CASE NO.:
Appeal (civil) 3632 of 2006

PETITIONER:
Commissioner of Central Excise, Chandigarh

RESPONDENT:
M/s. Punjab Laminates Pvt. Ltd.

DATE OF JUDGMENT: 24/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (C) No. 15180 of 2004]

S.B. SINHA, J :

Leave granted.

Whether extended period of limitation envisaged under the proviso appended to Section 11A of the Central Excise Act, 1944 (for short "the Act") would apply to the facts and circumstances of the present case is the question involved in this appeal.

Before adverting to the said question, however, we may notice the basic fact of the matter which is not in dispute.

The Respondent herein manufactures paper based decorative laminated sheets. The goods manufactured by the Respondent were classified under Chapter 39 of the Custom Excise Tariff Act whereas according to the Appellant it should have been classified as sub-heading No. 4823.90. The classification for the year 1993 was approved by the Revenue. By a letter dated 6.12.1994, it requested Respondent to intimate the manufacturing process of the product, to which a reply was sent by it in terms of its letter dated 7.12.1994 discloseing the manufacturing process stating:

"Brief Manufacturing Process of Paper Based Laminated Sheets

The process of manufacture of the above products involving in three major stages is as under:

1. Preparation of Reactive Mixtures like (i) Melamine formaldehyde and (ii) Phenol formaldehyde. The reactive mixture process involves mixing of Melamine Powder with Formaldehyde and Phenol with Formaldehyde in separate chemical reaction vessels, separately under high steam pressure and continuous sterling. The reactive mixture are used for treatment of various papers, used for the manufacture of paper based laminated sheets.

2. Paper treating process:

Under the process absorbent Kraft paper is

treated with Phenol Formaldehyde reactive mixture and Overlay Tissue paper and design prints or colour base papers are treated with Melamine formaldehyde reactive mixture under stream through chemical treating and drying machine.

3. Hydraulic pressing process

This process is the last and final one which involves hydraulic pressing of various layers chemical mixture treated papers under high hydraulic pressure and steam temperature. During the process the reactive mixtures treated papers are turning into a homogeneous substance, which is called "PAPER BASED LAMINATED SHEETS".

The raw materials used as under:

1. Unbleached Absorbent Kraft paper
2. Plain coloured and design printed base paper
3. Barrier paper
4. Tissue paper
5. Polly-Propelone Filins
6. Melamine Powder
7. Phenol
8. Formaldehyde
9. Methanol (Mehtyl Alcohol)
10. Denatured spirit
11. Urea
12. Printing Inks for printing designs & base paper

BRIEF PROCESS OF MANUFACTURE

Number of layers of unbleached Absorbent Kraft paper treated with Phenol formaldehyde Reactive mixtures are laid on a carrier steel plate, on which one layer of each Melamine formaldehyde reactive mixture treated base paper and overlay tissue paper are laid with and further high gloss mirror finished stainless steel press mould is placed on the treated paper. Similarly number of sets of reactive mixture papers duly treated are made by using polypropylene films for separating the sheets. The above sets are then put into the flat bed of hydraulic press for final pressing High pressure temperature upto 1800 to 3200 per sq. inch and temperature at 145 to 150 C is given. Thus the sheets are prepared into a homogeneous mass is called paper based laminated sheets.

End used

The end use of paper based laminated sheets are mainly as follows:

i) Making furnitures
ii) Panelling purpose
iii) Interior furnishing of Rail coaches & passenger buses etc. etc."

Yet again, a query was raised in regard to the use of plastic as an input for the manufacture of primal product, i.e., laminated sheets falling under sub-heading No. 4823.90. A reply thereto was also sent by the Respondent by a letter dated 22.12.1994 stating:

"It is intimated that we are using Phenol, Melamine and Formaldehyde falling under Chapter 29 of Central Excise Tariff. Further, it is clarified that a gluing solution is obtained by mixing of phenol and formaldehyde and melamine and formaldehyde. At no stage any product known as plastic or marketable as plastic comes into existence. We are as such not using plastic as an input in the manufacture of paper based laminated sheets."

The question as to whether the product manufactured by the Respondent would fall under Chapter 39 or Chapter 48 of the Central Excise Tariff Act came up for consideration before this Court in Collector of Central Excise, Hyderabad v. Bakelite Hylam Ltd. [(1997) 10 SCC 350] wherein it was held that in respect of such products classification as provided for in Entry 39.20 would be applicable, stating:

"Note (d) clearly provides that products consisting of glass fibres or sheets of paper impregnated with plastics and compressed together as in the present case, if they have a hard and rigid character, would fall under Chapter 39. If they have more the character of paper or of articles of glass fibres, they would be classified under Chapter 48 or Chapter 70, as the case may be. The decorative laminated sheets which have a hard and rigid character are, therefore, classifiable under Chapter 39 and not under Chapter 48. The appropriate entry is 3920.31/3920.37 which deals, inter alia, with sheets of other plastics, rigid, laminated. Decorative laminated sheets, therefore, cannot be classified under Tariff Entry 4818.90/4823.90. CEGAT is not right in classifying these under Entry 4818.90/4823.90."

The said view was reiterated by this Court in Decent Laminates Private Limited v. Collector of Central Excise and Customs [2002 (146) ELT 487]

A notice was issued on 9.12.1997 to the Respondent to show cause as to why:

"(i) central excise duty amounting to Rs. 36,37,338.00 short paid on the goods cleared during 08.01.1993 to 31.03.1994 should not be recovered from them under Section 11A of the Act by invoking the extended period of limitation available under the proviso to said Section 11A as the benefit of Notification No. 135/89-CE was willfully availed by them by making mis-statement regarding the description of the product manufactured by them in the classification list effective from 08.01.1993.

(ii) Interest as leviable should not be recovered from them under Section 11AB of the

Act; and

(iii) penal action should not be taken against them under Rule 173Q of the Rules read with Section 11AC of the Act for the aforesaid contraventions."

Pursuant thereto or in furtherance thereof, cause was shown by Respondent herein bringing to the Commissioner's notice that the classification list was approved by the Divisional Assistant Commissioner on 8.1.1993 and again for the year 1994. It was contended that as and when called upon to do so, Respondent had categorically stated about the detailed manufacturing process involved and, thus, the authorities concerned were at all material times aware thereof. It had been pointed out that the authorities have cleared 1385494 sheets between 8.1.1993 and 31.3.1994 upon giving the benefit of the notification dated 12.5.1989 and in that view of the matter the extended period of five years available under proviso to Section 11A of the Act was not applicable.

It was stated:

"The noticees strongly contend that they had correctly availed the concessional rate of duty. The noticees did not bonafide feel, at any stage that they are using any plastic product for the impregnation of the papersheets. They had been using phenol for formal dehyd. and other additives for preparation of a solution with which the paper was being treated to obtain paper based laminated sheets. The Hon'ble Tribunal in the case of Meghdoot Laminates P.Ltd. Vs. C.C.E. 1990 (49) ELT 75 had held that the products are classifiable under Chapter 48 and not Chapter 39 and accordingly entire industry had classified products under chapter heading 4823.90 and availed the benefit of Notfn. 135/89 dt. 12.5.89, which also referred to the products to be falling under sub-heading 4823.90. Since the duty had been paid by availing the benefit of Notfn. No. 135/89 as per practice being followed in the industry and as per approval of classification list granted by the competent authority it cannot be said that exemption has incorrectly been availed."

[Emphasis supplied]

It was further stated:

"\005The solution of Phenol Formal dehyd. and Melamine was being prepared in house and it was being considered in the industry as Resin and was honestly described as such in the classification list."

The Commissioner of Excise rejected the said contention of the Respondent. Aggrieved thereby and dissatisfied therewith Respondent preferred an appeal before the Custom Excise and Service Tax Appellate Tribunal. By reason of the impugned judgment, the same has been allowed opining that although the benefit of the said notification was not available if the manufactured goods were coated with plastic but held:

"\005Therefore, the proper officer before

approving the classification list extending the benefit of notification, should have satisfied himself that the product is not coated with plastic. The onus of proving the classification list correctly is on the department as held by the Tribunal in the case of Muzafarnagar Steel. The Assistant Collector is, indeed, required to make such inquiry and summon such information as may be called for in order to arrive at the correct decision\005"

It was opined that the entire demand pertaining to the period 8.1.1993 to 31.3.1994 was hit by the time limit specified under Section 11A(1) of the Act.

A proceeding under Section 11A of the Act indisputably could be initiated within a period of six months, as the law thence stood. The period of six months has been extended to one year in year 2000. The proviso appended to Section 11A of the Act extending the period of limitation is required to be applied if the conditions precedent therefor are satisfied. The manufacturing process indisputably was disclosed by Respondent. It is not in dispute that the question as regards classification of the decorative laminated sheets being falling under Chapter 39 of the Central Excise Tariff and not under Chapter Heading 48 had been operating in the field. It is also not in dispute that the issue as regards applicability of the exemption in terms of notification No. 135/89 was incidental to the basic classification of the product.

It is difficult to believe that although the Respondent, prior to 8.1.1993, had been paying duty at the rate of 35% ad valorem, the benefit of notification No. 135/89 dated 12.5.1989 had been accorded to it without any verification and only on the basis of the statements made by the Respondent.

At no point of time, the Revenue doubted the correctness or otherwise of the manufacturing process or the ingredients disclosed by the Respondent. The stand of the Respondent that the Industry as such had adopted the same manufacturing process and had been extended the benefit of the Exemption Notification of 1989 has not been called in question. If the stand of the manufacturer is correct, there was no reason as to why it should be singled out.

This Court decided Bakelite Hylam Ltd. (supra) on 10th March, 1997. The impugned notice was issued only on 9.12.1997 evidently relying on or on the basis thereof.

It is not a case where the Respondents had not disclosed the activities of manufacturing products carried out by them by declaration or otherwise. They responded to each and every query of the Appellant, as and when called upon to do so. The authorities of the Appellant must have verified the said disclosures. At least they are expected to do so. The disclosure made by the Respondent was acceptable to them. Their bona fide was never questioned.

The applicability of the extended period of limitation is, therefore, required to be considered in the aforementioned context. Proviso, it is trite, provides for an exception. It is not the rule. A case, therefore, has to be made out for attracting the same.

In Primella Sanitary Products Pvt. Ltd. v. Collector of C.Ex., Goa [2005 (184) ELT 117] a Three-Judge Bench of this Court was dealing with a case where a concession was made by a counsel appearing on behalf of the Revenue. The court opined that although the item was put under right classification list but they had not been permitted to take a

different stand stating:

"\005As the matter of classification has proceeded on a matter of concession of facts we do not allow the Appellants to withdraw from that concession. They are now not permitted to argue on the question of classification\005"

In Pahwa Chemicals Private Limited v. Commissioner of C.Ex., Delhi [2005 (189) ELT 257], this Court held:

"The Appellants have all along claimed that merely because they were affixing the label of a foreign party, they did not lose the benefit of Notification No. 175/86-C.E. as amended by Notification No. 1/93 \026 C.E. The view taken by the Appellants had, in some cases, been approved by the Tribunal which had held that mere use of the name of a foreign party did not dis-entitle a party from getting benefit of the Notifications. It is only after Larger Bench held in Namtech Systems Limited v. Commissioner of Central Excise, New Delhi reported in 2000 (115) E.L.T. 238 (Tribunal) that the position has become clear. It is settled law that mere failure to declare does not amount to willful mis-declaration or willful suppression. There must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression. When all facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no willful mis-declaration or willful suppression. If the Department felt that the party was not entitled to the benefit of the Notification, it was for the Department to immediately take up the contention that the benefit of the Notification was lost."

Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that it is not a fit case where this Court should interfere. The appeal is, therefore, dismissed. The parties shall, however, pay and bear their own costs.