

**Nepa Ltd. Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-24-2000

**Reported in :** (2000)(117)ELT637TriDel

**Appellant :** Nepa Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. M/s. NEPA Ltd. have filed this appeal against the Order, dated 1-5-1997 passed by Commissioner, Central Excise demanding Central Excise Duty amounting to Rs. 12.37 crores on paper for the period from 1-3-1986 to 22-2-1988 denying the benefit of Notification No. 163/67, dated 21-7-1967.

2. Shri M. Chandrasekharan, learned Senior Advocate, submitted that on merit the issue has been decided by the Appellate Tribunal against the Appellants in the case of Hindustan Newprint Ltd. v. C.C.E. Cochin, Final Order No. 970/99-C, dated 30-9-1999 denying the benefit of Notification No. 163/67, as amended, since the newsprint manufactured by them did not contain mechanical wood pulp amounting to not less than 50% of the fibre content. He, submitted that the entire demand is hit by time limit specified in section 11A of the Central Excise Act; that the show cause notice was issued to the Appellants on 21-9-1989 for demanding the duty for the period from 1-3-1986 to 29-2-1988; that initially the newsprint manufactured by them comprised of 60% mechanical wood pulp and 40% Chemical Pulp; that in or around 1977-78, they adopted a better technology for manufacture of refined mechanical wood pulp by using cold soda refining

mechanical wood pulp process; that the composition of the newsprint became 1/3 mechanical wood pulp and 1/3rd Cold Soda mechanical wood pulp; that by letter, dated 17-6-1978, Inspector of Central Excise raised the doubt that as the mechanical process pulp was only 42% to 45%, the benefit of Notification was not available to the Appellants; that they, in their reply, dated 7-2-1979, categorically stated that cold soda pulp was a variation of mechanical wood pulp and since the combination of two exceeded 50%, they were eligible to the exemption under Notification No.163/67; that this was accepted by the Department as no doubt was further raised while finally approving the classification lists and RT 12>Returns. The learned Senior Counsel, therefore, contended that there was no suppression of fact in as much as the Department was fully aware of the composition of the pulp of the Appellants; that the Collector under Order, dated 8-10-1991, while adjudicating the show cause notice, dated 5-1-1990, held that cold soda pulp was nothing but mechanical wood pulp and that if the sum total of the two exceeded 50% of the total fibre content the appellants would be entitled to the exemption.

The learned Senior Counsel, therefore, concluded that the fact that the Tariff had undergone a change on 1-3-1986 would not entitle the Department to allege suppression or wilful misstatement as the facts on the basis of which the demand was sought to be sustained were within the knowledge of the Department since long and he relied upon the decisions of the Apex Court in the case of C.C.E. v. Chemphar Drugs and Liniments - 1989 (40) E.L.T. 276 (SC) and C.C.E. v. H.M.M. Ltd. - 1995 (76) E.L.T. 97 (S.C.). The Learned Senior Counsel also mentioned that in Hindustan News Print case, Supra, also the Tribunal set aside the demand being time barred.

3. Countering the arguments, Shri K. Srivastava, learned SDR, reiterated the findings of the Commissioner to the effect that in reply to Inspector's letter, dated 17-6-1978, the Appellants had clarified that the cold soda pulp was an improved variety of mechanical wood pulp whereas in fact such pulp is entirely different from mechanical wood pulp and thus they have misdeclared that cold soda pulp was a mechanical wood pulp and that in classification lists they had misdeclared that paper manufactured by them contained not less than 50% mechanical wood pulp whereas in fact such pulp was used between 30% to 39% only as per the stock

preparation report. The learned SDR, distinguished the facts available in Hindustan Newsprint case from the facts in the present matter by submitting that there was no Communication from the side of the Appellants to the Department indicating the process of manufacture and or percentage of various types of pulp during or near about the period of dispute (1-3-1986 to 29-2-1988); that letter, dated 17-6-1978 was much in time before the disputed period to warrant an inference of full disclosure. He also submitted that the stock preparation reports giving the percentage of the different grades of pulp were supplied by the Party to the Department after repeated reminders and this fact was admitted by Shri N.V. Subramaniam, Secretary, NEPA, in his statement, dated 26-6-1989.

He thus, contended that the extended period of limitation is correctly invocable in the present matter.

4. We have considered the submissions of both sides. On merit, the benefit of Notification No. 163/77 is not available to the paper manufactured by the Appellants as per the decision of the Tribunal in Hindustan Newsprint's case, as fairly conceded by the learned Senior Counsel also. The issue to be decided by us is whether extended period of limitation is invocable in the facts of the present matter. For invoking extended period of five years limitation, duty should not have been paid, short levied or short paid or erroneously refunded because of any fraud, collusion, or wilful misstatement or suppression of facts or contravention of any provisions of the Act or Rules. These ingredients postulates a positive act and as such failure to pay duty is not necessary due to suppression or wilful misdeclaration, etc. It is not disputed by Revenue that as early as in 1978, the Department raised the doubt about availability of Notification No. 163/67 as the percentage of Mechanical wood pulp was between 42% to 45% only and on receipt of the Explanation, dated 7-2-1979 from the Appellants, the Department did not raise any further queries and extended the benefit of Notification No. 163/67. We observe from the perusal of their reply, dated 7-2-1979 that the Appellants had clearly mentioned that newsprint was being manufactured by them with partial use of cold soda pulp which was claimed by them as an improved form of mechanical pulp. The Appellants have not concealed from the Department the fact of using cold soda pulp and it was for the Department to satisfy itself whether it is

Mechanical wood pulp or not for the purpose of Notification. The Department cannot allege that they had indulged in any wilful misdeclaration. This is further strengthened from the fact that Department was getting the paper tested chemically for ascertaining the percentage of mechanical wood pulp from time to time. The test reports were also obtained even during 1986, 1987 and 1988, i.e. during the period of dispute. The Collector, Central Excise Indore, while dropping the demand of duty for the period from 1-12-1984 to 28-2-1986, observed that Chemi-mechanical pulp and Chemi-thermo mechanical pulp are only variation of mechanical pupling and the pulp so obtained would be covered by expression "Mechanical Pulp" occurring in exemption Notification No. 163/67-C.E., dated 21-7-1967 during the period prior to 1-3-1986. In view of these facts it cannot be alleged that the Appellants had misdeclared any fact wilfully or suppressed any fact from the Department, we agree with the submissions of the Appellants that the exemption having been claimed since long by them and duly approved by the Department, the continuation of the same even after 1-3-1986 while the same notification was continued, cannot be interpreted as an intent to avoid payment of duty we, therefore, hold that extended period of limitation is not invocable in the present matter and accordingly the demand is time barred. This the appeal is allowed on time limit.

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