

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). 5831 OF 2000

COMMISSIONER OF CENTRAL EXCISE, HYDERABAD

Appellant (s)

VERSUS

M/S. KALPANA CHEMICALS LTD.

Respondent(s)

(With office report)

Date: 21/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. Harish Chandra, Sr.adv.

Mr. Rupesh Kumar, adv.

Mr. T.A.Khan, adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s)

Mr. A.P.Dhamija, adv.(A.C.)

UPON hearing counsel the Court made the following

O R D E R

The appeal is disposed of.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5831 OF 2000

Commnr. of Central Excise,

Hyderabad

.. Appellant

vs.

M/s. Kalpana Chemicals Ltd.

.. Respondent

O R D E R

The respondent manufactures Sodium Carboxy Methyl Cellulose (SCMC). Prior to 1/3/1982 SCMC was classifiable under tariff item 68 of the Ist Schedule to the Central Excise and Salt Act 1945 as it then stood. With effect from Ist March 1982 a new tariff item was introduced being tariff item 15A(1) to the Ist Schedule to the Act which specifically related to SCMC. However, despite the amendment of the Ist Schedule, the classification proposed by the respondent of the SCMC under tariff item 68 was accepted by the excise authorities on 23.5.1982. On 20.8.1982 a show cause notice was issued to the respondent by the appellant seeking to recover the duty short paid for the period subsequent to 1/3/1982 on the basis that the goods had been wrongly classified under tariff item 68 for the aforesaid period.

-2-

The respondent contended that in view of the

decision of this Court in Commissioner of Central Excise vs. Cotspun Limited 1999 (113) ELT 353, (1999 (7) SCC 633) the appellant could not claim any duty on the basis of revised classification prior to the issuance of the show cause notice having regard to the acceptance of the classification list by the Department itself. The second submission was that the respondent was entitled to the benefit of certain exemptions.

The Tribunal upheld the submission of the respondent on the first issue. On the second issue the matter was remanded back to the excise authorities for redetermination of the accounts due taking into account the respondent's submission regarding the availability of the exemption notification.

The appellant has questioned the decision of the Tribunal only insofar as it pertained to first issue. According to the appellant the decision in Cotspun (supra) was no longer good law after the change effected by virtue of the amendment to the Finance Act 2000. Reliance has been placed on the decision of this Court in ITW Signode India Ltd. vs. Collector of Central Excise 2004 (3) SCC 48.

In that case the amendment to Section 11A effected by the Finance Act 2000 was challenged. The amendment sought to create jurisdiction in the

authorities to recover duties short levied despite the fact that classification had been approved by the Department during this period with retrospective effect from 17.11.1980. In other words, the basis of the principle enunciated in Cotspun was removed so that the ratio of the judgment would cease to apply for the period covered

by the amended Sec.11A. The challenge to the validity of the amendment to the Section was rejected by this Court in the decision in ITW Signode India Ltd. (supra).

In that view of the matter the order of the Tribunal insofar as it quashed the demands of duty prior to the date of the issuance of the show cause notice on the basis of the decision in Cotspun must be set aside. However, if the respondent becomes liable to duty it will be open to the respondent to claim the benefit of any exemption which it might be entitled under the law. Except to the extent aforesaid the decision of the Tribunal is confirmed. The appeal is accordingly disposed of.

.....J.

(RUMA PAL)

.....J.

(B.N.SRIKRISHNA)

New Delhi;

March 21, 2006.

.....J.

(DALVEER BHANDARI)