

**SUPREME COURT OF INDIA**

Collector of Central Excise, Kanpur

Vs.

Matador Foam

C.A.Nos.3832-3837 of 1999

(S.H.Kapadia and A.R.Lakshmanan JJ.)

05.01.2005

**JUDGMENT**

**S.H.Kapadia, J.**

1. These Appeals had been argued and had been decided by us by a Judgment reported in Thereafter LA. Nos. 19 to 24 of 2005 were filed seeking a clarification that the question of limitation, even though raised, had not been dealt with by this Court in the above mentioned judgment. On finding that the question of limitation had been argued and had not been dealt with, this Court restored these Appeals for the limited aspect of considering limitation. The Judgment on the question of classification has been maintained.

2. We have now heard parties on the question of limitation. Few necessary facts are that three show cause notices were issued on 31st of May, 1990. The periods of the show cause notices were 4-1-1990 to 31-3-1990, 12-2-1990 to 31-3-1990 and 27-12-1989 to 31-3-1990 respectively. Thus the demand in all the three show cause notices was within the period of six months.

3. The Tribunal has, however, held in favour of the Respondents on the question of limitation by holding that the order on the show cause notices is based on a circular dated 23rd of October, 1990 issued by the Board. The Tribunal relied upon the judgment of this Court in the case of H.M. Bags Manufacturer v. Collector of Central Excise reported in wherein it has been held that change of opinion based on a trade notice can only operate prospectively. In this Judgment it has been noticed that the concerned trade notice itself clarified that it would operate "henceforth". Therefore this Court held that classification pursuant to the trade notice can only be prospective. The Tribunal has therefore held that the demands for a period prior to this circular dated 23rd of October, 1990 could not have been made and such demands must be deemed to be time-barred.

4. On behalf of Respondents it has been submitted that Notices had been issued on 17th of May, 1990 under Rule 173B(5) for Modification of the classification list. It was submitted that the Modification Order was passed only on 13th September, 1990. It was pointed out

that this Order clarifies that the new classification would be applied "henceforth". It is submitted that, therefore, there could be no demand for a period prior to 13th September, 1990. It is submitted that the demands were not sustainable for this reason.

5. We are unable to accept the reasoning of the Tribunal and/or the submissions made before us today. The Tribunal noticed that the demand notices were dated 31st of May, 1990. They were thus prior to the circular dated 23rd October, 1990. Therefore, it is surprising that the Tribunal still concludes that the demand notices were based on that circular. Even otherwise, this circular is merely clarificatory. It does not provide that the classification as per the Circular, can only be after the date of the circular. The submissions made by the counsel in Court today ignore amended Section 11A of the Central Excise Act, 1944 which categorically provides that if a duty has not been levied or paid or has been short levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment short-levy or short-payment or erroneous refund was on the basis of any approval, acceptance or assessment, the Central Excise Officer can serve a notice as to why payment should not be made. This amendment has been made retrospectively with effect from 17th November, 1980. The effect of this amendment was considered by this Court in the case of *ITW Signode India Ltd. v. Collector of Central Excise reported in*<sup>1</sup> (relied on) wherein the validity of this amendment was upheld. The view taken by this Court in *Collector of Central Excise v. Cotspun Limited* reported in was held to be no longer good law. The Order directing Modification of classification list has no bearing on the aspect of demand made under the Show Cause Notices.

6. In this view, we do not find the demand to be time-barred. Therefore, on the question of limitation it is held in favour of the appellants.

7. The Appeals are disposed of accordingly.

<sup>1</sup>2004 (3) SCC 48