MADHUMILAN SYNTEX (P) LTD. A

v.

UNION OF INDIA

MARCH 4, 1997

B

[S.C. AGRAWAL AND S.C. SEN, JJ.]

Central Excises and Salt Act, 1944 : First Schedule—Tariff Item No. 18-III(i) and (ii)—'Spun yarn'—Classification of—Assessee's list classifying the spun yam, manufactured by it, under Item 18-III(i) approved by Assistant Collector—Later, Assistant Collector reclassifying the product under Item C *18-III(ii)—Demand notice sent for realisation of differential duty—In writ petition High Court held the reclassification bad in law and directed Collector (Appeals) to decide the matter on merits—Collector (Appeals upheld reclassification which was affirmed by High Court—Held, previous High Court judgment had quashed both the demand notice and the reclassification—Order of Collector (Appeals) modifying classification list contrary to earlier decision of High Court set aside—Order of Assistant Collector modifying the classification stands quashed.* D

The appellant, manufacturers spun yarn, had claimed through a classification list that the said yarn was covered under Tariff Item No. 18-III(i) of First Schedule to the Central Excises and Salt Act, 1944 which was approved by the Assistant Collector. Later, the Superintendent of Central Excise issued a demand notice for realising a differential duty after receiving the chemical analysis according to the subsequent notice higher duty was payable under Tariff Item No. 18-III(ii), instead of Tariff Item No. 18-III(i) of the First Schedule to the Act. E F

The appellant filed a Writ Petition before the High Court, which by an interim order stayed the said recovery.

The Assistant Collector reclassified the manufactured yarn and held that the modified approval will be effective from the date of production i.e. July 1983, onwards. He later on made the said revised classification final and confirmed the short levy against which an appeal was filed before Collector (Appeals). However in view of the stay granted by the High Court, Revenue cold not enforce recoveries. G H

A High Court disposed the writ petition, quashing the demand notice for differential duty. However the question regarding reclassification was left open for the Collector (Appeals) to decide on merits. The respondents appealed before this Court against the said judgment and the same was dismissed. The Collector (Appeals) upheld the said reclassification against which another writ petition was filed before the High Court. During the pendency of the writ petition another demand notice for a different period was served, and the same was also challenged in the said Writ Petition. High Court upheld the order pertaining to reclassification made by the Collector (Appeals) but quashed the later demand notice.

C Aggrieved the appellant-company appealed to this Court contending that the High Court was in error in constructing its earlier judgment; that by the said judgment, it had held the reclassification order to be bad in law and that this Court while dealing with the appeal of the respondents against the said judgment had also construed it to mean the same.

D Allowing the appeal, the Court

HELD : 1.1. The order passed by the Assistant Collector, Central Excise modifying the classification lists stands quashed. [674-F]

1.2. The observations of the High Court clearly indicate that there E was no material on the basis of which the order modifying the classification lists could be passed by the Assistant Collector of Central Excise and excess duty under Tariff Item No. 18-III(ii) could be demanded prospectively. [672-F]

F 2.1. This court has construed, in an earlier appeal filed by the respondents, the previous judgment of the High Court to mean that both the judges have held the order of the Assistant Collector of Central Excise modifying the classification lists was bad in law and had ordered that the same be quashed. Thus the High Court was in error in proceeding on the basis that the said order of reclassification had not been quashed by its G previous judgment and that the Collector did not commit any error in dismissing the appeal filed by the appellant company against those orders. [674-C]

2.2. The Collector (Appeals) by dismissing the appeal filed by the appellant company against the order modifying the classification lists has H affirmed the modification with effect from the date the appellant company

manufactured such yarn i.e. from July 1983, onwards, which is contrary to the earlier decision of the High Court which has been affirmed by this Court. [674-E] A

Union of India & Ors. v. *Madhumilan Syntex Pvt. Ltd. & Anr.,* **[1988] 3 SCR 838, referred to.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1410 of 1987.

From the Judgment and Order dated 21.4.86 of the Madhya Pradesh High Court in M.P. No. 478 of 1985. C

Harish N. Salve, Ranjit Kumar and Ms. Binu Tamta for the Appellant.

R.R. Mishra, K.C. Diwan and Sushma Suri (NP) for the Respondents. D

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Madhumilan Syntex (P) Ltd., appellant No. 1 (hereinafter referred to as 'the appellant company') owns a factory wherein they manufacture spun yarn. At the relevant time in Tariff Item No. 18-III E of the First Schedule to the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act') it was prescribed that cellulosic spun yarn, in which man-made fibre of cellulosic origin predominates in weight, made by a manufacture with the aid of power would fall within Tariff Item No. 18-III(ii), if it contained man-made fibres of non-cellulosic origin and it would fall within Tariff item No. 18-III(i), whereunder duty was leviable at F a lower rate, if it did not contain any man-made fibres of non-cellulosic origin. Claiming that it was manufacturing spun yarn by blending and processing cellulosic fibre and non-cellulosic waste the appellant company, on July 7, 1983, filed a classification list under the provisions of Rule 173(2)(b) of the Central Excise Rules in respect of the spun yarn manufactured by them showing the same as covered by Tariff. Item No. 18-III(i). G The said classification list submitted by the appellant company was approved by the Assistant Collector (Central Excise), Ujjain on July 13, 1983. A supplementary classification list was submitted by the appellant company on September 25, 1983 which was approved by the Assistant Collector on October 15, 1983. It appears that the samples of the products manufactured H

A by the appellant company were taken and were sent for chemical analysis and after receiving the test reports of the samples the Superintendent of Central Excise issued a demand notice dated February 7, 1984 for a sum of Rs. 26,47,749.39p as differential amount of duty on the ground that on the man-made yarn that was being manufactured by the appellant company excise duty was payable under Tariff Item No. 18-III(ii) and not under
B Tariff Item No. 18-III(i). Feeling aggrieved by the said notice of demand the appellant company filed a Writ Petition (M.P. No. 104/84) in the Madhya Pradesh High Court, on February 9, 1984, and in the said Writ Petition the High Court on February 9, 1984 passed an interim order directing that no recovery would be made from the appellant company in
C pursuance of the impugned notice of demand and that excise duty would be continued to be charged as was being charged till that date. On February 9, 1984 the Assistant Collector (Central Excise), passed an order wherein it was stated that the yarns claimed to be cellulosic spun yarn of which the samples were sent contain man-made fibres of nun-cellulosic origin and as per the Central Excise Tariff Schedule the same be classifi-
D able under Tariff Item No. 18-III(ii) and not under Tariff No. 18-III(i) and that in the light of the fresh material placed before him all the products mentioned in the Annexure-I to the said order have been reclassified as falling under Tariff item No. 18-III(ii) and that the said modified approval would be effective right from the date of production of these goods, i.e.,
E from July, 1983 onwards. In the said order it was further stated that in the interest of natural justice the modified approval in respect of tariff classification and rates of duties payable was provisional and the appellant company were being accorded an opportunity to submit to him their representation, if any, against the modified approval within a week's time and that if nothing was heard from them the provisional approval would
F be finalised. By another order February 9/10, 1984, the Superintendent, Central Excise, Range, III, Ujjain, issued a show cause notice wherein reference was made to the order dated February 9, 1984 passed by the Assistant Collector whereby the approval of the classification lists had been modified and the appellant company were required to show cause to the
G Assistant Collector as to why short levies of Rs. 26,47,749.39p should not be recovered from them under Section 11-A of the Act. After receipt of the said notice, the appellant company sought time before the Assistant Collector on the ground that the Writ Petition filed by them was pending before the High Court but the said request was not acceded to and on March 5, 1984, the Assistant Collector passed two orders. In one order the
H Assistant Collector, in view of the revised classification of the products,

confirmed the Short levy of Rs. 26,47,749.39p for the period from August 15, 1983 to February 6, 1984 under Section 11-A of the Act but observed that in view of the stay order dated February 9, 1984 passed by the Madhya Pradesh High Court the said recoveries would not be enforced till the stay order remains in force. In the other order the Assistant Collector held that there was no basis for accepting the classification of the yarn manufactured by the appellant company under Tariff Item No. 18-III(i) and that the modified approval as mentioned in the show cause dated February 9, 1984 which was kept provisional pending consideration of defence by the party was now made final and the classification list effective from September, 1983 was being finally classified as falling under Tariff Item No. 18-III(ii) and that the said classification and rate of duty would apply right from the date the party manufactured such yarns. The appellant company amended the Writ Petition which was pending in the High Court to challenge the validity of both these orders dated March 5, 1984 passed by the Assistant Collector. The appellant company also filed an appeal against those orders the Collector (Appeals), Customs and Excise, New Delhi.

The Writ Petition (M.P. No. 104/84) of the appellant company was disposed of by a Division Bench of the High Court (P.D. Mulye and V.D. Gyani JJ.) by judgment dated November 24, 1984. The main Judgment was delivered by Mulye J. with which Gyani J. agreed but Gyani J. also appended a separate explanatory note. Mulye J. in the judgment rendered on behalf of himself and Gyani J., quashed the demand for recovery of Rs. 26,47,749.39p for the period from August 15, 1983 to February 6, 1984. The learned Judges did not accept the contention urged on behalf of the appellant company that once the classification was made and approved it was only the Collector of Central Excise who had the jurisdiction *suo motu* to revise the same. The learned Judges also took note of the fact that the appellant company had already filed an appeal before the Collector (Appeals) and observed that it would be open to the Collector (Appeals), after considering the facts and circumstances of the case, to give adequate opportunity of hearing to the appellant company including an opportunity of adducing evidence and decide the appeal on merits.

The Union of India filled an appeal (C.A. No. 1110 (NT) of 1986) in this Court against the said decision of the Division Bench of the High Court. The said appeal of the Union of India was dismissed by this Court by its judgment in *Union of India & Ors.* v. *Madhumilan Syntex Pvt. Ltd. & Anr.,* reported in [1988] 3 SCR 838.

During the pendency of the said appeal before this Court the Collector (Appeals) considered the appeal of the appellant company and disposed of the said appeal by order dated May 27, 1985. The Collector (Appeals) held that in view of the fact that the order passed by the Assistant Collector relating to the demand of the duty for the period August 15, 1983 to February 6, 1984 had been quashed by the High Court the only appeal which was required to be decided on merits was against the order dated March 5, 1984 passed by the Assistant Collector modifying the approval of the classification lists. The Collector held that the spun yarn produced by the appellant company fell under Tariff Item No. 18-III(ii) and not under Tariff Item No. 18-III(i) of the Schedule to the Act and, therefore, he dismissed the appeal and affirmed the order dated March 5, 1984 passed by the Assistant Collector modifying the approval of the classification lists. Feeling aggrieved by the said order dated May 27, 1985 passed by the Collector (Appeals), the appellant company filed a second Writ Petition (M.P. No. 478/85) in the Madhya Pradesh High Court. It was urged that the order of the Collector dated May 27, 1985 was passed in violation of the direction given by the High Court in the judgment dated November 24, 1984 in M.P. No. 104/84. It was submitted that the High Court had quashed the order of the Assistant Collector dated March 5, 1984 along with the notice dated February 9, 1984 preceding that order requiring the appellant company to show cause why the classification lists be not modified. During the pendency of the said Writ Petition, the Assistant Collector issued a notice dated June 6, 1985 demanding differential duty for the period from March 1984 to April 1985. The appellant company amended the Writ Petition to incorporate a challenge to the said notice dated June 6, 1985. The Writ Petition was disposed of by a Division Bench of the High Court (G.G. Sohoni and R.K. Verma JJ.) by the impugned judgment dated April 21 1986. The High Court has upheld the order May 27, 1985 passed by the Collector (Appeals) dismissing the appeal of the appellant company against the order of the Assistant Collector dated March 5, 1984 modifying the approval of the classification lists. The High Court has held that in its judgment dated November 24, 1984 in M.P. No. 104/84 the High Court had not quashed the notice dated February 7, 1984 and the order dated March 5, 1984 passed by the Assistant Collector. The High Court has, however, quashed the demand notice dated June 6, 1985 for the amount of the differential duty from March 1984 to April 1985 on the view that it was not preceded by any notice as required by sub-section (1) of Section 11-A of the Act. Feeling aggrieved by the said judgment of the High Court the appellant company

have filed this appeal. A

Shri Harish Salve, the learned senior counsel appearing for the appellant company, has urged that in the impugned judgment the High Court was in error in construing its earlier judgment dated November 24, 1984 in M.P. No. 104/84. The submission of Shri Salve is that by the said judgment the High Court had held that the order dated March 5, 1984 B passed by the Assistant Collector modifying the classification lists was bad in law and that this Court, while dealing with the appeal of the respondents against the said judgment, has also construed the said judgment of the High Court to mean that the order modifying the classification lists that was served on the appellant company was bad in law and the said order had C been quashed.

We find considerable force in the said submission of Shri Salve, Gyani J., in his explanatory note, has clearly said :

> "The orders Annexures R-10 and R-11 are quashed. .. The Classification lists, filed by the petitioners and the approvals granted therein shall remain intact so long as a proper opportunity of showing cause is not afforded to the petitioners and the same is not cancelled in accordance with law." D

E

By order (Annexure R-11) dated March 5, 1984 the Assistant Collector had modified the classification lists and had directed that the spun yarn that was being manufactured by the appellant company should be classified as falling under Tariff Item No. 18-III(ii) and not under Tariff Item No. 18-III(i).

F

Though Mulye J., in the concluding part of his judgment rendered on behalf or himself and Gyani J., has not expressly quashed the said order (Annexure R-11) but in the main body of the judgment, after rejecting the contention urged on behalf of the appellant company that once the classification was made, the Assistant Collector had no jurisdiction to reconsider the matter on the basis of the new facts and the materials subsequently made available regarding the manufacturing of the product, the learned Judge has observed : G

> "But it also cannot be disputed that the Superintendent of Central Excise, Ujjain, acted in a hasty manner by issuing the notice and H

A that it is also now clear that it is only after the filing of the Writ Petition in which the stay order was passed that the respondent No. 3 thought of giving show cause notice to the petitioners and that without giving adequate opportunity to the petitioners passed the impugned order. Natural Justice requires that quasi judicial authority must inform the person proceeded against, the material
B which it proposed to use against him so that he may meet the inference likely to use against him so that he may meet the inference likely to be raised from that material. Even when the material used is within the knowledge of the person proceeded against, he must tell that it would be used against him, for unless
C he is so informed, he would have no opportunity of offering his explanation for meeting the inference that the authority seeks to draw from it.

In the present case there is no material on record to indicate that right from 15.8.1983 the petitioners have been manufacturing
D the yarn product which is covered by item 18 III(ii). Therefore, in our opinion, the excess duty on that basis from 15.8.83 to 6.2.84 could not be demanded retrospectively. But at best it could be demanded prospectively from 7.2.1984, if after giving proper and adequate change of hearing to the petitioners it is found that at least some of the product of yarn manufactured by the petitioners
E is covered by item 18.III(ii) and that could have been manufacturing a product contrary to the classification which was approved, the ingredients of which are not in conformity as prescribed in item 18 III(i) as mentioned in Rule 173B(4) of the Rules."

These observations clearly indicate that the High Court found that
F there was no material on the basis of which the order dated March 5, 1984 modifying the classification lists could be passed by the Assistant Collector of central Excise and according to the High Court excess duty under Tariff Item No. 18-III(ii) could be demanded prospectively from February 7, 1984, if after giving proper and adequate chance of hearing to the
G petitioners it was found that at least some of the product of yarn manufactured by the appellant company was covered by item 18-III(ii).

In *Union of India* v. *Madhumilan Syntex* (supra) this Court, while referring to the said judgment of the High Court, has said :

H "Mulye J. held by his judgment that the Writ Petition was allowed

to the extent that the demand for recovery of Rs. 26,47,749.39p for the period August 15, 1983 to February 6, 1984, which was the period referred to in the demand notice was quashed. However, the learned Judge directed the Collector, Central Excise before whom the appeal filed by the petitioners was pending to decide the appeal in respect of the demand made by the excise authorities for the subsequent period. Gyani J., the other learned Judge, in his concurring judgment set aside the two orders issued by the Assistant Collector, Central Excise, Ujjain Division both dated 5th March, 1984 as set out earlier. Copies of these adjudication orders are at Annexure R/10 and R/11 respectively to the Writ Petition. *Very shortly put, both the Judges held that the notice of demand and the orders modifying the classification list served on the petitioners were bad in law and ordered that the same be quashed.* A perusal of the judgment also clearly indicates that the Division Bench directed that the Collector, Central Excise (Appeal) should hear the appeal of the petitioners on merits after giving the petitioners an adequate opportunity to put their case and their evidence before him in respect of the period from 7th February, 1984 onwards. Thus, the Division Bench took the view that the show cause notice served on the petitioners could be treated as valid and effective only in respect of the period 7th February, 1984 onwards and not retrospectively from August 15, 1983 to February 6, 1984 being the period from which the demand has already been made in the demand notice dated 9th February, 1984". (emphasis supplied) (pp. 842-843)

The Court did not accept the contention urged by Shri Govind Das on behalf of the Union of India that since the Collector (Appeals) had been directed to examine the merits of the matters, viz., the modification of the classification lists after allowing adequate opportunity to the appellant company to show cause in respect of the period from February 7, 1984 onwards, the notice to show cause dated February 9/10, 1984 should be treated as valid and effective notice in respect of the period from August 15, 1983 to February 6, 1984 as well as the period from February 7, 1984 onwards. The Court found merit in the contention urged by Dr. Chitale on behalf of the appellant company that the said notice did not ask the appellant company to show cause against the alteration in the classification

A lists. It was held :

> "This notice, therefore, cannot be regarded as a show cause notice against the modification of the classification lists in respect of the aforesaid period. In the circumstances, the show cause notice is bad in law and of no legal effect as far as the said earlier period
B was concerned. "(pp. 845-846)

This would show that this Court has construed the judgment of the High Court dated November 24, 1984 in M.P. No. 104/84 to mean that both the Judges have held that the order of the Assistant Collector of Central Excise dated March 5, 1984 modifying the classification lists was bad in law
C and had ordered that the same be quashed. In these circumstances, we are of the opinion that the High Court was in error in proceeding on the basis that the said order dated March 5, 1984 had not been quashed by the High Court and that the Collector did not commit any error is dismissing the appeal filed by the appellant company against those orders. In our opinion,
D the Collector (Appeals) should have proceeded on the basis that the order dated March 5, 1984 passed by the Assistant Collector modifying the classification lists had been quashed by the High Court. By dismissing the appeal filed by the appellant company against the order of the Assistant Collector, Central Excise dated March 5, 1984 modifying the classification
E lists the Collector (Appeals) had firmed the modification of the classification lists with effect from the date the appellant company manufactured such yarn i.e. from July 1983 onwards, which is contrary to the earlier decision of the High Court in M.P. No. 104/84 which has been affirmed by this Court in *Union of India* v. *Madhumilan Syntex* (supra).

F The appeal is, therefore allowed, the impugned judgment of the High Court is set aside and the order dated May 27, 1985 passed by the Collector (Appeals) dismissing the appeal is set aside and it is held that the order dated March 5, 1984 passed by the Assistant Collector, Central Excise modifying the classification lists stands quashed. No orders as to costs.

A.Q. Appeal allowed.