

SUPREME COURT OF INDIA

Commissioner of Customs and Central Excise

Vs.

Messrs Charminar Nonwovens Limited

C.A.No.6559-6560 of 1997

(S. R. Babu and G. P. Mathur JJ.)

05.05.2004

JUDGMENT

Rajendra Babu CJI.

1. In these matters the question for our consideration is whether Floor Coverings and Filter Fabrics are to be classified under sub-heading No.5703.90 of the Tariff Item attracting duty at the rate of 30% ad valorem or whether it should be classified under sub-heading 5703.20 attracting duty at the rate of 5% ad valorem. A detention memo issued to the respondent stating that the goods lying in the factory premises, specified in the schedule, were liable for confiscation. The respondent was ordered not to dispose of the goods in question or otherwise deal with or part with the same unless he heard in the matter to the proper Central Excise Authority and a notice was issued on 5.11.1996 to the respondent to show cause as to why the goods should not be classified as stated above.

2. The respondent filed a writ petition before the High Court of Andhra Pradesh challenging this show cause notice and the detention order. On an earlier occasion on similar adjudication, the appellate authority had upheld the claim of the assessee. The High Court proceeded on the basis that the appellate order had become final and expressing agreements with the same, quashed the notice. The argument on behalf of the appellant is that if the view of the High Court is correct a classification cannot be reviewed and any such classification once made cannot be reviewed even if the earlier view is erroneous, and such a course would result in great loss of revenue was not accepted and allowed their petition and quashed the show cause notice. Hence this appeal.

3. The matter relating to commodity classification whether it falls under one heading or the other or attracts higher or lower duty has to be decided on facts arising in each case. Even though, the decision may have been taken earlier at one point of time but on further investigation discover new fact or the law has changed, as is the stand in the present case, the matter has to be re-examined. It is not at all proper for the High Court to interfere in such matters at the stage of issue of the show cause notice. We, therefore, set aside the order made by the High Court and remit the matter to the concerned authority for adjudication. It shall be

open to the respondent to file reply to the show cause notice as they deem fit, if not already filed within a period of one month from today or such further time as may be allowed by the Adjudicating Authority. We direct the Adjudicating Authority to dispose of the matter thereafter in accordance with law.

4. The appeals are allowed accordingly.

CIVIL APPEAL NOS. 776/1999, 3568-3571/2000, 6270-6271/2000, 6447-6448/2000, 341-344/2001, 4446/2001, 6198/2001, 1810/2002)

5. In these cases also identical issue as arises in C.A. 6559-60/1997 fell for consideration before the Tribunal. The Tribunal took the view that the decision rendered by the Andhra Pradesh High Court earlier in the case of M/s Charminar Nonwovens Ltd. would be applicable. Inasmuch as we have set aside the order made by the High Court and remitted the matter to the Adjudicating Authority, we follow suit in these cases and set aside the order of the Tribunal and remit the same to the Tribunal for consideration of the matter afresh in accordance with law.