
(2008) 09 MAD CK 0068

In the Madras High Court

Case No : Writ Appeal No's. 19 to 21 of 2001 and Writ Petition No's. 3847 and 22276 of 1993 and 5096 of 1994 and C.M.P. No's. 137 of 2001 in W.A. No. 19 of 2001, 138 of 2001 in W.A. No. 20 of 2001 and 139 of 2001 in W.A. No. 21 of 2001 and W.M.P. No's. 6168 of

Madura Coats Ltd.

APPELLANT

Vs

The Collector of Central Excise and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 173B, 173G, 173Q, 8(1), 9(1)

Central Excises and Salt Act, 1944 — Section 11A(1), 5A(1)

Customs Act, 1962 — Section 3(1)

Customs Tariff Act, 1975 — Section 3

Citation : (2008) 09 MAD CK 0068

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : N.S. Sivam, for the Appellant; M. Ravindran, Addl. Solicitor General assisted by E.R.K. Moorthy, Central Govt. Standing Counsel and K. Gunasekar, Central Govt. Standing Counsel, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The appellant-writ petitioner (M/s. Madura Coats Limited) has preferred the Writ Appeals against the impugned

common order dated 3.11.2000 passed by the learned single Judge in W.P. Nos. 19201 of 1992 and 5969 and 19286 of 1993, whereby and

whereunder, the learned single Judge, without deciding the Writ Petitions on merits, asked the writ petitioner-Madura Coats Limited to avail of the

alternative remedy of appeal before the Central Excise and Gold (Control) Appellate Tribunal (for short, "the CEGAT"), now known as "the

Central Excise and Service Tax Appellate Tribunal" (for short, "the CESTAT").

2. In the Writ Petition Nos. 19201 of 1992, 5969 and 19286 of 1993, which are

under challenge in the respective Writ Appeal Nos. 19 to 21 of 2001 and in the other connected Writ Petition Nos. 5096 of 1994, 3847 of 1993 and 22276 of 1993, which are being heard along with the Writ Appeals, the show cause notice(s) or the final order(s) passed under the relevant provisions of the Central Excise Act/Central Excise Tariff Act/Central Excises and Salt Act, have been challenged.

3. In all the Writ Appeals/Writ Petitions as common questions of law are involved, they were heard together and disposed of by this common judgment.

4. The writ petitioner-Madura Coats Limited-assessee (hereinafter referred to as "the assessee") for their manufacture of sewing threads made out of cotton, nylon, polyester and polypropylene yarns, has imported man-made filaments and fibres, in the classification list annexed with the provisions of the Central Excise Tariff Act, 1986. The assessee has specifically stated that cotton, nylon, polyester and polypropylene yarns which are used for sewing threads, are being manufactured out of indigenous and imported man-made filaments and fibres which had sustained Central Excise Duty and Counter-vailing Duty (CVD) under the provisions of the Customs Act, in lieu of the Central Excise Duty, and therefore, for those sewing threads, the assessee is entitled to avail of the exemption granted in Notification No. 318 of 1986, dated 22.5.1986 and Notification No. 435 of 1986, dated 6.10.1986, both issued by the Central Government.

5. The aforesaid Notifications dated 22.5.1986/6.10.1986 were issued by the respondents-Central Government (Central Excise Authorities), granting exemption to the classified list of "goods", which were reiterated, vide consequential Notifications issued between 1987 and 1993.

6. In regard to certain matters, of the year 1987, i.e. after nearly six years, the Collector of Central Excise, Madurai, issued different show cause notices on the assessee, as to why the exemption granted under Notification 53 of 1987/C.E., dated 1.3.1987, Notification No. 47 of 1990/C.E., dated 20.3.1990, Notification No. 53 of 1991/C.E., dated 25.7.1991, as amended by Notification No. 83 of 1991/C.E., dated 19.8.1991 and Notification No. 23 of 1992/C.E., dated 1.3.1992, be not denied to the assessee in respect of the nylon sewing thread manufactured out of imported filament yarn and why the penalties be not imposed on it under Rules

9(2) and 173-Q of the Central Excise Rules, 1944, for violation of Rule 173-B, 173-G and 9(1) of the Central Excise Rules, 1944. One of such notices was issued on the assessee, vide C. No. V/54.02/15/28/92-Adjn, dated 26.6.1992 for the period 1.6.1987 to 31.3.1992.

7. According to the assessee, appropriate duty of excise has already been paid by it and in view of the exemption granted by the competent authority, vide different Notifications, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975, was not payable. After about six years, i.e. in the year 1992, pertaining to the period of assessment for the year 1987, the Collector of Central Excise, Madurai, interpreted that as per Sl.No.3 of Notification No. 53 of 1987/C.E, dated 1.3.1987, in the matter of exemption of excise duty granted for the double or multi-fold yarn made out of yarn falling under Chapters-52, 54 or 55, on which appropriate duty of excise has already been paid, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (Act 51 of 1975) as mentioned under Sl. No. 4 of split yarn, has not been mentioned in Sl. No. 3 and therefore, for the double or multi-fold yarns made out of imported filaments and fibres, the second incidence of excise duty should be imposed. On this interpretation, the show cause notice(s) under the proviso to Section 11-A(1) of the Central Excises and Salt Act, were issued demanding duty retrospectively from 1.6.1987 onwards. It was submitted that except the Collector of Central Excise, Madurai, no other Central Excise Authority in India, had given such interpretation to Notification No. 53 of 1987/C.E, dated 1.3.1987. Since the interpretation would cascade the prices of commodities made out of the imported filaments or fibres, the assessee-Madura Coats Limited, the South India Mill Owners Association and the All India Tyre Manufacturers Association, represented before the Central Government/the Central Board of Excise and Customs, to issue necessary clarification as direction to the Collector of Excise, Madurai. Since the issue was pending consideration before the Central Government and the Board of Excise and Customs, the Collector of Central Excise, Madurai, and the Assistant Collector, under his jurisdiction, were requested to keep the show cause notice(s) issued, in abeyance till such information is received. However, as the Collector of Central Excise, Madurai, passed the impugned orders, the writ petitions were preferred before

the learned single Judge challenging the same, as also the show

cause notice, which were not entertained by the learned single Judge on the ground of availing of the alternative remedy.

8. In W.P. Nos. 5096 of 1994 and 22276 and 3847 of 1993, the demand of second incidence of excise duty of cotton sewing threads for the relevant periods, are under challenge.

9. The question of law ""Whether the counter-vailing duty paid under the provisions of the Customs Act, is payment of central excise duty or additional customs duty"" being common in both the Writ Appeals and the Writ Petition, they were all heard together.

10. Learned Counsel appearing for the assessee, while referring to the Notifications issued by the respondents-Central Government (Central

Excise Authorities) between 1986 and 1993, also referred to certain decisions of the Supreme Court in regard to the question of additional

customs duty. According to the learned Counsel for the assessee, the demand of duty from retrospective date, i.e. from 1st October, 1986, has

been made only by the Collector of Central Excise, Madurai and no other Central Excise authorities of India. A wrong interpretation has been

given in regard to Notification No. 53 of 1987/C.E, dated 1.3.1987, giving reference to the decisions of the Supreme Court in the case of

Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, , wherein, the Supreme Court held that since

Section 3(1) of the Customs Act, 1962 enables the imposition of additional customs duty, the additional customs duty cannot be re-opened as the

Countervailing Duty in lieu of Central Excise Duty and therefore, payment of Countervailing Duty on the imported man-made filament and fibres,

would not be re-opened to avail of the exemption. According to the learned Counsel for the assessee, this was the reasoning for confirming the

question of second incidence of Excise Duty of sewing threads and cords made out of imported man-made filament and fibres.

11. Reliance was placed on the decision of the Supreme Court in the case of Thermax Private Limited Vs. The Collector of Customs (Bombay),

New Customs House, , wherein the Supreme Court held that the Countervailing Duty imposed on the imported articles is the ""Central Excise

Duty"" suffered by similar articles manufactured in India.

12. It was informed that the assessee relied on the decision of the Supreme Court reported in the case of ""Thermax Private Limited"" (supra) and at the time of hearing of Writ Petition Nos. 19201 of 1992, 19286 and 5969 of 1993, wherein the Central Government Standing Counsel submitted before the Court that since the Union of India, Central Board of Excise and Customs, and the officials of the Central Excise Collectorate, Madurai, are parties to those Writ Petitions and whatever the decision as would be given, the Central Government would abide by the decision of this Court and on the basis of such submission, the learned single Judge of this Court reserved orders; while so, the Central Government Standing Counsel submitted before the learned single Judge that he has received the communication to the effect that the Central Government is going to issue appropriate Notification clarifying the subject matter of the Writ Petitions and therefore, rendering decision in those Writ Petitions shall be kept in abeyance. The Central Government thereafter issued Notification No. 104 of 1993/C.E., dated 28.12.1993, directing that for the words, ""has already been paid"", in the Notification No. 31 of 1993/C.E, dated 28.2.1993, the words, ""under the said Schedule, or as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), has already been paid"", be substituted. This substitution rendered the orders of the Collectorate of Customs, Madurai and his subordinates, impugned in the Writ Petitions, as illegal and therefore, when the impugned Writ Petitions were taken up, the learned Central Government Standing Counsel produced a letter dated 31.1.1994, issued by the Deputy Secretary (TRU) from the Department of Revenue, Tax Research Unit, Government of India, and submitted that the Notification No. 104 of 1993/C.E., dated 28.12.1993 would operate prospectively. It was informed that the learned Counsel appearing for the assessee, wanted to make submissions on the above claim of prospective operation, when the learned single Judge kept the matters pending since 1993.

13. In the meantime, the Supreme Court of India, in the case of Hyderabad Industries Ltd. and Another Vs. Union of India (UOI) and Others, , observed that the correctness of the decision rendered in the case of Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, , requires consideration by a Larger Bench. Subsequently, the Constitution Bench (Five Judges) of the Supreme Court of India,

in the case of Hyderabad Industries Ltd. and Another Vs. Union of India and Others, , taking into consideration the decision aforesaid, including

the decision in the case of Thermax Private Limited Vs. The Collector of Customs (Bombay), New Customs House, , held that the interpretation

of Counter-vailing Duty given in Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, , is incorrect and

thereby, reversed the said decision Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, .

14. It is stated that the aforesaid judgment(s) of the Supreme Court were placed before the learned single Judge, but without going into the merits,

after more than seven years of the filing of the Writ Petition(s), the learned single Judge, by the impugned order dated 3.11.2000, asked the

assessee (Madura Coats Limited) to avail of the alternative remedy of appeal before the CEGAT.

15. So far as the Writ Petition Nos. 22276 and 3847 of 1993 are concerned, according to the learned Counsel for the assessee-Madura Coats

Limited, the Headings 52.03 and 52.04 of Chapter 52 (cotton) of the Central Excise Tariff Act specifies ""Yarn includes sewing threads"", though

there is no ambiguity, the Central Excise Authorities at Madurai, taking the view that the yarn and sewing threads are different commodities, sought

to impose second incidence of Excise Duty of cotton sewing threads made out of duty-paid yarn. The Central Government, vide Notification No.

318 of 1986/C.E, dated 22.5.1986, exempted imposition of Excise Duty of doubled or multi-folded yarn under Chapter 54 or Chapter 55 of

Central Excise Tariff Act. The Central Excise Authorities of Madurai Collectorate, holding that since Chapter 52 (cotton) was not mentioned in the

above Notification No. 318 of 1986/C.E, dated 22.5.1986, the second incidence of Excise Duty of Rs. 15/kg. could be imposed on cotton

sewing threads awaiting the clarification from the Board of Central Excise and Customs. The Central Government, vide Notification No. 435 of

1986, dated 6.10.1986, substituted Chapter Nos. 52, 54 and 55, in Notification Nos. 318 of 1986, dated 22.5.1986, in the place of Chapter 54

or 55. In view of the Central Government Notifications, the Central Excise Authorities, Madurai, stopped imposition of second incidence of Excise

Duty of sewing threads. However, the show cause notice was once issued, but after about six years of its issuance, the Assistant Collector of

Central Excise, Madurai Collectorate, Tirunelveli, passed an order in No. 17 of 1992, dated 31.1.1992, holding that the Notification No. 435 of

1986, issued on 6.10.1986, would operate prospectively, and therefore, the assessee-Madura Coats Limited is liable to pay the second incidence

of duty of Rs. 14,33,202.81 of cotton sewing threads for the period from 1.3.1986 upto 5.10.1986 and the said amount would be adjusted in the

deposit of Rs. 15 lakhs made by the assessee-Madura Coats Limited, on 29.3.1989. It was submitted that while in all over India, the substitution

has been interpreted to have come with effect from the date of the Notification No. 318 of 1986, dated 22.5.1986, the Central Government,

having corrected the mistake earlier committed by it, it is only the Excise Collectorate, Madurai, who has given wrong interpretation that it will

come into operation only from the prospective date and imposed the second incidence of Excise Duty for the period from 1.3.1986 to 5.10.1986.

During the pendency of the Writ Petitions which are being challenged in the present Writ Appeals and the other Writ Petitions which are before us,

the Central Government issued further Notification in 1993 and refund was sought for, but the Central Government, by their letter dated

13/21.10.1993, as impugned in W.P. No. 22276 of 1993, informed that the Board of Central Excise has examined the matter and it was not

possible to accede to the request of refund/waiver.

16. Learned Counsel appearing for the assessee relied on Notification No. 467/86-C.E, dated 23.12.1986 (as seen from Notification No. 53 of

1987), wherein, with regard to the specified varieties of cotton yarn and man-made fibres, etc., exemption had been granted by the Central

Government in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, at Sl. Nos. 3 and 4 in the Table

annexed to the said Notification dated 23.12.1986, as quoted hereunder:

Sl. No. Chapter No. Heading No or Description Rate Conditions

Sub-heading No. of goods

(1) (2) (3) (4) (5)

03 52, 54 and 55 Yarn, doubled Nil If such yarn, doubled or

or multifold multifold, is manufactured out of yarn falling under Chapter 52, 54 or 55 of the said Schedule on which the appropriate duty of excise has already been paid.

04 54.02 and 54.04 Split yarn Nil If such split yarn has been produced from mother yarn for split yarn on which the appropriate duty of excise under the said Schedule or, as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), has already been paid.

17. It was submitted by the assessee that the Revenue issued the impugned show cause notice merely on the ground that the sentence ""additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) has already been paid"", has not been mentioned in Column No. (4) of Sl.No.3 under the sub-heading Nos. 52, 54 and 55 of the said Notification dated 23.12.1986, as quoted above.

18. When the Writ Petition(s) in question, were preferred, the aforesaid facts were brought to the notice of the Revenue, which took up the matter up to the Central Government, whereinafter, the Revenue issued Central Excises Notification No. 104 of 1993, dated 28.12.1993. It is thus seen that the Ministry of Finance, Department of Revenue, Government of India, in exercise of the powers conferred by Sub-section (1) of Section 5-A of the Central Excises and Salt Act, 1944 (1 of 1944), made the following further amendment in the earlier Notification of the Government of India

in the Ministry of Finance, Department of Revenue No. 31 of 1983, Excises, dated 28th February, 1993, namely:

In the Table annexed to the said Notification, against Sl. No. 50, in column No. (3), for the words ""has already been paid"", the words and figures

under the said Schedule, or as the case may be, the additional duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), has already been

paid,"" shall be substituted.

19. It was submitted that the Supreme Court in the case of Porritts and Spencer (Asia) Ltd. Vs. Collector of Central Excise, New Delhi, , in the

case of Collector of Central Excise, Jaipur Vs. Banswara Syntex Ltd., and in the case of Rajasthan Spg. and Wvg. Mills Ltd. Vs. Commissioner

of Central Excise, Jaipur, , having held that the single yarn alone would sustain the ""duty"" and not the double or multi-folded yarn made out of the

duty-paid-yarns, the interpretation given by the Central Excise Authorities of Madurai, cannot be sustained. It is further submitted that in the case

of Government of India and Others Vs. Indian Tobacco Association, , the Supreme Court, having held that the amended Notification intended to

rectify the mistake, would have retrospective effect and operation, the impugned common order passed by the learned single Judge, as also the

impugned show cause notice(s), cannot be sustained and are liable to be set aside.

20. Learned Counsel appearing for the assessee also referred to the decision of the Supreme Court reported in 2005 (183) ELT 238 (SC)

(Commissioner of Central Excise, Trichy v. Madura Coats Limited), wherein, in the case of the very same appellant-assessee, namely Madura

Coats Limited, the following observation was made by the Apex Court:

2. The principle enunciated by the decisions in the two cases relied upon by the Tribunal is not disputed by learned Counsel for the appellant. We

are of the view that having regard to the fact that the show cause notice was issued on the basis that the yarn in question was twisted yarn, there is

no useful purpose would be served by remanding the matter back to the Departmental Authorities for considering whether the yarn in question is

twisted or not. The appeal is dismissed without any order as to costs.

21. Learned Additional Solicitor General appearing for the Revenue giving reference to a decision of the Division Bench of this Court in the case of

Madura Coats Limited v. Commissioner of C. Ex., Madurai reported in 2008 (227) E.L.T. 355 (Mad), submitted that in the case of the very same

appellant/writ petitioner/assessee, when a show cause notice was challenged, the Division Bench of this Court, instead of interfering with the

matter, allowed the petitioner therein to avail of the alternative remedy.

22. On instructions, learned Additional Solicitor General appearing for the Revenue further submitted that there is no dispute with regard to the

classification of the ""goods"" which are covered under Sl. Nos. 3 and 4 (table quoted above) and there is also no dispute in the fact that the

assessee has already paid the additional customs duty on the same. Learned Additional Solicitor General fairly accepted that the case of the

appellant/writ petitioner/assessee is covered by the decision of the Constitution Bench of the Supreme Court in the case of Hyderabad Industries

Ltd. and Another Vs. Union of India and Others, wherein, the Apex Court held that, ""...The levy of additional duty being with a view to provide

for counterbalancing the excise duty leviable, we are clearly of the opinion that additional duty can be levied only if on a like article excise duty

could be levied. The decision in Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others, to the extent it

takes a contrary view, does not appear to lay down the correct law....

23. We have heard the learned Counsel appearing for the parties and noticed their rival contentions.

24. Learned Additional Solicitor General appearing for the Revenue accepted that the classification of the "goods" are covered under Sl. Nos. 3

and 4 of the Table quoted above in this judgment and that there is no dispute that the assessee has already paid the additional customs duty on the

same. He also fairly accepted that the case of the appellant-writ petitioner-assessee (Madura Coats Limited) is covered by the decision of the

Constitution Bench of the Supreme Court in the case of Hyderabad Industries Ltd. and Another Vs. Union of India and Others, , wherein the

Supreme Court held that, ""...The levy of additional duty being with a view to provide for counterbalancing the excise duty leviable, we are clearly

of the opinion that additional duty can be levied only if on a like article excise duty could be levied. The decision in Khandelwal Metal and

Engineering Works and Another Vs. Union of India (UOI) and Others, to the

above extent it takes a contrary view, does not appear to lay down the correct law...

25. Now, the only question is that in spite of such undisputed facts and the decision(s) of the Supreme Court, after such a long lapse of time after

the passing of the impugned show cause/orders and the impugned common order passed by the learned single Judge, the Writ Petition(s)/Writ

Appeals should be dismissed on the sole ground of alternative remedy of appeal before the CEGAT/CESTAT.

26. We have noticed that in the case of the very same appellant/writ petitioner- assessee (namely Madura Coats Limited), in the case of

Commissioner of Central Excise, Trichy v. Madura Coats Ltd. reported in 2005 (183) E.L.T. 238 (SC), the Supreme Court interfered with the

show cause notice issued on the basis that the yarn in that case was a twisted yarn. The Apex Court in that case held that no useful purpose would

be served by remanding the matter to the departmental authorities, as the principle had already been enunciated by the decisions of the Supreme

Court in two cases, namely Collector of Central Excise, Jaipur Vs. Banswara Syntex Ltd., and Porritts and Spencer (Asia) Ltd. Vs. Collector of

Central Excise, New Delhi, , which were relied upon by the Tribunal in that case 2005 (183) E.L.T. 238 (SC) (supra) and not disputed by the

Counsel for the Revenue.

27. In the case of Union of India (UOI) and Another Vs. Vicco Laboratories, , the Supreme Court, while deciding the question of interference

with the show cause notice by a Writ Court, held as follows:

30. Normally, the Writ Court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get

ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case

for proceeding against the person against whom the show cause notices have been issued. Abstinance from interference at the stage of issuance of

show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is

not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the

Writ Court would not hesitate to interfere even at the stage of issuance of show

cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

31. The case of the respondent that the classification of the said products having attained finality pursuant to the decision of this Court, the appellants have no jurisdiction to issue impugned show cause notice on the ground on which it has been issued and it virtually amounts to re-opening of the issue which stands concluded by the decision of this Court, and that therefore it is an abuse of process of law. The High Court after referring to the history of litigation rightly concluded that the matter stood concluded by judgments of this Court and the High Court in respondents' case.

28. The question of "alternative remedy", fell for consideration before the Supreme Court in the case of *Dhampur Sugar Mills Ltd. v. Union of India* reported in 2000 (122) E.L.T. 333 (SC), and taking into consideration the fact that the petition in that case was pending for more than seven years, the Apex Court in that case, held as follows:
Leave granted.

2. The order under challenge was passed on a writ petition that had been filed in 1992. The Division Bench took the view that there was an alternate remedy under the Central Excise and Salt Act, which the petitioner had not availed of. It, therefore, took the view that it would not be appropriate for it to give an opinion prior to adjudication.

3. The petition had been pending for seven years and it does seem a little harsh to relegate the appellant after seven years to the alternate remedy.

The learned Additional Solicitor General fairly states, in the circumstances, that the order under challenge may be set aside and the writ petition

(Civil Misc.) Writ Petition No. 747 of 1962) may be restored to the file of the High Court to be heard and disposed of on merits. This is appropriate and it should be done expeditiously.

4. Order on the appeal accordingly.

5. No order as to costs.

29. In the cases on hand, in all the cases, final orders have been passed, except in one case in which the show cause notice is under challenge. It

has been accepted by the learned Additional Solicitor General appearing for the Revenue that the ""goods"" are covered by the subsequent

clarification made by the Central Government and the decision of the Supreme Court in the case of Hyderabad Industries Ltd. and Another Vs.

Union of India (UOI) and Others, and the Constitution Bench decision of the Supreme Court in the case of Hyderabad Industries Ltd. and

Another Vs. Union of India and Others, .

30. It is also not in dispute that the Writ Petition Nos. 3847 and 22276 of 1993 which are before us, are pending before this Court for more than

15 years.

31. In the above said background, we are of the view that the learned single Judge, after keeping the cases pending for more than seven years

from the date of their filing, i.e. in 1992/1993, on the request of the learned Standing Counsel appearing for the Central Government, awaiting the

decisions of the Central Government and after the issuance of Central Government Notification No. 104 of 1983, dated 28.12.1993, clarifying on

the matter by making amendment to the relevant Notification, it was not desirable for the learned single Judge to ask the appellant-writ petitioner-

assessee-Madura Coats Limited, to avail of the alternative remedy of appeal before the CEGAT/CESTAT.

32. The principles enunciated by the Supreme Court in the decisions as referred to above, are applicable to the present cases, having been not

disputed by the learned Additional Solicitor General appearing for the Revenue, he having accepted the fact that the classification of the ""goods"" of

the writ petitioner-assessee-Madura Coats Limited, are covered under Sl. No. 3 (as extracted in the Table in the earlier paragraph of this

judgment) and that there is no dispute in the fact that the assessee has already paid the additional customs duty on the same, we are of the view

that no useful purpose would be served by remanding the cases to the departmental authorities for considering the same issue which had already

been settled by the Supreme Court.

33. We accordingly set aside the impugned common order passed by the learned single Judge and the impugned show cause notice(s)/final

order/letter issued by the Revenue. The Writ Appeals and the Writ Petitions are allowed. But there shall be no order as to costs. The Miscellaneous Petitions are closed.