

A COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE  
AND ORS.

v.

M/S. CHARMINAR NONWOVENS LTD.

B MAY 5, 2004

[RAJENDRA BABU, C.J. AND G.P. MATHUR, J.]

C *Central Excises and Salt Act, 1944—Classification of commodity—*  
D *Levy of duty—Issue of show cause notice to assessee regarding classification*  
E *of goods by the authority—Writ Petition—Appellate order on similar*  
F *adjudication on earlier occasion upholding claim of assessee—High Court*  
G *quashing the notice on the ground that the order of appellate authority had*  
H *become final—On appeal, Held : High Court erred in interfering in such*  
*matters at the stage of issue of show cause notice—Such matter to be*  
*decided on facts arising in each case view of further investigation leading*  
*to discovery of new fact or change in law, matter to be examined—Hence,*  
*order of High Court set aside and matter remitted back to the concerned*  
*authority for adjudication—Constitution of India, 1950 Article 226.*

E Respondent-assessee was issued a detention memo stating that the  
goods lying in the factory premises were liable for confiscation and was  
also issued show cause notice regarding classification of goods.  
Respondent filed a writ petition challenging the show cause notice and  
the detention order. The appellate authority on similar adjudication  
F on earlier occasion had upheld the claim of the assessee regarding  
classification. High Court holding that the appellate order had become  
final and expressing agreements with the same, allowed the petition  
and quashed the notice. Hence the present appeals.

G Allowing the appeals, the Court

H HELD : The matter relating to commodity classification whether  
it falls under one heading or the other or attracts higher or lower duty  
has to be decided on facts arising in each case. Even though, the decision  
may have been taken earlier at one point of time but on further  
H investigation discovery of new fact or the changed law, the matter has

**to be re-examined. It is not proper for the High Court to interfere in such matters at the stage of issue of the show cause notice. Therefore, order of the High Court is set aside and the matter is remitted to the concerned authority for adjudication. Also in the other appeals on the identical issue, the order of the tribunal holding that the order of the High Court is applicable is set aside and the matter is remitted back to it for fresh consideration. [224-D-F; 224-H; 225-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6559-6560 of 1997.

From the Judgment and Order dated 18.12.96 of the Andhra Pradesh High Court in W.P. Nos. 23945-46 of 1996.

WITH

C.A. Nos. 776/99, 3568-71, 6270-6271 6447-6448/2000, 341-344, 4446, 6198/2001 1810/2002.

Raju Ramachandran, Additional Solicitor General, M. Chandrasekharan, S.K. Bagaria, Gauri Shankar Murthy, Ms. Smeeta L, Ms. Vibha Makhija, Sanjiv Sen, B. Krishna Prasad, A. Subha Rao, Chandra Mohan A., Punit Dutt Tyagi, V. Lakshmikumaran, V. Balachandran, J.C. Gupta, Vinay Gupta, Ms. Bela Maheshwari, Rajesh Kumar, Sunil Kumar, Himanshu Shekhar, Rupesh Kumar, Tara Chandra Sharma and Ms. Neelam Sharma, for the appearing parties.

The Judgment of the Court was delivered by

**RAJENDRA BABU, CJ. :**

*CIVIL APPEAL NOS.6559-6560 OF 1997*

In these matters the question for our consideration is whether Floor Coverings and Filter Fabrics are to be classified under sub-heading No.5703.90 of the Tariff Item attracting duty at the rate of 30% ad valorem or whether it should be classified under sub-heading 5703.20 attracting duty at the rate of 5% ad valorem. A detention memo issued to the respondent stating that the goods lying in the factory premises, specified

**A** in the schedule, were liable for confiscation. The respondent was ordered not to dispose of the goods in question or otherwise deal with or part with the same unless he heard in the matter to the proper Central Excise Authority and a notice was issued on 5.11.1996 to the respondent to show cause as to why the goods should not be classified as stated above.

**B** The respondent filed a writ petition before the High Court of Andhra Pradesh challenging this show cause notice and the detention order. On an earlier occasion on similar adjudication, the appellate authority had upheld the claim of the assessee. The High Court proceeded on the basis that the appellate order had become final and expressing agreements with the same, **C** quashed the notice. The argument on behalf of the appellant is that if the view of the High Court is correct a classification cannot be reviewed and any such classification once made cannot be reviewed even if the earlier view is erroneous, and such a course would result in great loss of revenue was not accepted and allowed their petition and quashed the show cause **D** notice. Hence this appeal.

The matter relating to commodity classification whether it falls under one heading or the other or attracts higher or lower duty has to be decided on facts arising in each case. Even though, the decision may have been taken earlier at one point of time but on further investigation discover new **E** fact or the law has changed, as is the stand in the present case, the matter has to be re-examined. It is not at all proper for the High Court to interfere in such matters at the stage of issue of the show cause notice. We, therefore, set aside the order made by the High Court and remit the matter to the concerned authority for adjudication. It shall be open to the respondent to **F** file reply to the show cause notice as they deem fit, if not already filed within a period of one month from today or such further time as may be allowed by the Adjudicating Authority. We direct the Adjudicating Authority to dispose of the matter thereafter in accordance with law.

**G** The appeals are allowed accordingly.

*CIVIL APPEAL NOS. 776/1999, 3568-3571/2000, 6270-6271/2000, 6447-6448/2000, 341-344/2001, 4446/2001, 6198/2001, 1810/2002)*

**H** In these cases also identical issue as arises in C.A. 6559-60/1997 fell for consideration before the Tribunal. The Tribunal took the view that the

decision rendered by the Andhra Pradesh High Court earlier in the case of M/s Charminar Nonwovens Ltd. would be applicable. Inasmuch as we have set aside the order made by the High Court and remitted the matter to the Adjudicating Authority, we follow suit in these cases and set aside the order of the Tribunal and remit the same to the Tribunal for consideration of the matter, afresh in accordance with law. A  
B

N.J.

Appeals allowed.