

SUPREME COURT OF INDIA

Collector of Central Excise, Kanpur

Vs.

U.P. Lamination

(S Bharucha and S Sen JJ.)

11.12.1996

JUDGMENT

S.P. BHARUCHA, J.

1. We will assume that the judgment under appeal is erroneous insofar as it holds, based on a Allahabad High Court judgment, that excisable goods cleared only means those excisable goods on which excise duty is payable and has been paid; this because of the judgment of this Court in Collector of Central Excise, Hyderabad v. Vazir Sultan Tobacco Company Limited . Even so, the respondent is entitled to, and does, support the judgment on the strength of other arguments raised by it before the Tribunal.

2. One such argument pertained to the validity of the notice issued to it on 20th October, 1982, calling upon it to show cause why excise duty should not be levied on the goods in issue. It is not in dispute that the notice was issued after the permissible period of six months. It is clear from the notice that there is no averment therein that the respondent has contravened the relevant provisions with intent to evade the payment of excise duty, nor is this a necessary inference upon the facts alleged. The extended period is, therefore, unavailable. The notice being out of time, the order under appeal must be upheld.

3. The appeal is dismissed, with no order as to costs.