**(2011) 07 CAL CK 0044**

**In the Calcutta High Court**

**Case No :** CEXA No. 13 of 2011 and GA No. 2163 of 2011

Commissioner of C. Ex., Kolkata-II APPELLANT

Vs

Diamond Scaffolding Co. RESPONDENT

**Date of Decision :** 28-07-2011

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 11A, 35G

**Citation :** (2011) 274 ELT 10

**Hon'ble Judges :** Sambuddha Chakrabarti, J;Bhaskar Bhattacharya, J

**Bench :** Division Bench

**Advocate :** Tapas Hazra with K.K. Maity, for the Appellant;

**Final Decision :** Dismissed

# Judgement

1. This appeal u/s 35G of the Central Excise Act, 1944 is at the instance of the Revenue and is directed against order dated 5th February, 2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Excise Appeal No. E/A-328 to 330 of 2006 thereby dismissing the appeal filed by the Revenue.

2. Being dissatisfied, the Revenue has come up with the present appeal.

3. The only question that arises for determination in this appeal is whether the period of limitation of six months provided in the main limb of Section 11A of the Central Excise Act can be extended by alleging fraud in a case where due to subsequent decision of the Larger Bench of the Tribunal, the act of the importer has been held to be a "manufacturing process" whereas at the relevant point of time, in the years 2001-04, the then law was different.

4. The Tribunal has pointed out that the demand is for the period 2000-01 to 2003-04 and the show cause notice was issued on 12th August, 2005 alleging suppression with intent to evade payment of duty.

5. It is pointed out that pursuant to the order of remand, a Larger Bench of the

 

Tribunal in the case of 2005 (190) ELT 301 held that process in dispute amounts to manufacture.

6. In such circumstances, the Tribunal below by relying upon the decision of the Hon''ble Supreme Court in the case of Padmini Products Vs. Collector of Central Excise, Bangalore, held that mere failure or negligence on the part of the manufacturer to take out licence or pay duty when there was scope of doubt as to whether the licence was required to be taken and there was a scope of doubt whether the goods were dutiable or not, would not attract the provision of Section 11A of the Act.

7. We find that the Tribunal below has correctly applied the law and came to the conclusion that the act on the part of the importer could not be branded as wilful suppression with intent to evade payment of duty.

8. In respect of the second point, i.e., clubbing of clearance, the Tribunal further came to the conclusion that clearances of two other units were clubbed with the clearance made by the importer without issuing any show cause notice to the other units and there was no notice to the two units for clubbing clearance with the clearance of the importer. In such circumstances, in our opinion, the Tribunal was quite justified in holding that demand by clubbing the clearance of other units without issuing any show cause notice was not sustainable.

9. We, thus, find that no substance question of law is involved and consequently, we summarily dismiss this appeal.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.