

Collector of Customs, Bombay

Vs

Modi Spinning & Weaving Mills Co. Ltd.

Civil Appeal No. 2308 of 1997

(S. C. Agarwal, S. R. Babu, A. P. Mishra JJ)

15.01.1998

ORDER

1. M/s Modi Spinning and Weaving Mills Company Limited, the respondent herein, had imported (i) Step and Repeat Machine, (ii) Automatic Photo Camera "Danagraf", and (iii) Glass Film and Screens. The Assistant Collector of Customs assessed customs duty by classifying Step and Repeat Machine as "Photocopying Machine" falling under Heading 90.01, Automatic Photo Camera "Danagraf" as falling under Heading 90.07 and Glass Film and Screens as falling under Heading 90.10 of the Customs Tariffs. On appeal, the Collector of Customs (Appeal) disagreed with the said classification of the goods by the Assistant Collector. He held that Step and Repeat Machine was classifiable under Heading 83.54 and Glass Film and Screens was classifiable under Heading 90.01 or 90.02. The classification of the Automatic Photo Camera "Danagraf" under Heading a 90.07 was maintained. The Collector gave the benefit of Notification No. 112/77 in respect of the Automatic Photo Camera "Danagraf" and Glass and Film Screens. The Central Government, being of the tentative view that the appellate authority's findings in the matter of classification of the above articles were erroneous and improper, issued a show-cause notice dated 13-8-1981 stating that the Government in exercise of its powers under Section 131(3) of the Customs Act, 1962 (hereinafter referred to as "the Act") proposed to annul or modify the order-in-appeal and pass such order as deemed fit. In the said notice it was also stated that the Central Government was of the view that the Step and Repeat Machine is a photocopying machine and should have been classified under Heading 90.10 and that the benefit of Notification No. 112/77 could not be given with regard to the Automatic Photo Camera "Danagraf" and that the Glass Film and Screens should have been classified under Heading 90.10 without allowing the benefit of Notification No. 112/77. After the constitution of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") the powers conferred on the Central Government under Section 131 were transferred to the Tribunal and the Tribunal dealt with the proceedings arising out of the show-cause notice dated 13-8-1981. Before the Tribunal, an objection was raised by the respondent that the show-cause notice which was issued under sub-section (3) of Section 131 was barred by limitation since in view of the provisions of Section 28 of the Act such a proceeding could only be initiated within a period of one year from the date of the passing of the order sought to be annulled and that the show-cause notice was issued after the expiry of the period of one year from the date of the order of the appellate authority sought to be annulled since the said order had been passed on 5-4-1980 while the notice was issued on 13-8-1981. The said objection has been accepted by the Tribunal by the impugned judgment and the proceedings initiated on the basis of the said show-cause notice have been held to be not maintainable on the ground that they are barred by limitation.

2. Shri Subba Rao, the learned counsel appearing for the Department, has urged that no period of limitation is prescribed for exercise by the Central Government of its power of revision under

Section 131(3) which empowers the Central Government, on its own motion, to annul or modify any order passed under Section 128 or Section 130 and that in the present case the show-cause notice had been issued in respect of the order of the appellate authority passed under Section 128 of the Act. The submission of the learned counsel is that the period of limitation of one year under Section 28 of the Act is applicable to exercise of power under Section 131(5) of the Act in respect of an order passed by the original authority. In support of the said submission Shri Subba Rao has placed reliance on the decision of this Court in *Indian Textile Paper Tube Co. Ltd. v. Collector of Customs* [(1990) 4 SCC 65 : 1990 SCC (Cri) 525 (1990) 3 SCR 96].

3. In *Indian Textile Paper Tube Co. Ltd.* [(1990) 4 SCC 65 : 1990 SCC (Cri) 525 (1990) 3 SCR 96] this Court has construed the provisions contained in sub-section (3) as well as sub-section (5) of Section 131 and it has been held that the orders which are contemplated under sub-section (3) of Section 131 are orders passed under Section 128 or Section 130 only, namely, the orders passed in appeal by the Appellate Collector or in revision by the Central Board of Excise and Customs respectively and that sub-section (5) of Section 131 contemplates proceedings against actions of the original assessing authority which have resulted in either not levying or short-levying the duty on goods. In the said case, Sawant J., speaking for the majority, has said : (SCC p. 70, para 8)

"8. Thus the situations contemplated by sub-section (3) and by sub-section (5) are mutually exclusive in that whereas sub-section (3) speaks of the annulment or modification of the appellate or revisional orders, sub-section (5) speaks of the orders passed by the original assessing authority. Hence, the limitation applies when government seeks to annul or modify orders of the original assessing authority under sub-section (5) and not when the government takes action to annul or modify the appellate or revisional orders under sub-section (3)."

It is thus evident that while the period of limitation is prescribed for issue of a show-cause notice under sub-section (5) of Section 131 when the Central Government seeks to annul the order passed by the original assessing authority, (sic) no period of limitation with regard to show-cause notice issued under sub-section (3) of Section 131 where the order sought to be annulled is that of the appellate or revisional authority. In the present case, the show-cause notice dated 13-8-1981 has been issued in exercise of the power conferred under sub-section (3) of Section 131. Since no period of limitation is prescribed for exercising the power under sub-section (3) of Section 131, the proceeding initiated on the basis of the said show-cause notice could not be held to be not maintainable as being barred by limitation. We are, therefore, unable to uphold the impugned judgment of the Tribunal.

4. The appeal is accordingly allowed, the impugned judgment of the Tribunal is set aside and the matter is remitted to the Tribunal for consideration on merits in accordance with law. No costs.