

Pushpam Pharmaceuticals Company vs Collector Of Central Excise, Bombay on 28 March, 1995

Equivalent citations: 2002(80)ECC6, 1995(78)ELT401(SC), 1995SUPP(3)SCC462, AIRONLINE 1995 SC 706

Bench: R.M. Sahai, S.B. Majmudar

ORDER

1. The only question that arises for consideration in this appeal is whether the Department was justified in initiating proceedings for short levy by invoking proviso to Section 11A of the Central Excises & Salt Act, 1944 for the years 1978-79, 1979-80, 1980-81 and 1981-82.

2. The appellant manufactured an item falling under Tariff Entry 14E as well as another item under Item 68. The item under item 68 was fully exempt from payment of duty. The value of items manufactured under Tariff Item 14E in each year was less than Rs. 5 lakhs. Notification No. 111/78 was issued on 9th May, 1978 exempting the turnover of goods manufactured under Item 14E if it was below Rs. 5 lakhs. Therefore, the appellant surrendered its licence and it was cancelled. Notices were, however, issued because if the turnover of the two items, i.e. exempted under Item 68 for the years in dispute was clubbed together with turnover of Item 14E, then it exceeded Rs. 5 lakhs and the goods became liable to duty. The Department invoked extended period of limitation of five years as according to it the duty was short levied due to suppression of the fact that if the turnover was clubbed then it exceeded Rupees Five lakhs.

3. Law about excisability of exempted goods was settled by this Court in Wallace Flour Mills Co. Ltd. v. Collector of Central Excise, Bombay, Division III . Till then conflicting decisions were rendered by different High Courts and Tribunal and it was not settled whether the turnovers of assessable and exempted goods were liable to be clubbed for determining liability. Therefore, two questions arise whether the appellant was bound in the state of uncertainty in law to include the turnover of the two items and if it failed to do so then it amounted to suppression of fact and second whether it was the duty of appellant to keep the Department informed about the turnover of the goods which were not liable to any duty. No rule could be pointed out requiring a manufacturer to disclose the turnover of exempted goods. Even assuming it was, the appellant could not be held guilty of suppression when the law itself was not certain.

4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such

strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.

5. In the result this appeal succeeds and is allowed. The matter is remitted back to the Authority for determining the turnover of the assessee in respect of only that period which is within six months from the date of issue of show cause notice.