

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). 5830 OF 2000

COMMNR. OF CENTRAL EXCISE, KANPUR

Appellant (s)

VERSUS

J.K.SYNTHETICS (P) LTD.
Respondent(s)

Resp

(With application for stay and office report)

Date: 15/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.H.KAPADIA

For Appellant(s)

Mr. Mohan Parasaran, Sr. Adv.

Mr. Manish Tiwari, Adv.

Mr. Vivek Sood, Adv.

For Respondent(s)

Mr. Harshad V.Hameed, Adv.

Mr. K.J. John, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeal is allowed in terms of the signed order.

No costs.

(Parveen Kumar Chawla)

(Anand Singh)

ster

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5830 OF 2000

Commissioner of Central Excise, Kanpur

Appellant (s)

Versus

J.K. Synthetics (P) Ltd.

Respondent (s)

O R D E R

the M/s J.K. Synthetics (P) Limited, hereinafter referred to as 'assessee', manufacturers plastic flanged bobbins which are used on spinning machines and the yarn is wrapped around the aluminium tube. It filed its classification list on 8th January, 1990 classifying the product under heading 3926.90 which was approved on 30th April, 1990. On the basis of Audit Report dated 20th September, 1990, a show cause notice under Section 11-A of the Central Excise Act, 1944, hereinafter referred to as 'the Act', was issued calling upon the assessee to explain as to why the product in question should not be classified under Heading 7616.90 of the Central Excise & Tarrif Act, 1985 and the differential duty be not demanded for the period from 31st March, 1990 to 31st August, 1990.

Assessee filed its reply contending that the classification list was approved by the Assistant Collector and there was no misrepresentation

made by them. One of the objection taken was that the department was not entitled to invoke the extended period of limitation because the classification list had already been approved by the department. Assessee contested the classification list on merits as well. The adjudicating authority overruled the objection filed by the assessee and confirmed the demand.

Aggrieved against the order of the adjudicating authority, assessee filed an appeal before the Collector(Appeals), which was dismissed. Aggrieved against the order passed by the Collector(Appeals), the assessee filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, hereinafter referred to as 'the Tribunal'. The Tribunal in its order held on merits that

"we agree with this finding of the Collector (Appeals) and hold that the essential character to the impugned product is provided by the aluminium tube around which yarn is wrapped. Accordingly, the product is classifiable under sub heading 7616.90 as other articles of aluminium".

On the objection regarding limitation, Tribunal, following the decision of this Court in Commissioner of Central Excise vs. Cotspun Limited reported in (1999) 7 SCC 633, held that the levy of excise duty on the basis of approved classification list is not a short levy and differential duty could not be recovered on the ground that the classification list had already been approved by the department.

Aggrieved against the order of the Tribunal, the present appeal has

been filed under Section 35-L(b) of the Central Excise and Customs Act,

1944, which was admitted.

Pending the appeal, the law has been amended allowing the reopening of the approved classification list. The said amendment was brought out by Act 10 of 2000 with retrospective effect from 17.11.1980.

The said amendment was challenged and ultimately this Court in ITW Signode India Limited vs. Collector of Central Excise reported in (2004) 3 SCC 48 upheld the validity of the Amending Act with retrospective effect stating therein that the law laid down in Cotspun Limited case (supra) does not exist after the amendment and consequently the said decision is no longer operative and binding as a precedent.

Since the judgment on the basis of which the Tribunal had decided the case in favour of the assessee is no longer a good law, this appeal has to be allowed and is allowed accordingly. In the interest of justice and keeping in view that the Tribunal upheld the findings of the Collector (Appeals) on merits by a cryptic order, we remit the case back to the Tribunal for a fresh decision on merits. The Tribunal shall now record a finding on merits by a reasoned order.

Subject to what has been stated above, this appeal stands allowed.

No costs.

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.J.

(ASHOK BHAN)

New Delhi;

..J.

December 15, 2005.

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(S.H. KAPADIA)