

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1453-1458 OF 2001

COMMISSIONER OF CENTRAL EXCISE,
AHMEDABAD

APPELLANT(S)

VERSUS

DAMODAR POLY FAB (P) LTD. AND ORS.

RESPONDENT(S)

O R D E R

1. These appeals are directed against the judgment and order dated 09.11.1999 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (now The Customs, Excise and Service Tax Appellate Tribunal) (for short, 'Appellate Tribunal') in Order Nos. 1045-1050/99-C.

2. The short question of law that arises for consideration is whether an assessee who has accepted the classification under the Central Excise Tariff Act (for short, 'the Act') is liable to pay duty as per the said classification without insisting on a notice

under Section 11A of the Act.

3. For the purposes of the present case, on the basis of the statements made at the Bar, we have taken into account the facts in Damodar Poly Fab (P) Ltd., one of the assessee in the present appeals, and have proceeded on the basis that our answer to the question posed in the facts of the said case would govern all the other similarly situated assessees.

4. The respondent-assessee had claimed classification of the High-Density Polyethylene (HDPE) tapes, fabrics and sacks manufactured by them under Chapter Sub-Heading 3926.90 of the Act. The appellant-Revenue claimed that Chapter Sub-Heading 5406.90 was more appropriate. The Collector (Appeals) upheld the classification insisted upon by the Revenue/Department on the basis of which as many as 10 notices under Section 11A of the Act were issued to the respondent-assessee for payment of differential/short paid duty under Chapter Sub-Heading 5406.90.

5. While the aforesaid show-cause notice(s) were yet to be finally adjudicated, the learned Appellate Tribunal by order dated 29.09.1992 held that the subject goods were correctly classifiable under Chapter Sub-Heading 3920.32. Thereafter, it appears that an adjudication order dated 30.9.1993 was passed determining the duty liability of the respondent-assessee on the basis of the classification made by the learned Appellate Tribunal under Chapter Sub-Heading 3920.32 by order dated 29.9.1992. This was notwithstanding the fact that the earlier show cause notices issued covered the period(s) preceding the order dated 29.9.1992 passed by the learned Appellate Tribunal and the said show cause notices were issued demanding duty on the basis of Chapter Sub-Heading 5406.90 which was holding the field prior to the order of the learned Appellate Tribunal dated 29.9.1992. In this regard, it may be further noted that the demand of the respondent-assessee for a fresh show cause

notice was negatived by the learned Adjudicating Authority, *inter alia*, on the ground that the adjudication was being made pursuant to an order of the High Court passed for determination of the entitlement of the respondents - assesseees to MODVAT Credit as per the status of the parties prior to the order of the learned Appellate Tribunal dated 29.9.1992 classifying the subject goods under Chapter Sub-Heading 3920.32.

6. The respondent-assessee challenged the order dated 30.09.1993 of the Assistant Collector in further appeal which was answered in its favour by the learned Collector (Appeals) as well as the learned Appellate Tribunal. Aggrieved, the Union has filed the present statutory appeal(s).

7. We have heard the learned counsels for the parties and perused the relevant material.

8. The argument of the appellant-Revenue made by Shri K. Radhakrishna, learned senior counsel, in short, is to the effect that as

the respondent-assessee had accepted the classification made by the Tribunal by its order dated 29.09.1992 under Chapter Sub-Heading 3920.32 there is no requirement of any further notice under Section 11A of the Act, as acceptance of the classification amounts to an acknowledgment of the duty liability following such classification.

9. The above position has been contested by Shri Saurabh Suman Sinha, learned counsel appearing for the assessee-respondent No.1, who submits that the requirement of giving a reasonable opportunity under Section 11A of the Act is statutory in character and acceptance of a classification under a particular Chapter Sub-Heading is by no means an acceptance of the duty liability which would depend on several other circumstances which ideally would be a matter to be adjudicated on the response of the assessee to the notice.

10. Section 11A of the Act enjoins a duty on the concerned Central Excise Officer to

show cause an assessee as to why the assessee should not pay the duty not levied or not paid or short levied or short paid or erroneously refunded, as the case may be, details of which are required to be mentioned in the show cause notice. On cause being shown by the assessee, the notice(s) is required to be adjudicated upon by the Central Excise Officer issuing such notice under Section 11A which order can be the subject matter of further proceedings under the Act. Section 11A of the Act statutorily engrafts the principle of reasonable opportunity which would cast a mandatory duty on the Central Excise Officer to comply with the said requirement. While it is correct that duty has to be paid as per classification determined, acceptance of classification may not necessarily amount to acknowledgment of the liability to pay duty. This is because the particular Chapter Sub-Heading under which classification has been made and which has been accepted by the assessee may be covered by an exemption

notification or the question of exemption may be reasonably argued in the reply of the assessee, as may be. Alternatively, Section 11A contemplates a period of limitation for giving of the notice which gets extended in case of suppression, mis-statement etc. This could be another defence open to an assessee in support of his claim of nil duty liability while, at the same time, accepting the classification made.

11. The situations in which an assessee can legitimately deny its liability to pay duty even after accepting a classification may be so myraid that it is not for the Court to speculate the same. The very fact that the requirement of giving notice has been statutorily engrafted casting a mandatory character to the said requirement is sufficient for the Court to take the view that in the present appeals the demands raised for payment of duty following the classification under Chapter Sub-Heading 3920.32 without giving the assessee an opportunity as

contemplated by Section 11A of the Act is legally impermissible and therefore would not be tenable in law.

12. For the aforesaid reasons, we affirm the order and conclusion of the learned Tribunal and dismiss the appeals of the Revenue.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
AUGUST 30, 2017

ITEM NO.101

COURT NO.3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1453-1458/2001

COMMNR. OF CENTRAL EXCISE, AHMEDABAD

Appellant(s)

VERSUS

DAMODAR POLY FAB (P) LTD. AND ORS.

Respondent(s)

Date : 30-08-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. K. Radhakrishnan, Sr. Adv.
 Mr. Arijit Prasad, Adv.
 Ms. Kiran Bhardwaj, Adv.
 Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. Saurabh Suman Sinha, Adv.
 Mr. Jitendera Singh, Adv.
 For M/s. Ap & J Chambers, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the
signed order.

Pending application(s), if any, shall stand
disposed of.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER

(Signed order is placed on the file.)