



In the High Court of Judicature at Madras

Dated: 30-9-2008

Coram:

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA  
AND  
THE HONOURABLE MR.JUSTICE V.DHANAPALAN

Writ Appeal Nos.19 to 21 of 2001  
and Writ Petition Nos.3847 and 22276 of 1993 and 5096 of 1994  
and  
C.M.P.Nos.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.Nos.6168 of 1993 in W.P.No.3847 of 1993,  
34933 of 1993 in W.P.No.22276 of 1993 and  
8047 of 1994 in W.P.No.5096 of 1994

M/s.Madura Coats Ltd.,  
Represented by its Asst. Logistics Manager-Excise,  
Aladiyur, Ambasamudram,  
Papavinasam Mills P.O. 627 422,  
Tirunelveli District. .. Appellant in W.A.No.19 of 2001  
and Petitioner WA.20/01,  
Petitioner in WP.3847/93

M/s. Madura Coats Ltd  
rep by its Manager,  
Excise Madura Mills,  
New Jail Road,  
Madurai 625 001. .... Appellant in WA.21/2001  
Petitioner in WP.22276/93

M/s. Coasts Viyella India Ltd.,  
rep by its Asst Logisties  
Manager, Excise, Aladiyur,  
Ambasamudram 627 422  
Tirunelveli District. ....Petitioner in WP.5096/94

vs.

1. The Collector of Central Excise,  
O/o The Collector of Central Excise,  
Bibikulam, Madurai-625 002.
2. The Asst. Collector of Central Excise,  
Tirunelveli District, Tirunelveli.



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3. The Superintendent of Central Excise,  
Ambasamudram Range, Ambasamudram.
4. The Central Board of Excise and Customs,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110 001.
5. The Government of India,  
Ministry of Finance,  
North Block, New Delhi. .... Respondents in W.A.No.19  
of 2001
  
1. The Government of India,  
Ministry of Finance,  
North Block, New Delhi
2. The Central Board of Excise and Customs,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110 001.
3. The Collector of Central Excise,  
Madurai Central Excise,  
Collectorate, Madurai.
4. The Assistant Collector of Central Excise,  
Madurai I Division, Madurai 625 002.
5. The Superintendent of Central Excise,  
City Range, Madurai, .... Respondents in WA.21/01
  
1. The Government of India, rep by its Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi-110 001.
2. The Central Board of Excise and Customs,  
Department of Revenue,  
North Block, New Delhi-110 001.
3. The Collector of Central Excise,  
Central Revenue Buildings,  
Bibikulam, Madurai-625 002. .... Respondents in WP.22276/93



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1. The Asst. Collector of Central Excise,  
Tirunelveli District, Tirunelveli.
2. The Superintendent of Central Excise,  
Ambasamudram Range, Ambasamudram.627 401.
3. The Collector of Central Excise,  
O/o The Collector of Central Excise,  
Bibikulam, Madurai-625 002.
4. The Central Board of Excise and Customs,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110 001.
5. The Government of India,  
Ministry of Finance,  
North Block, New Delhi ... Respondents in WP.5096/94.

Writ Appeal No.19 to 20 of 2001 filed under Cause 15 of the Letters patent Act against the order of this Court, dated 3.11.2000 in Writ Petition No.19201 of 1992 and 5969/93 and 19286/93.

WP.No.19201/92 : Filed under Article 226 of the constitution of India to issue writ of certiorarified mandamus, calling for the records of the respondents culminated on order No.36/92 (C.No.V/54.02/15/28/92 Adjn dated 15.11.92 of the first respondent herein and quash the same and direct the respondents to keep in abeyance adjudication of the show cause Notice Nos.C.No.V/54.02/15/28/92 Adjn dated 26.6.92 of the Collector of Central Excise Madurai first respondent and OC.No.2010/92 dated 12.10.92 of the Superintendent of Central Excise, Ambasamudram Range 3<sup>rd</sup> respondent herein in view of the circular No. 1/90 of the Government of India.

WP.No.5969/93 : Filed under Article 226 of the constitution of India to issue certiorari, calling for the records of the respondents culminated in the show cause Notices OC.No.1388/92 dated 7.7.1992 and OC.No.29/93 dated 5.1.1993 of the 4<sup>th</sup> respondent and quash the same.

WP.No.19286/93 : Filed under Article 226 of the constitution of India to issue certiorari calling for the records of the respondents culminated in order No. 46/93 dated 11.7.1993 of the Collector of Central Excise Madurai first respondent herein and quash the said order.



WP.No.3847/93: Filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records of the respondents culminated in order No. 17-92, C.No.V/55/04/30/174/86, dated 31.1.1992 of the second respondent and quash the above order.

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WP.No.22276/93:- Filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records of the respondents culminated in order No. F.No.52/7/91- CX I dated 13<sup>th</sup>/21<sup>st</sup> October 1993 of the first respondent herein and quash the said order and consequentially direct the respondents to return the Rs.18.96 lakhs received from the petitioner company on account together with accrued 18% interest from the dates of receipt till the date of return of the above amount back to the petitioner company.

WP.No.5096/94:- Filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records of the respondents culminated in order No.68/93 - C.No.V/54.02/30/15/93 dated 22.12.1993 of the Assistant Collector of Central Excise Tirunelveli Division the first respondent herein and quash the above order.

For appellant/petitioners : Mr.N.S.Sivam

For respondents: Mr.M.Ravindran, Addl. Solicitor General assisted by  
Mr.E.R.K.Moorthy,  
Central Govt. Standing Counsel and  
Mr.K.Gunasekar,  
Addl Central Govt. Standing Counsel

Common Judgment

S.J.Mukhopadhyaya, 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').



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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.

**WEB COPY** 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 under Section 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 under Section 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



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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 1<sup>st</sup> 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 Engg. Works vs. Union of India", reported in 1985 (3) SCC 620, 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. Collector of Customs", reported in 1992 (4) SCC 440, 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



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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 under Section 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. vs. Union of India" reported in 1995 (5) SCC 338, observed that the correctness of the decision rendered in the case of "Khandelwal Metal and Engg. Works" (1985 (3) SCC 620) (*supra*), 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. vs. Union of India" reported in 1999 (5) SCC 15, taking into consideration the decision aforesaid, including the decision in the case of "Thermax Private Limited" (1992 (4) SCC 440) (*supra*), held that the interpretation of Counter-vailing Duty given in "Khandelwal Metal and Engg. Works" (1985 (3) SCC 620), is incorrect and thereby, reversed the said decision (1985 (3) SCC 620).

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



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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:



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Sl. No.	Chapter No. Heading No or Sub-heading No.	Description of goods	Rate	Conditions
	(1)	(2)	(3)	(4)
03	52, 54 and 55	Yarn, doubled or multifold	Nil	If such yarn, doubled or 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 under section 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 under Section 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.

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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 under Section 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 & Spencer (Asia) Ltd. vs. Collector of Central Excise, New Delhi, reported in AIR 1995 SC 2344, in the case of "Collector of Central Excise, Jaipur vs. Banswara Syntex Ltd., reported in 1996 (88) E.L.T. 645 (SC) and in the case of "Rajasthan SPG & WVG Mills Ltd. vs. Commissioner of C.Ex., Jaipur", reported in 2003 (152) E.L.T. 32 (SC), 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 vs. Indian Tobacco Association", reported in AIR 2005 SC 3685, 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 vs. Madura Coats Limited), wherein, in the case of the very same appellant-asseesee, namely Madura Coats Limited, the following observation was made by the Apex Court:



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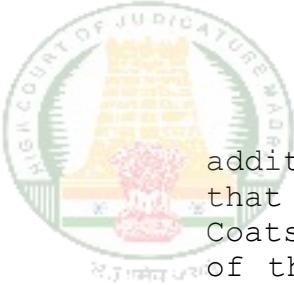
"2. The principle enunciated by the decisions in the two cases relied upon by the Tribunal is not disputed by learned Counsel for the appellant. We are of the view that having regard to the fact that the show cause notice was issued on the basis that the yarn in question was twisted yarn, there is no 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 vs. 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., vs. Union of India., {1999 (5) SCC 15 (supra) } 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 & Engg. Works case, (1985 (3) SCC 620) 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



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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 Limited" (1999 (5) SCC 15) (*supra*), 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 & Engg. Works case (1985 (3) SCC 620) 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 vs. 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 "Commissioner of Central Excise, Jaipur vs. Banswara Syntex Ltd.," reported in 1996 (88) E.L.T. 645 = 1996 (11) SCC and "Porritts & Spencer (ASIA) Ltd. vs. Collector of Central Excise, New Delhi", reported in 1999 (106) E.L.T. 18 = 1995 Supp. (3) SCC 219, 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 vs. Vicco Laboratories", reported in 2008 (2) C.T.C. 511, 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



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show cause notices have been issued. Abstinence 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. vs. 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.



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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 Limited" (1995 (5) SCC 338) (supra) and the Constitution Bench decision of the Supreme Court in the case of "Hyderabad Industries Limited" (1999 (5) SCC 15).

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 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.

**WEB COPY** 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.

Cs

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Collector of Central Excise,  
O/o The Collector of Central Excise,  
Bibikulam, Madurai-625 002.
2. The Asst. Collector of Central Excise,  
Tirunelveli District, Tirunelveli.
3. The Superintendent of Central Excise,  
Ambasamudram Range, Ambasamudram.
4. The Central Board of Excise and Customs,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110 001.
5. The Secretary,  
Ministry of Finance,  
Government of India,  
North Block, New Delhi.
6. The Assistant Collector of Central Excise,  
Madurai Division, Madurai
7. The Superintendent of Central Excise,  
City Range, Madurai,



Copy to:-

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The Section Officer,  
VR Section, High Court,  
Madras.

+ 1 cc to Mr. M. S. Sivam, Advocate, SR No.56165

+ 1 cc to Mr. K. Gunasekar, Advocate, SR No.56312

+ 1 cc to Mr. E. R. K. Moorthy, Advocate, SR No.55957

Writ Appeal Nos.19 to 21 of 2001  
and  
Writ Petition Nos.3847 and 22276 of  
1993 and 5096 of 1994

VSV(CO)  
SR/3.11.2008