

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4352 OF 2000

COLLECTOR OF CENTRAL EXCISE, AURANGABAD

Appellant (s)

VERSUS

M/S BCL FORGINGS LIMITED

Respondent(s)

(with appl(s) for stay and with office report)
WITH
CIVIL APPEAL NO. 4359 OF 2000
(with application for stay and with office report)

Date: 10/11/2005 This mater was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant(s)

Mr. G.E.Vahanvati, SG
Mr. T.Mohd. Yusuf, Sr. Adv.
Mr. Devdatt Kamat, Ms. Suruchi Suri,
Mr. H. Baurah, Mr. C.P. Sharma,
Ms. D.N.Tiwari, Advs.

For Respondent(s) Mr. Tara Chandra Sharma, Adv.
Mr. Rupesh Kumar, Adv.
Ms. Neelam Sharma, Adv.

Mr. Y.Raja Gopala Rao, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeals are allowed in terms of the signed order. Parties shall bear their own costs.

(Parveen Kr. Chawla)
Court Master

(Kanwal Singh)
Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4352 OF 2000

Collector of Central Excise, Aurangabad

Appellant (s)

Versus

M/s BCL Forgings Ltd.

Respondent (s)

WITH

CIVIL APPEAL NO.4359 OF 2000

O R D E R

This order shall dispose of both the appeals. The facts are taken from Civil Appeal No. 4352 of 2000.

This is a statutory Appeal under Section 35-L (b) of Central Excise Act, 1944 (for short 'the Act') against the final judgment and order bearing No. 72/2000-B dated 13.1.2000 in Appeal No.E/276/90-B passed by the Customs, Excise and Gole (Control) Appellate Tribunal, New Delhi (hereinafter referred to as the 'Tribunal').

The duty demand of Rs.31,24,189.11 in the present case relates to the period 1.3.1988 to 31.8.1988, when the classification list filed w.e.f. 1.3.1988, was finally approved on 13.6.1988 under the chapter heading claimed by the respondent-assessee i.e. Chapter Hearing 73.26.

Appellant issued two show cause notices to the respondent-assessee in September, 1988 (covering the period 1.3.1988 to 22.6.1988) and November, 1988 (for the period 23.6.1988 to 31.8.1988) proposing re-classification under Heading 87.08 and 84.83.

The Tribunal, relying upon a decision of this Court in the case of

Collector of Central Excise, Vadodara vs. Cotspun Limited reported in 1999 (113) ELT 353 (SC), held that when the goods have been cleared on the basis of approved classification list, the demand can only be prospective and consequently set aside the demand as unsustainable.

The Legislature intervened and amended the provisions of Section 11-A of the Act by Finance Act, 2000 with retrospective effect to take away the effect of the judgment of this Court in Cotspun Limited's case(supra). The amended Act was challenged and this Court in ITW Signode India Limited vs. Collector of Central Excise reported in (2004) 3 SCC 48 upheld the constitutional validity of the Amending Act i.e. Finance Act, 2000 amending Section 11-A of the Act. Resultantly the duty could be levied retrospective as well.

Since the law laid down by this Court in Cotspun Limited's case (supra) is no longer a good law, the order passed by the Tribunal has to be set aside and accordingly we accept this appeal and set aside the order of the Tribunal. As the Tribunal did not decide the dispute on the merits, the case is remitted to the Tribunal for a fresh decision on merits.

The Appeals are allowed, as indicated above. Parties shall bear their own costs.

.....J.
(ASHOK BHAN)

New Delhi;
November 10, 2005.

.....J.
(ARUN KUMAR)

