

(2004) 03 SC CK 0013
In the Supreme Court Of India
Case No : Civil Appeal No. 3667 of 1998

Hyderabad Polymers (P) Ltd.	Vs	APPELLANT
Commissioner of C. Ex., Hyderabad		RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2004) 94 ECC 7 : (2004) 166 ELT 151 : (2006) 11 SCC 578

Hon'ble Judges : S. N. Variava, J;H. K. Sema, J

Bench : Division Bench

Advocate : Alok Yadav and V. Balachandran, for the Appellant; A.K. Ganguli Nisha Bagchi and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. This Appeal is against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal dated 24th February, 1998.

2. Briefly stated the facts are as follows :-

The Appellants are manufacturing HDPE Woven Tubular Fabrics on Circular Looms. They do this with the aid of power. It is not denied that that fabric would have fallen, at the relevant time, under Tariff Item 54.08. Thereafter, the fabric is cut and one end of the fabric is sewed up without the aid of power and a sack is manufactured. It is not denied that such a sack would fall under Tariff Item 6301 which reads as follows :-

"6301.00 Made up textile articles in- Nil If made without eluding blankets (other than the aid of power of wool), tarpaulins, tent, sails for boats."

The question for consideration is whether the Appellants are entitled to the benefit of Notification No. 65/87-C.E., dated 1st March, 1987.

3. The Show Cause Notice was issued to them on 17th June, 1991. It was for the period from 4th July, 1987 to 29th February, 1988. It appears that earlier in

1988 also a Show Cause Notice had been issued making a demand on a similar issue and for an identical amount. That Show Cause Notice was dropped. In pursuant to Show Cause Notice dated 17th June, 1991, the Collector passed an order dated 31st October, 1991 wherein, it is, inter alia, held as follows :-

"11. On the question of time-bar, I agree with the noticee, that having issued a demand in 1988 on similar issue and for identical amount, the question of suppression or misdeclaration would not arise. I also agree with the contention that approval of classification list is a quasi judicial function to be done after making suitable enquiries by the adjudicating authority. There would therefore be no question of getting the classification list approved and it is rightly an order of the Assistant Collector. Later, even the RT 12 have been finally assessed. There is as such no misdeclaration or suppression on the part of the noticee."

The Collector also held that the Appellants were entitled to the benefit of the Notification.

4. The Appeal filed by the Department before the Customs, Excise and Gold (Control) Appellate Tribunal has been allowed. The Tribunal has held that the Appellants are not entitled to the benefit of the Notification. On the question of time-bar the Tribunal has held that there was suppression of the fact that the Tubular Fabric was manufactured on circular looms with the aid of power and that the entire process was an integral process in the manufacture of sacks. It was held that the extended period of limitation was available.

5. Before us two questions arise (a) whether the extended period of limitation is available, and (b) whether the Appellants are entitled to the benefit of the said Notification.

6. The Collector has given a categoric finding that the earlier Show Cause Notice raised a demand on a similar issue and for an identical amount. That Show Cause Notice had been dropped. In our view the Tribunal was wrong in still holding that there was suppression of fact or material. This Court has in the case of ECE Industries Limited Vs. Commissioner of Central Excise, New Delhi, held as follows :-

"4. In the case of P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in Also reported in 2003 (153) E.L.T. 14 (S.C.). P and B Pharmaceuticals (P) Ltd. Vs. Collector of Central Excise, the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period u/s 11A could not be invoked.

5. In our view, the principles laid down in above case fully apply here. As earlier proceedings in respect of same subject-matter were pending adjudication it could not be said that there was any suppression and the extended period u/s 11A was

not available."

On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct.

7. We thus hold that the extended period of limitation was not available. In this view, it is not necessary to decide the second point. We leave the question of law open to be decided in an appropriate case.

8. Accordingly, the Appeal is allowed. The order of the Tribunal is set aside. There will be no order as to costs.