

Customs, Excise and Gold Tribunal - Calcutta

Vinar Systems Pvt. Ltd. vs Commissioner Of Central Excise on 17 September, 2003

Equivalent citations: 2003 (158) ELT 297 Tri Kolkata

Bench: A Wadhwa, R K Jeet

ORDER Archana Wadhwa, Member (J)

1. Archana Wadhwa, Member (J). - Vide his impugned order Commissioner of Central Excise, Calcutta has confirmed demand of duty of Rs. 1,08,736.00 against the appellant on the ground that their final product was properly classifiable under heading 9403.00 whereas the appellant has claimed the classification under the tariff heading 7308.90. He has also imposed personal penalty of Rs. 25,000/- along with confirmation of demand of interest against the appellant.

2. Shri S.K. Bagaria, Id. Adv. appearing for the appellants submits that the show cause notice was issued to the appellant on 31-12-98 for the period 1993-94 to 1997-98. However, the Commissioner in his impugned order has accepted the appellants' contention that inasmuch as the classification lists filed by the appellant were duly approved by the proper officer, there was no question of any suppression of facts or misstatement thus justifying the invocation of longer period of limitation. However, he has confirmed the demand for the past one year from the date of issuance of the show cause notice by following the amended provision of Section 11A(1) read with Section 110 of the Finance Act, 2000. Shri Bagaria's contention is that the show cause notice was issued in the year 1998 and as such the law prevalent at the time of issuance of the show cause notice would be applicable. The above position has been settled at rest by the Larger Bench of the Tribunal in the case of Atma Steels Pvt. Ltd., 1984 (17) E.L.T. 331 and has since been followed by the Tribunal in a number of decisions. Similarly he submits that the provisions of Section 110 of the Finance Act, 2000 have been wrongly made applicable by the adjudicating authority to the facts of the instant case. The said section nowhere raises the normal period of limitation for pending show cause notice from six months to one year and the only effect is that irrespective of the approval of the classification lists the demand could be made within the statutory period of limitation of six months or within the extended period of five years. The Tribunal in the case of Borosil Glass Works Ltd., v. CCE 2002 (147) E.L.T. 396 (Tribunal) = 2002 (48) RLT 201 has held that Section 110 of the Finance Act, 2000 does not empower the department to raise demand beyond the normal period of six months in the absence of any fraud, collusion etc. For identical reasons he challenges the imposition of personal penalty against the appellant.

3. We have heard Shri A.K. Mondal, Id. SDR for the Revenue.

4. The Commissioner in his impugned order has held that "in view of the above factual position, the allegation of suppression of facts, misstatement, fraud, collusion etc. with intent to evade payment of central excise duty in classifying the impugned product by the assessee cannot sustain. As a result demand of central excise duty for longer period as for the provision of Section 11A(1) of the Central Excise Act, 1944 also cannot sustain". In spite of observing so the Commissioner has confirmed the demand for the period of one year from the date of issuance of the show cause notice. It is seen that the normal period of six months available under Section 11A was substituted by 'one year' by clause (B) of Section 97 of the Finance Act, 2000. The show cause notice in the present case was issued on

31-12-98 when the normal period was six months. As such the longer period of one year, which came to be replaced in Section 11A under the Finance Act, 2000 cannot be made applicable to the notice issued and adjudicated. The Larger Bench in the case of Atma Steels has clearly laid down in para 101(d) that :-

"101(d) Recourse can be had to the provisions as prevailing at the time of initiation of proceedings, and the period available would be the one as permissible under the provisions existing at the time of issuance of show cause notice, in spite of the fact that the short-levy or non-levy refers, to the period when different period of limitation was available, and lastly".

5. As such we are of the clear opinion that the demand beyond the period of six months from the date of show cause notice is barred by limitation. In the present case demand has been confirmed for January, 1998 to March, 1998 whereas the show cause notice was December, 1998. As such the entire demand would be hit by limitation.

6. We also note that the provisions of Section 110 of the Finance Act, 2000 are not applicable to the facts and circumstances of the case when the Commissioner has himself recorded that there was no suppression or misstatement on the part of the assessee, the demand for the period beyond six months from the date of issuance of the show cause notice could not have been confirmed by him.

7. In view of the foregoing we set aside the impugned order and allow the appeal with consequential relief to the appellants.