

**(2015) 11 SC CK 0008**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 1644 of 2008 with C.A. No. 1645 of 2008

Union of India

APPELLANT

Vs

Rubber Products Ltd.

RESPONDENT

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**Date of Decision :** 20-11-2015

**Acts Referred:**

**Citation :** (2015) 326 ELT 232

**Hon'ble Judges :** A.K. Sikri and Rohinton Fali Nariman, JJ.

**Bench :** Division Bench

**Advocate :** Shri Praveen Kumar and Ms. Sunaina Kumar, Advocates, for the Respondent; S/Shri K. Radhakrishna, Senior Advocate, Rupesh Kumar, M. Rambabu, Shankar Divate, Jitin Singhal, Pratik Raoka and B. Krishna Prasad, Advocates, for the Appellant

**Final Decision :** Disposed Of

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## **Judgement**

These appeals pertain to classification of goods known as "Vacuum Brake Hose Pipe" which are manufactured by the assessee. According to the Revenue these goods are to be classified under Tariff Heading 4009.92 whereas the assessee contends that they are classifiable under Tariff Heading 4009.99 of the Central Excise Tariff Act, 1985. It so happened that in Civil Appeal No. 1644/2008, show cause notice dated 25-3-1987 was issued. The Adjudicating Authority had classified the goods under Tariff Heading 4009.92. The assessee filed appeal there against before the Collector (Appeals) which was allowed and the plea of the assessee that the goods were to be classified under Tariff Heading 4009.99 was accepted. The Department did not accept the aforesaid decision and filed further appeal before the Tribunal. This appeal was, however, dismissed on 12-1-1990 only on the ground that the same is time barred and there was no sufficient cause to condone the delay. The matter was not adjudicated upon merits.

2. The Revenue thereafter issued another show cause notice dated 16-1-1992 for the period July, 1991 to December, 1991 again classifying the goods under Tariff

Heading 4009.92. Instead of challenging this order by filing appeal before the Collector (Appeals), the assessee filed Writ Petition No. 4411/1992 in the High Court of Bombay which has been allowed vide impugned judgment dated 4-5-2005 [2006 (206) E.L.T. 1153 (Bom.)] on the ground that when the Collector (Appeals) in the earlier round of litigation, arising out of show cause notice dated 25-3-1987, classified the goods under Tariff Heading 4009.99 this order was binding on the Adjudicating Authority.

3. The facts in the other appeal i.e. 1646/2008 are also almost identical. The only difference is that in the second show cause notice which was issued by the Assistant Collector, Central Excise, goods were classified under Tariff Heading 4009.92 and this order was challenged by the assessee in appeal before the Collector (Appeals), which was also dismissed. However, instead of filing further statutory appeal before the Tribunal, the assessee filed writ petition in the High Court which has been allowed by the High Court on the same grounds as contained in order dated 4-5-2005 passed in Writ Petition No. 4411/1992.

4. We are of the opinion that the aforesaid view taken by the High Court is unsustainable on two grounds. In the first instance, writ petition itself was not maintainable when there was alternate remedy available to the assessee under the provisions of the Central Excise Tariff Act and the assessee should have exhausted those statutory appeals. Even otherwise, on merits, the High Court has allowed the writ petition wrongly. The High Court has glossed over the vital fact that the order of Collector (Appeals) in the first round of litigation was not accepted by the Department but was challenged. This plea did not fail on merit but appeal was dismissed by the Tribunal as time barred. Therefore, at the most, the said order of the Collector (Appeals) attained finality insofar as period covered by the earlier show cause notice is concerned and could not have been binding precedent for future period.

5. We, thus, allow these appeals and set aside the impugned orders passed by the High Court in these cases. It would, however, be open to the respondent/assessee to file the statutory appeals under the Act challenging the orders which were impugned in the High Court.