

Prabhu Steel Industries Ltd.

Vs

Collector of Central Excise, Nagpur

Civil Appeal No. 5150 of 1990

(CJI J.S. Verma, S.P. Bharucha JJ)

11.10.1997

ORDER

1. The appellant is engaged in the manufacture of iron and steel products under a classification list dated 1-3-1986 which was duly approved on 23-10-1986. The appellant removed its products for the period August 1986 to February 1987. The appellant claimed benefit of the Exemption Notification No. 208/83-CE dated 1-8-1983 (as amended by 79/86-CE dated 10-2-1986). One of the conditions for grant of benefit under that notification was that the final products are made from any goods of the description specified in the corresponding entry in column (1) of the Table. By a show-cause notice dated 25-1-1988 issued by the Collector, Central Excise to the appellant, it was called upon to show cause against the proposed action mentioned therein on the ground that the appellant had not used the specified input in accordance with the Exemption Notification dated 10-2-1986. The notice also invoked the larger period of limitation in accordance with the proviso to Section 11-A of the Central Excises and Salt Act, 1944. The Collector finally held against the appellant and confirmed the duty holding "wilful suppression of facts and non-declaration of facts with intention to evade payment of duty" by the appellant. Accordingly, he directed payment of duty amounting to Rs. 11,80,423.10 under Section 11-A of the Central Excises and Salt Act, 1944 read with the proviso thereto and penalty of Rs. 25,000 under Rule 173-Q of the Central Excise Rules. The Tribunal has upheld the Collector's order and dismissed the appellant's appeal. Hence, this further appeal by the assessee.

2. Two points were involved for decision by the Tribunal. The first related to the correct classification of the input and the second relates to limitation. In our opinion, it is unnecessary for us to examine the correctness of the Tribunal's finding on the first point relating to classification of the input since the other point relating to limitation is alone sufficient to decide this appeal. Accordingly, we do not express any opinion on the first point and we also make it clear that our judgment is not to be construed as approving the Tribunal's conclusions on the first point.

3. It is clear that unless the benefit of the larger period of limitation under the proviso to Section 11-A of the Act is available to the Department, the matter is clearly barred by limitation and this alone is sufficient to allow the appeal. In order to avail the benefit of the larger period of limitation, the Department has to establish wilful suppression of fact. The proviso to Section 11-A reads thus :

"Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the

provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, (as if, ...) for the words 'six months', the words 'five years' were substituted."

4. From the admitted facts of this case there can be no doubt that none of the requirements of the above-quoted proviso is satisfied in the present case to give to the Department the benefit of the larger period of limitation. The removal of the goods was in accordance with the approved classification list and all the material facts were before the authorities concerned. Simply because there was a change in opinion as to the correct description of the input, it cannot be said that the case falls within the ambit of proviso to Section 11-A. Admittedly, there was no concealment of the true facts and the classification list submitted by the assessee had been duly approved under which the removal was made.

5. We are, therefore, satisfied that the proviso to Section 11-A is not attracted in the present case. That being so, the show-cause notice is clearly beyond the available period of limitation. This alone is sufficient to allow the appeal.

6. The appeal is accordingly allowed.