contemplated hereinabove, this order shall cease to be operative at the end of one week. Further, in case, if stay application has been filed and disposed of, even then this order will not be operative.