
(2002) 06 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 3688 of 1988

Super Steels Corporation

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 05-06-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226

Citation : (2002) 103 ECR 492 : (2002) 143 ELT 504

Hon'ble Judges : J.P. Devadhar, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Ragesh Mehta and P.G. Bhatia, for the Appellant; R. Asokan, instructed by H.D. Rathod, for the Respondent

Judgement

J.P. Devadhar, J.—In this petition, the Petitioners have challenged the validity of four show cause notices dated 2nd September 1986, 17th August 1987, 16th November 1987 and 23rd May 1988 wherein the Excise Authorities have purported to demand and recover the excise duty under the provisions of Section 11-A of the Central Excise Act, 1944, being the short levy on the goods cleared by the Petitioners as per the approved price list during the periods as more particularly set out in each of the show cause notices.

2. The facts relevant for the present petition are as follows :-

The Petitioner No. 1 is a registered partnership firm engaged in the manufacture, inter alia, of LPG Tanks. The said manufacturing activity was carried on by the Petitioners mostly on a job work basis, i.e. the Petitioners receive raw materials from their principals and manufacture the goods as per the prescribed specifications.

3. On 17th March 1986, the Petitioners filed Classification List Nos. 1 and 2 in respect of LPG Tankers manufactured by them by classifying under Central Excise Tariff Heading 8707.00. By a letter dated 8th August 1986, the office of the

Central Excise Department directed the Petitioners that the LPG Tanks manufactured by the Petitioners are liable to duty under Heading 8704.00 of Central Excise Tariff Act, 1985 as motor vehicle for transport of goods and not under sub-heading 8707.00 thereof as contended by the Petitioners. By the said letter, the Petitioners were directed to furnish revised classification list classifying the LPG Tanks manufactured by them under sub-heading 8704.00 of the Central Excise Tariff and the Petitioners were directed to pay duty at 20% ad valorem on all the clearance of LPG Tanks effected by them.

4. Accordingly, on 18th August 1986 the Petitioners filed supplementary classification list classifying their goods under Central Excise Tariff 8704.00. The said classification list was approved by the Excise Authorities sometime in December 1987. Accordingly, the Petitioners have cleared the goods and paid the excise duty as per the classification list duly approved by the Central Excise Authorities.

5. By the impugned show cause notices, the Excise Authorities have purported to recover the excise duty on the goods manufactured and cleared by the Petitioners pursuant to the classification list duly approved by the Excise Authorities by purporting to classify the same under Tariff Item 8707.00 of the Central Excise Tariff. In the show cause notices. It is stated that in view of the subsequent information received by the Respondents, the goods manufactured and cleared by the Petitioners were liable to be classified under subheading 8707.00 and accordingly the show cause notices were issued to the Petitioners stating therein as to why the differential duty should not be recovered from the Petitioners and penalty should not be levied upon the Petitioners. Challenging these show causes notices, the present petition has been filed.

6. Mr. Mehta, learned Counsel appearing for the Petitioners, submitted that the show cause notices issued by the Respondents seeking to recover excise duty for the past period during which the clearances have been effected as per the classification list duly approved by the Central Excise Authorities are without jurisdiction and hence the same are liable to be quashed and set aside. He relied upon a judgment of the Apex Court in the case of Collector of Central Excise, Baroda Vs. M/s Cotspun Ltd., , wherein in paragraphs 13 and 14 it is held as follows :-

"13. 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.

14. 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."

In the light of the aforesaid decision of the Apex Court, it is evident that where

the clearances have been effected as per the approved classification list, it is not open to the Excise Authorities to demand and levy excise duty for those period on the ground that there is short levy.

7. Mr. Asokan, learned Counsel appearing on behalf of the Respondents, submitted that the petition is premature and since the Petitioners have approached this Court even before the show cause notices are adjudicated upon, no order be passed in favour of the Petitioners and the Respondents must be permitted to complete the adjudication proceedings in accordance with law.

8. Mr. Asokan further submitted that in view of the subsequent knowledge that there was a change in the manufacturing activities carried on by the Petitioners, the Respondents were justified in seeking to classify the goods manufactured by them under Tariff Item 8707.00 of the Central Excise Tariff. It was submitted that it was open to the Petitioners to raise all the contentions before the adjudicating Authority and no interference is called for in a writ jurisdiction under Article 226 of the Constitution.

9. After hearing the Counsel on both sides and on perusal of the records, we are of the opinion that the four show cause notices impugned in the petition cannot be sustained in view of the fact that the said show cause notices pertain to the period during which the goods were cleared as per the approved classification list. In our opinion, the issues raised in the petition are covered by the decision of the Apex Court in the case of Cotspun Limited (*supra*). In the instant case, in fact the Petitioners had filed the original classification list by classifying their goods under Tariff Item 8707.00 and it is the Excise Authorities on verification of the facts came to the conclusion that the goods be classified under Tariff Item 8704.00- Accordingly, revised price list was filed and the same was approved under Tariff Item 8704.00. As held by the Apex Court, the levy of excise duty on the basis of an approved classification list is the correct levy and there is no question of any short levy. In this view of the matter, the show cause notices impugned in the petition cannot be sustained and the same are liable to be quashed and set aside. However, we clarify that this decision is restricted to the four show cause notices wherein the short levy is sought to be recovered on the goods cleared as per the approved classification lists only.

10. Accordingly, the four show cause notices set out in Exhibits. F-1, H-1, I-1 and M-1 to the petition are quashed and set aside. Rule is made absolute in terms of prayer (b). However, there will be no order as to costs.