

SUPREME COURT OF INDIA

Flex Industries Limited

Vs.

Collector of Central Excise, Meerut

C.A.No.7080 of 1996

(V. N. Khare CJI., S. H. Kapadia and S. B. Sinha JJ.)

28.01.2004

JUDGMENT

S. H. Kapadia, J.

1. In this appeal, we are concerned with the two questions which are as follows:

“(1) Whether the amendment to Section 11A of the *Central Excise Act, 1944* by Section 110 of the Finance Act, 2000 is a valid piece of legislation?

(2) Whether after the appellate authority had decided the appeal of the appellant herein and that having obtained finality, is it permissible for the Department to issue a show cause notice on the basis of a circular issued by the Board dated 5-5-1989 subsequently revised by Board's circular dated 13-7-1989?”

2. So far as the first question is concerned, the same stands concluded by the decision of this Court in *ITW Signode India Ltd. v. Collector of Central Excise, 0 (S.C.)*.

3. As regards the second question, it is not disputed that although the appellant claimed NIL duty, however it paid the duty under Tariff Item No. 39.23 in Chapter 39 of the Central Excise Tariff. The appellant herein being not satisfied with the assessment, filed an appeal before the Collector.

4. In the meantime, the Board by Circular dated 5-5-1989 provided that the classification of goods in which the appellant dealt with, will be under Chapter 49 prior to 16-1-1989. Subsequently, the said circular was modified by another Circular dated 13-7-1989 holding that the classification of the goods in which the appellant dealt with, will be under Heading 39.20 as per decision of the Collectors' conference. Armed with this circular, the Department sent show cause notices to the appellant herein initiating proceedings under Section 11A of the Central Excise Act alleging short levy and demanding differential duty. The appellant contested the show cause notice. However, the Assistant Collector confirmed the demands by his order dated 28-5-1992. Thereafter, the appellant filed an appeal before the Collector (Appeals) which was dismissed. An appeal filed before the Tribunal against the order of the

Collector, was also dismissed. The aforesaid facts show that before the appellant could file an appeal, show cause notices on the basis of the revised classification list were issued to it. That was an independent proceeding and the appeal filed by the appellant and the orders passed thereon, have no bearing on that proceeding. Under such circumstances, we do not find