

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH  
ZONAL BENCH  
CHENNAI**

**Appeal No.C/87/2006**

[Arising out of Order-in-Appeal No.C.Cus.No.1/2006 dt. 06.01.2006  
passed by the Commissioner of Customs (Appeals), Chennai]

Sterlite Industries (India) Ltd.

Appellant

Versus

Commissioner of Customs, Chennai

Respondent

Appearance:

Shri S.Viswanathan, Advocate  
For the Appellant

Shri A. Cletus, ADC (AR)  
For the Respondent

**CORAM :**

**Hon'ble Shri D.N. Panda, Judicial Member**  
**Hon'ble Shri Madhu Mohan Damodhar, Technical Member**

Date of hearing / decision : 13.03.2017

**FINAL ORDER No. 40488/2017**

**Per D.N. Panda**

Adjudication order dt. 28-04-2005 *prima facie* shows that there was no show cause notice issued for determination of the classification. Ld. Adjudicating Authority in para-4 of the order has recorded that classification declared by the appellant under CTH 902750 was not acceptable. The proper head for classification was CTH 90271000. He



has also recorded that by letter dt. 15-04-2005 appellant informed that the duty was paid under protest.

2. In absence of SCN, appellant was deprived of the course of natural justice. It may be stated that violation of natural justice <sup>is</sup> not curable defect at the appellate stage. Therefore, the matter is remanded to the adjudicating authority to issue appropriate notice to appellant stating the reasons why Revenue seeks to classify the goods under CTH 90271000. Upon such notice, appellant shall file reply with 30 days of the service thereof. Considering the defence reply, the authority shall pass appropriate order, recording reason of his decision.

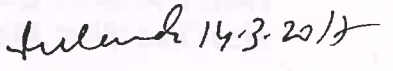
3. It may be stated that the very nature of goods <sup>being</sup> in dispute, it would be preferable to secure technical opinion of a National Institute to resolve the dispute at the interest of justice, <sup>being</sup> *confronting such opinion to appellant for defence.*

4. In the result, Appeal is remanded to Adjudicating Authority.

(Dictated and pronounced in open court)

  
(Madhu Mohan Damodhar)  
Technical Member

16/03/2017

  
(D.N. Panda)  
Judicial Member

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