

Vee Kay Industries

Vs

Collector of Central Excise, New Delhi

Civil Appeals No. 1820 of 1991 with No. 1619 of 1990

(CJI J.S. Verma, B.N. Kirpal JJ)

23.07.1997

ORDER

1. Learned counsel for the appellant M/s Vee Kay Industries 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 26-AA(ia)/25(8) of the erstwhile Central Excise Tariff and not under Item 68. That decision of the Special Bench of the Tribunal is Sikka Heat Treatment Centre v. CCE. [(1996) 81 ELT 628 (Trib)] In that decision the two earlier decisions of the Tribunal by smaller Benches which have given rise to these appeals reported in Paxma Axle & Springs (P) Ltd. v. CCE [(1990) 47 ELT 639 (Trib)] and Vee Kay Industries v. CCE [(190) 50 ELT 520 (Trib)] 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 Centre 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 Centre' 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.