

(2003) 02 SC CK 0009
In the Supreme Court Of India
Case No : Civil Appeal No. 7868 Of 1995

ITW Signode India Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2003) 153 ELT 501 : (2003) 9 SCC 225 : (2003) 5 SCR 751 Supp

Hon'ble Judges : S. S. M. Quadri, J; Ashok Bhan, J

Bench : Division Bench

Advocate : V. Lakshmikumaran, Alok Yadav and V. Balachandran, for the Appellant; N.K. Bajpai, Vibha Dutta Makhija and B. Krishna Prasad, for the Respondent

Judgement

1. Earlier this appeal was adjourned awaiting the judgment of this Court in C.A. No. 2693 of 2000, Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore, . When this appeal is taken up for hearing today, Mr. Ba-jpai, the learned Counsel appearing for the Revenue, invited our attention to the judgment in Easland Combines (supra) and submitted that the point involved in this appeal is covered by the said judgment.

2. In Collector of Central Excise, Baroda Vs. M/s Cotspun Ltd., , a Constitution Bench of this Court laid down as follows :

"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 ceased 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."

3. The Parliament "has amended Section 11A of the Central Excise Act, 1944 by Finance Act, 2000 (10 of 2000) with effect from November 17, 1980 with a view to change the basis of the judgment in the afore-mentioned case. The question whether the amendment has changed the basis of the judgment in Cotspun's case (supra), is the question that arises in this case. The same question came up for consideration of this Court in Easland Combines (supra). A bench of two learned Judges took the view that the amendment which conferred power to correct the errors or mistakes in approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods cannot be said to be unreasonable. It was further held that with retrospective effect, the legislature has empowered the Central Excise Officer to set at naught the erroneous approval of classification list or acceptance of price list or assessment order, and, on that premise, it was laid down,

"Hence, it is held that in view of the amendment of Section 11A(1), the decision rendered by this Court in Cotspun's case (supra) would not be a good law. Show cause notice for correcting errors or mistakes in approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under the provisions of the Act or the Rules made thereunder could be issued within the prescribed period."

4. Having gone through the judgment carefully and given our anxious consideration to the said judgment in Easland Combines (supra), we are unable to agree with the view taken by the bench of two learned Judges in regard to either the import of the amendment or the effect thereof and, in our view, the amendment does not alter the basis of the judgment in Cotspun's case (supra).

5. We, therefore, consider it appropriate to refer the appeal to a bench of three learned Judges.

6. The Registry is directed to obtain the orders of Hon'ble Chief Justice for listing the case before a bench of three learned Judges.