

**(1987) 07 BOM CK 0068**

**Bombay High Court**

**Case No:** Writ Petition 748 of 1981

Vishal Electronics Pvt. Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

**Date of Decision:** July 23, 1987

**Citation:** (1988) 15 ECC 190 : (1988) 36 ELT 38

**Hon'ble Judges:** H. Suresh, J

**Bench:** Single Bench

### **Judgement**

1. The Petitioners had imported lenses for the close circuit television cameras. It appears that the said lenses were classified under the Heading 90.02 read with Heading 85.15(1) of the Customs Tariff Act, 1975 (hereinafter referred to as "the Tariff Act"). However, the countervailing duty was levied on the lenses under Item 23A of the First Schedule of the Central Excises and Salt Act, 1944 by classifying the said lenses as an item of "Glass and Glassware". The rate of duty leviable under the said item was at 35 per cent.

2. Since the levy of countervailing duty at the rate applicable to the "Glass and Glassware" did not appear to be in order, the petitioners took up the matter with the Customs Authorities. The petitioners explained to the Department that the Tariff Item 23A covers "Glass and Glassware" of the types specified under the said Item, while the items imported by the petitioners were "lenses" which are used in highly sophisticated appliances like closed circuit television cameras. The Department accepted this contention of the petitioners and levied the duty under Item 68 of the Central Excise Tariff.

3. On the besides of this, the petitioners preferred a claim for refund of excess countervailing duty levied on the lenses imported by the petitioners earlier. However, the applications for refund were rejected on the ground that the same were preferred after a period of six months of payment of duty. The petitioners took the matter right upto the Government level, but they were turned out.

4. It is clear that the said levy of countervailing duty was clearly without the authority of law, and if that is so, there can be no question of limitation for the purpose of claiming refund of the duty collected by the respondents. The respondents themselves have accepted their mistake and it is a clear case wherein both the parties were under a clear mistake of law. In the result, this petition will have to be allowed.

**ORDER**

5. Rule made absolute in terms of prayers (a) and (b) of the petition. However, interest shall be at the rate of 15 per cent per annum from the date of the petition till payment. Amount shall be paid to the petitioners within a period of six weeks from today.

6. However, in the circumstances of the case, there will be no order as to costs.