

SUPREME COURT OF INDIA AIR 2000 3574(2)

Additional Collector of Central Excise

Vs.

Mahindra and Mahindra Ltd.

C.A.Nos.2206 with 4165 and 2905 of 1999

(S. P. Bharucha, Ajay Prakash Misra and N. Santosh Hegde, JJ.)

27.01.2000

ORDER

1. This is an appeal against an order of the Customs Excise and Gold (Control) Tribunal. The Tribunal followed the judgment of this Court in Philips India Ltd. v. Collector of Central Excise, Pune (1997) 6 SCC 31 in coming to its conclusion.
2. We find that, on another point, this matter is covered against the appellant by the judgment of the Constitution Bench of this Court in Collector of Central Excise, Baroda v. Cotspun Limited (1999) 7 SCC 633 : (1999 AIR SCW 4291 : AIR 2000 SC 197). Therefore, we do not go into the merits of the Tribunal's judgment.
3. The show cause notice in this case was issued on 4th November, 1988 for the period October, 1983 to August, 1987. The clearances in question during this period had been made on the basis of approved price lists. The judgment in Cotspun Limited holds :

"14. The levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show-cause notice. It is only when the correctness of the approval is challenged that an approved classification list ceases to be such.

15. The levy of excise duty on the basis of an approved classification list is not a short levy. Differential duty cannot be recovered on the ground that it is a short levy. Rule 10 has then no application.

4. In the circumstances, the civil appeal has to be dismissed.

5. So ordered.

6. No order as to costs.

Civil Appeal Nos. 4165 of 1998 and 2095 of 1999 :

7. The facts are similar to those mentioned in the case of Addl. Collector of Central Excise, Bombay-II v. Mahindra and Mahindra Ltd. (Civil Appeal No. 2206 of 1999). The civil appeals are, therefore, dismissed.

8. No order as to costs.

Order accordingly.