
(1994) 10 SC CK 0066

In the Supreme Court Of India

Case No : Civil Appeal No. 3148 (NM) of 1985.

M/s. Rainbow Industries (P) Ltd.

APPELLANT

Vs

Collector of Central Excise, Vadodara

RESPONDENT

Date of Decision : 04-10-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 173(2)
Central Excises and Salt Act, 1944 — Section 11A

Citation : AIR 1994 SC 2783 : (1994) 48 ECC 117 : (1994) 55 ECR 1 : (1994) 74 ELT 3 : (1994) 6 JT 393 : (1994) 4 SCALE 386 : (1994) 6 SCC 563 : (1994) 4 SCR 135 Supp

Hon'ble Judges : R.M. Sahai, J;M.K. Mukherjee, J

Bench : Division Bench

Advocate : S. Ganesh and Poonam Madan, for the Appellant; A.K. Ganguli, A.K. Srivastava, V.K. Verma and Sushma Suri, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Sahai, J.—The short question of law that arises for consideration in this appeal directed against the judgment and order of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, is whether the classification and the price list accepted by the Department and acted upon, found subsequently to be erroneous, is to be applied prospectively or retrospectively.

2. The appellant, a manufacturer of dye-stuff, filed a price list in Part IV proforma as applicable for sales to related persons. The price list showed various includible and excludible expenses as well as assessable value as claimed by the appellant. This was approved by the Department on 6th December 1975 and the assessable value as declared was accepted. The approval was to be effective from 1st October 1975. After nearly a year the Assistant Collector issued a show cause notice requiring the appellant to show cause as to why the net assessable value as per the method shown in the annexure should not be revised and differential duty recovered from the appellant. The reply of the appellant was not accepted

either by the Assistant Collector or by the appellate Collector or the Tribunal. In fact before the Tribunal it was conceded on behalf of the appellant that the method for determining the assessable value in the price list submitted by the appellant was not correct.

3. The order of the Tribunal was challenged and it was urged that the classification and the price list submitted by the appellant having been accepted and acted upon under Rule 173(2) of the Central Excise Rules, 1944 the Department precluded the appellant from challenging it and, therefore, it is estopped from claiming that the appellant was guilty of suppression of facts. The learned Counsel urged that the classification and the price list having been accepted and acted upon, the Department was not justified in taking proceedings u/s 11A of the Central Excises & Salt Act, 1944. It was also urged that the Department could not have changed its opinion and the law does not contemplate issuing of any notice only because the Department felt that a particular item was dutiable in another entry. In the alternative the learned Counsel submitted that where the Department has been acting upon the price list submitted by the appellant worked out in one manner but the Department claims that it should be calculated in a different manner then even if the calculation resorted to by the Department is held to be correct it should apply from the date of issue of notice and not from the date when the price list was submitted. Reliance for it was placed on the order passed by this Court in Civil Appeal Nos. 1960-61 of 1988 in the case of Collector of Central Excises, Calcutta v. Indian Oxygen Ltd. Khardah, Decided on 17th March, 1989 (48) E.L.T. A 24

4. Since the appellant did not dispute that the method of calculation of the duty by the department was correct, the submission of the learned Counsel on lack of jurisdiction to initiate proceedings is not necessary to be decided as the power to issue show-cause notice vests even if the duty was short-levied as a result of erroneous application of law. However, once the Department accepted the price list, acted upon it and the goods were cleared with the knowledge of the Department, then in absence of any amendment in law or judicial pronouncement the reclassification should be effective from the date the Department issued the show-cause notice. The reason for it is clearance with the knowledge of the Department and no intention to evade payment of duty.

5. In the result, this appeal succeeds and is allowed in part. The appellant is held liable to pay duty on the dye-stuffs manufactured by it in the manner calculated by the Department from 16th October, 1976, the date the show-cause notice was issued to the appellant.

6. Parties shall bear their own costs.