

SUPREME COURT OF INDIA

J.L. Morrison (India)

Vs.

Asstt. Collector, Central Excise

(B.N. Kirpal and M.B. Shah JJ.)

20.01.2000

ORDER

1. The question involved in this case is for the demand of duty made against the appellants in respect of cotton bandages and surgical sutures for the period from 20th March, 1985 to 31st August, 1985 and 26th March, 1985 to 31st August, 1985 by issuance of a notice dated 16th September, 1985.
2. It is not in dispute that these goods were being cleared on the basis of classification which had earlier been done. It is this classification which was sought to be disputed by the Department and the impugned notice issued raising a demand of Rs. 3,59,235.81 in respect of surgical sutures and Rs. 1,14,453.52 in respect of cotton bandages. The High Court set aside the demand in respect of cotton bandages but upheld the other demand.
3. This Court in Collector of Central Excise, Baroda v. Cotspun Ltd. 1999 (6) SCALE 223 has inter alia held that the levy of excise duty on the basis of an approved classification list is the correct levy until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. Revised assessment, it was held, could be made effective only prospectively. In the present case the aforesaid decision clearly applies inasmuch as without the proposal of revising the classification which had been approved, the respondent has sought to raise a demand by the impugned notice dated 16th September, 1985 in respect of an earlier period mentioned hereinabove and this, according to the aforesaid decision in Cotspun's case could not be done without issuance of show cause notice reclassifying the item and raising a demand prospectively. 'It was held in that case that it is only when the correctness of the approval is challenged that an approved classification list ceases to be such'. We make it clear that we are not expressing any opinion whether the items in question falls within tariff Item 14-E or not.
4. For the aforesaid reasons this appeal is allowed, judgment of the High Court insofar as it had disallowed the claim in respect of surgical sutures, is set aside. The effect of this would be that the impugned notice date 16th September, 1985 would stand quashed. The bank guarantee stands discharged.