

Supreme Court of India

H.M. Bags Manufacturer vs Collector Of Central Excise on 22 July, 1997

Equivalent citations: 1997 (94) ELT 3 SC, (1997) 11 SCC 696

Bench: J Verma, B Kirpal

ORDER

1. Leave granted in SLP (Civil) No. 19363 of 1995.

2. The only contention of learned Counsel for the appellant is that a trade notice No. 29 was issued by the Board on 5-11-1992 notifying the reclassification and it is this date i.e. 5-11-1992 which is material and the demand in the present case could not be from any prior date. It is urged that it is the power under Section 37B of the Central Excises and Salt Act which was exercised in the present case and, therefore, any argument based on Section 11A is not available to the revenue. It is submitted that according to the existing practice, any action taken under Section 37B is duly notified or published and it takes effect from the date of notification or publication in view of the fact that the notification or publication of the classification made pursuant to the Board's order dated 24th September, 1992 was only on 5-11-1992, the date of issuance of the trade notice, it must be held that the effective date for raising the demand by the revenue cannot be any date prior to 5-11-1992. This conclusion is reinforced by use of the word "henceforth" by the Board. The Board's order excluded the intention of making the same effective from any earlier date. This submission of learned Counsel for the appellant has, therefore, to be accepted.

3. We are informed that the duty has already been paid by the appellant. That being so, the discipline of amended Section 11B has to be followed for claiming the refund and it is for the appellant to show that the duty has not been passed on to the consumers to sustain its claim for refund.

4. Consequently, these appeals are allowed in the above terms and the Tribunal's orders are set aside.