(1997) 07 SC CK 0028

In the Supreme Court Of India

Case No : Civil Appeal No''s. 1619 of 1990 and 1820 of 1991

Vee Kay Industries APPELLANT

Vs

Collector of Central Excise, New Delhi RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Citation : (1998) 77 ECR 439 : (1997) 92 ELT 5 : (1998) 4 JT 439 : (1997) 8 SCC 483

Hon'ble Judges : J. S. Verma, C.J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.S. Verma, C.J., and B.N. Kirpal, J.—Learned Counsel for the appellant M/s. submitted that a Special Bench of five members of Central Excise & Gold (Control) Appellate Tribunal (CEGAT) has considered the same question and taken the view in favour of the assessee that elastic rail clips are classifiable under Item 26AA(ia)/25(8) of the erstwhile Central Excise Tariff and not under Item 68. That decision of the Special Bench of the Tribunal is 1998 (77) ECR 606 In that decision the two earlier decisions of the Tribunal by smaller Benches which have given rise to these appeals reported in 1990 (28) ECR 337 and 1991 (32) ECR 671 have been overruled. The result therefore, is that the judgments which are challenged in these appeals have already been overruled by a Larger Bench of the Tribunal. That judgment was rendered on 24-6-1995. The learned Additional Solicitor General on instructions informs us that the Department has accepted the Tribunal''s latter decision in Sikka Heat Treatment center (supra) and, therefore, the same has not been challenged before this Court.

2. Apart from the fact that the Department itself has accepted the Tribunal''s view taken in Sikka Heat Treatment center (supra), we also find that this is the more appropriate view to take in the facts of the case. These appeals have, therefore, to be allowed.

3. Consequently, these appeals are allowed. The impugned judgments of the Tribunal are set aside. No costs.

