IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.44938 of 2002

M/s.Rajshree Laminates Limited,
Nos.46/1 to 46/4, CBE-Pollachi Road,
Aachipatti, Pollachi. ... Petitioner

Vs.

1.Commissioner of Central Excise (Appeals),
No.1, Williams Road, Cantonment,
Trichy - 620 001.

2.The Assistant Commissioner of Central Excise,
Pollachi Division, Pollachi.

3.The Commissioner of Central Excise,
Coimbatore - 18. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI calling for the records of the case in Order-In-Appeal No.232/2002(CBE)ADK dated 15.11.2002, passed by the first respondent herein and to quash the same as ultra vires the provisions of Central Excise Act, with the consequential relief.

For Petitioner : T.Ramesh

For Respondents : Mr.A.P.Srinivas
Senior Panel Counsel

O R D E R

Heard Mr.T.Ramesh, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondents.

2.The petitioner, in this writ petition, challenges an order passed by the first respondent, Commissioner of Central Excise (Appeals) dated 15.11.2002, confirming the order passed by the second respondent, Assistant Commissioner of Central Excise,

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Pollachi, dated 24.11.1998.

3.The issue involved in this writ petition is with regard to the classification of product dealt by the petitioner. The petitioner's contention is that they are manufacturer of decorative laminated sheets and the product is classifiable under Chapter 48 of Central Excise Tariff Act, 1985 and they will have to be granted the benefit under Chapter Heading 4823.90 or under Chapter Heading 3920.31. A dispute arose as to whether the classification of such product should be under Chapter 48 or under Chapter 39. Writ petitions were filed before this Court, in which the petitioner herein was also one among the petitioner in W.P.No.7429 and 17589 of 1993. In the said case, the Assistant Collector of Central Excise, the second respondent therein, by order dated 13.08.1992, classified the goods under Heading 3920.31 and on an appeal, the Collector (Appeals), by order dated 17.12.1992, remanded the matter for fresh consideration. In the mean time, budgetary changes were introduced in the year 1993-94 budget and the assessee filed a classification list dated 02.04.1993, which was modified by the Assistant Collector by virtue of provision of rule 173-B(5) and the writ petitions were filed against the same and also the subsequent demands for duty in show cause notices/letter advising the assessee not to claim exemption under Notification No.20/94 dated 01.03.1993.

4. When the writ petitions were heard along with other connected matters, the respondent took a stand that in view of Collector's letter dated 16.02.1995, on re-examination of the issue, the petitioners' plea for classifying the goods under Chapter Heading 48 has been accepted. Recording the said submission, while holding that the writ petitions have become infructuous and dismissing the same by order dated 22.03.1996, it was clarified that in view of the Collector's order classifying the goods under Chapter Heading 48, the assessee will have the benefit under Heading 4823.90.

5. A similar issue arose in the petitioners own case in respect of another show cause notice dated 10.12.1993 and on an appeal, the Appellate Authority by order dated 09.11.1994 held that the product manufactured by the petitioner is an article of paper classifiable under sub-heading 4823.90 and not under 3920.31. Thus the order passed in the writ petition has become final and the order passed by the Collector (Appeals) also become final.

6. What is relevant to note is that this Court, while disposing of the writ petition, by order dated 22.03.1996, held that the petitioner/assessee will have the benefit under the Heading 4823.90 for the relevant years. On account of the fact that, in a subsequent decision, in the case of Backlite Highlamp

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Ltd, reported in 1997 (91) ELT 13(SC), the Hon'ble Supreme Court has held that the product is classifiable under Chapter Heading 39, the first respondent in the impugned order, because of the decision of the Hon'ble Supreme Court, which binds all Courts and Tribunals, has taken a decision that the correct classification would be under Chapter Heading 39.

7. However, what is important to notice is that so far as the period up to the date of the Court order is concerned, already covered by a decision of this Court, wherein the Court recorded the stand of the Collector and then passed an order giving the benefit under the Chapter Heading 4823.90. Same is the finding rendered by the Commissioner (Appeals) in the assessee's own case vide order dated 09.11.1994. Thus, by virtue of the subsequent development, the second respondent has no power to reopen the assessment, which have already been made and attained finality, that too pursuant to the orders passed by the Court. Hence, for such reasons the impugned orders call for interference and accordingly, the writ petition is allowed and the impugned orders are set aside. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr/vsm

To

1.Commissioner of Central Excise (Appeals),
No.1, Williams Road, Cantonment,
Trichy - 620 001.

2.The Assistant Commissioner of Central Excise,
Pollachi Division, Pollachi.

3.The Commissioner of Central Excise,
Coimbatore - 18.

+1cc to Mr.T.Ramesh, Advocate SR.No.48697
+1cc to MR.A.P.Srinivas, Advocate SR.No.48960

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