

Bihari Silk and Rayon Processing Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-03-2000

Reported in : (2000)(71)ECC97

Appellant : Bihari Silk and Rayon Processing

Respondent : Collr. of C. Ex.

Judgement :

1. By Order No. 661/93-WRB, dated 27-8-93, two questions were proposed to be referred to a Larger Bench. As per the order of the Hon'ble President dated 20-1-2000, the said questions have been referred to this Larger Bench. The matter was heard on 24-1-2000.

2. The following are the questions which have been referred to the Larger Bench:
"(a) Whether the Show Cause Notice issued without quantification of demand is legal and valid.

(b) Whether, during the material period the Collector could have adjudicated upon, vide Section 11A (as it then existed) or it could only be the Asstt. Collector who was empowered to adjudicate".

3. When the matter was called, none appeared for the appellants, M/s.

Bihari Silk & Rayon Processing Mills (P) Ltd. We therefore proceed with the matter after hearing the Id. DRs, S/Shri S. Srivastava and R.D.Negi.

4. Ld. DR submitted that the second question that has been mentioned in the referral order has already been decided by other Larger Bench.
5. As regards the first question, namely, whether a Show Cause Notice issued without quantification of duty demand is legal and valid, D.R.refers to and relies on the decision of the Delhi High Court in Hindustan Aluminium Corporation Ltd. v. Supdt., Central Excise [1981 (8) E.L.T. 642] in support of the contention that there was no bar to issuing a SCN without quantification of demand.
6. Ld. D.R. referred to the observations made by the Id. Member (T) in Order No. 661/93-WRB, dated 27-8-93 (para 4.2) in which the Id. Member had stated that since the SCN had given details like the quantity of the fabrics involved, the period during which they were removed and the proposal to recover duty involved thereon, non-quantification of the duty in the SCN could not be construed as a vital omission causing serious prejudice to the appellant.He had also observed that the duty amount had since been quantified pursuant to the order.
7. Shri G. Shiv Das, Id. Advocate who addressed the Tribunal however, drew attention to the clear wording of Section 11 A(I) and submitted that it was incumbent on the Officer issuing the notice to specify the actual amount of duty in the notice.
8. On a consideration of the submissions made before us and the case law, we are of the view that non-quantification of duty demand in the SCN would make the demand invalid for reasons we give in the succeeding paragraphs.
9. The relevant provision relating to issuance of notice is Section 11A of the Central Excise Act, 1944 providing for recovery of duties not levied or not paid, short levied or short paid, or erroneously refunded. Relevant portion of that section is extracted below : "(1) When any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the

notice.

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under Sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined".

10. Interpreting the scope of Rule 10 of the Central Excise Rules, 1944 (which was in pari materia with Section 11A(1) of the Central Excise Act, 1944 as it stands now) the Bombay High Court in J.B.A. Printing Inks Ltd. v. Union of India and Ors. [1980 (6) E.L.T. 121 (Bom.)] observed as follows : 19. Mr. Dalai urged that even though no specific amount had been mentioned in the show cause notice no prejudice had been caused to the petitioner as the amount was merely a matter of calculation.

There is no merit in this contention, inasmuch as the sine qua non of Rule 10 is that the show cause notice must necessarily specify the amount in respect of which the party is called upon to show why he should not pay. Mr. Dalai relied on the decision of the Supreme Court in The Kesava Mills Co. Ltd. and Anr. v. Union of India and Ors., A.I.R. 1973 SC 389. In that case it was held that when a textile mill company and the persons concerned have received a fair treatment and also all reasonable opportunities to make out their own cases before Government they cannot be allowed to make any grievances of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over or that they had not been furnished with a copy of the report, more so when Government gave them ample opportunity to reopen and run the mill on their own if they wanted to avoid the take-over. In absence of any resources with them to do so, insistence on a formal hearing in such circumstances is nothing but insistence on an empty formality. It was further observed that it is not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given cases before the authority takes a decision upon that report. The answer to this question also must

always depend on the facts and circumstances of the case. In the circumstances of the case the non-disclosure of the report of the Investigating Committee did not cause any prejudice whatsoever to the textile mill company or the persons concerned.

20. That decision and the observations of the Supreme Court can be of no assistance to the present respondents. It can hardly be said that the requirement of Rule 10 making it incumbent for the authority to state a specific amount is an empty formality. The facts and circumstance in Kesava Mills Co. Ltd. case before the Supreme Court have not the slightest semblance or bearing to the facts and circumstances of the matter before me. In the circumstances, the final ground of challenge urged by Mr. Dada be accepted and the contention of Mr. Dalai to the contrary must be rejected.

21. To summarise (i) it is not necessary that a show cause notice under Rule 10 must state the rule under which it is issued as long as the requirements of that rule are satisfied; (ii) the notice must require the party to show cause to the proper officer why he should not pay a certain stated amount; (iii) the amount must be stated and manifestly specified in the notice itself; (iv) the party must not be relegated to conjecture, speculation or calculation in order to ascertain the amount in respect of which the show cause notice is issued; (v) the amount determined by the authority as payable shall not exceed the amount specified in the show cause notice; and (vi) such amount which the party is ordered to pay must be stated and manifestly specified in the order without relegating the party to conjecture or calculation, for ascertainment of the amount ordered to be paid. None of these mandatory requirements of Rule 10 have been complied with in this case. Hence the show cause notice and the impugned orders are liable to be set aside. *Hindustan Aluminium Corporation v. Supdt, C.E.* [1981 (8) E.L.T. 624 (Delhi H.C.)] took a contrary view and held: 19. Mr. Sorabjee has also raised an additional challenge to the impugned notice dated 31-10-1979 on the ground that the show cause did not specify the amount which the petitioners are required to pay. A reference to the impugned show cause will show that the petitioner has been told to show cause why it should not be required to pay the duties for the period between 17-5-1969 to 23-6-1979. The amount is the differential duty

between the Central Excise duty leviable under Tariff item 27 and the amount of Central Excise duty rebatable in terms of notification of 17-5-1969 Mr. Sorabjee says that this does not satisfy the requirement of Rule 10 which requires the notice to mention a definite amount. According to the counsel the absence of specification of the amount makes the notice bad and he refers us to (1980 E.L.T. 121) J.B. Printings Inks Ltd v. Union of India and Ors. In that case a notice issued under Rule 10 called upon the petitioner to pay duty for the period 7-1-1972 onwards.

This was held not to be in compliance with Rule 10. We do not think that this authority can be of any assistance to the petitioner. The first reason is that in that case the show cause only called upon the petitioner to pay duty for the period 7-1-1972 onwards. In the present case though the exact amount in terms of Rupees and Paisas is not specified the specification is broadly done by pointing out that the duty payable is differential between the duty leviable under Tariff item 27 and the amount of Excise Duty rebatable in terms of notification of 17-5-1969. Though it would have been certainly better if the exact amount was specified, it cannot be said that the petitioner cannot know as to how much duty is being demanded or in what manner to calculate the duty demanded of it.

That apart even if we hold that the impugned show cause did not comply with Rule 10 in all particulars meticulously it does not mean that the show cause notice will become void. We cannot read the requirements of Rule 10 to specify the amount to mean that if the specified amount is not mentioned in the show cause notice the same will become void as Lentin, J. of Bombay High Court has purported to hold. In our opinion to give such a strict, and we say so with respect, uncalled for construction to the requirement of specification of the amount in the show cause under Rule 10 is neither warranted by any principles of law or any sound rule of interpretation. The whole purpose of the show cause is to indicate the amount that is demanded of the petitioner. If instead of mentioning the amount the show cause indicates the difference between the duty demanded and the duty not paid that would be sufficient compliance. Even if there was a total silence to specify any amount all that this would mean would be that the petitioner would be entitled to ask the respondents to indicate the specified amount to the petitioner and then to

give his reply to it. But that would not mean that the notice per se would become illegal. The requirements of specifying the amount is a salutary one and must in all cases be followed but the absence of it would not make the notice bad. We feel that sometimes the broad maxim that penal provision should be strictly construed against the department and if any concession is to be made it must be made in favour of the citizen is literally construed as an effort at finding any technical flaw to help a person from avoiding to pay the duties and taxes leviable under the provisions of law. We cannot accept as sound law that a fiscal provision has to be construed against the department and in favour of citizens on any supposed reason of technicality and strict construction. It must be remembered that it is only when there is some equivocation or ambiguity about a word or provision that the rule of strict construction or narrow construction in favour of the subject is to be applied but if there is no ambiguity and the act or omission falls clearly within the mischief of statute then the construction of penal statute will not differ from that of any other, see *Maharaja Book Depot v. State of Gujarat* 1979 (1) SCC 295 at 301. The Rule that statutes imposing criminal or other penalties should be construed narrowly in favour of the person proceeded against was more rigorously applied in former times when the number of capital offences was still very large, when it was still punishable with death to cut down a cherry-tree in an orchard or to be seen for a month in the company of gipsies see *Interpretation of Statutes by Maxwell* page 238 12th Ed. There was obvious sense in giving a strict construction to penal statute and in requiring the fulfilment to the letter of statutory condition precedent to the infliction of punishment and insisting on the strict observance of technical provision concerning criminal procedure and jurisdiction page 240. This rule of interpretation of strict construction was later on extended in England to even statutes while it was said to encroach on the rights of the subject, whether as regards person or property so that they would also be subject to strict construction like a penal act. The next stage was that the statute to which imposes pecuniary burden were also made subject to the same rule of strict construction and that is why the English Court in interpreting the taxing act stated, 'There is no room for any intendment'. There is no equity about tax, ... but this strictness of interpretation may not always ensure to the subject's benefit, for 'if the person sought to be taxed comes within the letter of the law he must be taxed, however, great the

hardship may appear to the judicial mind to be'. "It obviously the original reason for the growth of the rule, to mitigate the extension of capital felonies" says Livingstone Hall, "no longer applies to all penal statutes, if indeed it was ever of such widespread application; this has often been recognised, in (United States) where the rule has been abrogated, and where this argument is still made, it has been limited to few statutes carrying punishments believed by the courts to be disproportionately severe as compared with acts sought to be punished; Livingstone Hall - Strict and Liberal Construction of Penal Statutes, Harvard Law Review (1934-35) p. 765. 'Although the common distinction,' as Pollock C.B. said in *Nicholson V. Fields*, 'taken between penal Acts and remedial Acts, that the former are to be construed strictly and the others, are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a judge,' yet the distinction now means little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction, nor equitable interpretation to exonerate parties plainly within their scope. See Craries on Statute Law 6th Edition page 531. It is thus not, therefore, correct to seek to equate the strict construction principle applicable to the penal statute which imposes punishment and imprisonment in the same identical way as to those statutes imposing taxes and duties. That a different approach may be necessary in the context of our situation of the requirement of social justice was recognised by the Supreme Court in *Commissioner of Income Tax, Andhra Pradesh v. T. N. Arvinda Reddy* [1979 (4) Supreme Court Cases 721] where Krishna Iyer, J. speaking for the court said, 'A passing reference to avoidance and evasion of tax was made at the bar, a dubious refinement of a dated legal culture sanctified, though by judicial dicta. The court is not the mint of virtue and one day in our welfare state geared to Social justice, this clear concept of avoidance against 'evasion' may have to be exposed. Enough unto the day is the evil thereof. That administration of tax law must also recognise the demand of social justice, was emphasised by P.N. Bhagwati, J. in AIR 1977 S.C. 1182.

21. In welfare state like ours there is no question of having a tilt in favour of interpretation which will assist in avoiding to pay the taxes and duties which have been levied. Either the provision of law is clear that a citizen is not liable to pay that particular duty or tax, in which case of course he would be entitled to exemption; but the principle of strict interpretation being carried to the extent of holding as if there was something inherently bad or penal in the imposition of taxes and duties so that on small technicality the conclusion should be inferred that a citizen is entitled to avoid payment of tax, cannot be accepted by us as laying down a sound rule of interpretation. We are also of the view that the rule of strict construction applicable to penal statute like those provisions which imposed a sentence of fine or imprisonment for any alleged breach cannot in all fairness be applied in the same manner for interpreting the laws like imposition of excise or tax. To equate the law for imposition of tax or excise duty as equivalent to penal provision is to hark back to the exploded laissez faire theory of 19th century and to refuse to accept the compulsions of 20th century Welfare state which necessarily postulate the imposition of taxes and duties of excise and custom for carrying out its multifarious social welfare activities. We, therefore, cannot accept that J.B.T. Printing Ink Ltd. is laying down the correct law.

22. As a result the petition is disposed of as above. The respondents will now proceed to decide the matter in the light of this judgment and observations made herein. As there has been partial success there will be no order as to costs.

12. In the case of *Davanagere Cotton Mills v. Chairman, CBEC* [1991 (55) E.L.T. 295 (Kar.)], without noticing either the Bombay High Court judgment or the Delhi High Court judgment referred to earlier, observed in Para 23 as follows: "23. Sub-Sec. (2) of Section 11A contemplates adjudication of the duty payable by the assessee as determined by the Asstt. Collector in the order to be made by him after considering the objections, if any, taken to the notice. This determination of the amount payable must be preceded by issue of the notice under Sub-sec. (1) and it is a statutory duty cast on the Asstt. Collector, not only to issue notice by indicating the amount payable in the notice itself, but also to determine the amount payable as required under Sub-sec. (2).

That this is the scheme of the Act provided for recovery of duties not levied or not paid, cannot be disputed by the Department.

Therefore, the arguments advanced on behalf of the Department that no such determination of the duty payable was required to be made by the Assistant Collector under Sub-section (2), has to be rejected as wholly untenable and opposed to the Scheme of Section 11A".

13. On a careful consideration of the decisions referred to above and the settled principles of Administrative Law and principles of natural justice, we are in agreement with the view taken by the Bombay High Court in J.B.A. Printing Inks Ltd. case (supra). We are of the view that even in a case where the omission to specify the amount in the SCN may not cause serious prejudice to the assessee (in view of the other details given in the SCN enabling him to work out the actual quantum of duty liability), the possibility of a dispute arising about the method and manner of arriving at the amount by reason of questions relating to the rate of duty, valuation, classification etc., cannot be ruled out.

As had been held in the Bombay High Court judgment, relegating the amount to conjecture or speculation cannot be said to be the intention of Section 11A(1) (or the corresponding provision in the erstwhile Rule 10). In fact, it is only with a view to avoid such situations that Section 11A(1) has clearly provided that the amount should be specified in the notice. Further, in our view, to give an interpretation to Section 11A(1) which would render the expression "the amount specified in the notice" a mere surplusage will be contrary to the well understood rules of interpretation. In our view, the said words in Section 11A(1) have to be given its full meaning and effect. Hence we are in agreement with the views expressed in Para 19 of the Bombay High Court judgment in J.B.A. Printing Inks (supra) holding that it was a sine qua non of Rule 10 [the present Section 11A(1)] that the SCN must specify the amount in respect of which the party is called upon to show cause why the amount should not be paid.

14. Further, the provision in Sub-section (2) of Section 11A stating that the Central Excise Officer shall determine the amount of duty "not being in excess of the amount specified" clearly pre-supposes the specification of the amount in the

notice. In the absence of such specified amount the determination of amount of duty under Sub-section (2) by the Central Excise Officer becomes impossible as determination of the amount by him has to take into account the caveat that the amount cannot exceed the amounts specified in Section 11A(1). It is therefore imperative that the notice issued under Section 11A(1) specifically mentions the amount of excise duty.

15. Accordingly, the questions referred to in Para 2(a) above is answered as follows : A SCN issued without quantification of payment is not legal and valid.

16. This Reference Application is disposed of in the above terms.

Sd/- Sd/- 17. [Contra per: Lajja Ram, Member (T)]. - With due respects, we do not agree with the view that a show cause notice issued without quantification of demand is not legal and valid; and we record the following order - 18. Relevant extracts from Section 11A of the Central Excises Act, 1944 (hereinafter referred to as the 'Act') have been given in para 9 of the order proposed by learned brother Shri A.C.C. Unni, Member Judicial. It is for consideration as to what is the meaning of the expression 'amount specified in the notice' used in Sub-section (1) of the said Section 11A of the Act.

It is to be noted that the expression used in the Sub-section (1) is 'specified'. Specifying is not the same as 'determined' referred to in Sub-section (2) of the said Section 11-A; or 'quantification' the expression used in the reference. While there is an element of definiteness in specifying any amount, describing or stating in detail is the same as specifying.

According to the New International Webster's Comprehensive Dictionary of the English Language (Encyclopedic Edition) 'specify' means, "to mention specifically; state in full and explicit terms." According to The World Book Dictionary 'specify' means "to mention or name definitely; state or describe in detail." According to The New Roget's Thesaurus in Dictionary Form, 'specify' is to particularise, itemize, individualize (detail); mention, cite, enumerate, name (talk, name).

19. The expression 'amount specified in the notice' has a reference to the duty of excise which has not been levied or paid or which has been short levied or short paid or which has been erroneously refunded.

The scope of the term 'levy' is wide. In various judicial pronouncements, its scope has been explained as under -N.B. Sanjana, Asstt. Collector of Central Excise, Bombay v. Elphinstone Spinning & Weaving Mills Co. Ltd - 1973 July Cen-Cus (vi) (SC). The expression 'levy' does not mean 'collection'.

"It is to be noted that Sub-section (1) (of Section 3 of the Central Excises & Salt Act, 1944) uses both the expressions "levied and collected" and that clearly shows that the expression "levy" has not been used in the Act or the Rules as meaning actual collection".Asstt. Collector of Central Excise, Calcutta v. National Tobacco Co.

of India Ltd. "The term 'levy' appears to us to be wider in its import than the term 'assessment'. It may include both imposition of a tax as well as assessment. The term "imposition" is generally used for the levy of a tax or duty by legislative provisions indicating the subject matter of the tax and the rates as it has to be taxed. The term "assessment" on the other hand is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount...We think that although the connotation of the term levy' seems wider than that of 'assessment' which it includes, yet it does not seem to us to extend to 'collection'. Article 265 of the Constitution makes a distinction between 'levy' and 'collection'."Union of India v. Bombay Tyre International Ltd. -1983 (14) E.L.T. 18% (S.C.): "While the levy in our country has the status of a constitutional concept, the point of collection is located where the statute declares it will be." J.K. Cotton Spinning & Weaving Mills Ltd. v. UOI -1988 STC 68 at 421 (S.C.): "While Section 3 of the Central Excises Act, 1944 lays down the taxable event, Rules 9 and 49 provide for the collection of duty.

There is a distinction between levy and collection of duty. In Province of Madras v. Boddu Pai Danna & Sons - 1942 (1) STC 104 (FC) it has been observed by the federal Court as follows.

"There is in theory nothing to prevent the Central Legislature from imposing a duty of excise on a commodity as soon as it comes into existence, no matter what happens to it afterwards, whether it be sold, consumed, destroyed or given away. A taxing authority will not ordinarily impose such a duty because it is much more convenient administratively to collect the duty (as in the case of most of the Indian Excise Act) when the commodity leaves the factory for the first time and also because the duty is intended to be an indirect duty which the manufacturer or producer is to pass, on to the ultimate consumer which he could not do if the commodity had for example been destroyed in the factory itself. It is the fact of manufacture which attracts the duty even though it may be collected later" Ashok Singh v. Asstt. Collector of Estate Duty -1992 ITR196 at 160 (SC): "The word 'levy' in Blacks' Law Dictionary (V Edition) at page 816 is stated thus : Levy is to assess; raise; execute, exact; to collect; gather; take up, seize. Thus, to levy (assess, exact, raise or collect) a tax; to levy (raise, or set up) a nuisance; to levy (acknowledge) a fine, to levy (inaugurate) war, to levy an execution i.e. to levy or collect a sum of money on in execution.

As a matter of fact in Padampat Singhania - (1980) 122 (ITR) 162 (Allahabad) the meaning of this word (levy) under this very Act [Estate Duty Act, 1953] came to be laid down - which is extracted as under (at page 166) "The word 'levy' has been interpreted by the Supreme Court in the case of Asstt. Collector of Central Excise v. National Tobacco Co.

of India Ltd - AIR 1972 SC 2563 as embracing within it the process of assessment and also the imposition of tax." Shri Synthetics Ltd., Ujjain v. Union of India -1982 (10) E.L.T. 97 (MP) : "The crucial time for levy of duty is 'time of removal' as envisaged by Rule 9A of the Central Excise Rules, 1944 and not the date of manufacture or production of goods in the factory.

It is not correct to say that the qualifying words "in such manner as may be prescribed" in Section 3 of the Central Excises Act qualify only 'collected' and 'not levied' The term 'levy' is wider and includes all stages up to assessment but does not include 'collection' which is separately referred to in Section 3 of the Act.

The term 'levy' is a word of very wide import while the term 'imposition' is narrower and is generally used for the levy of a tax or duty by legislative provisions indicating the subject matters of the tax and the date on which it has to be taxed." Similarly the expression 'paid' has a wide coverage as observed by the Supreme Court in the case of N.B. Sanjana, Assistant Collector of Central Excise, Bombay v. The Elphinstone Spinning and Weaving Mills Co. Ltd., 1978 (2) E.L.T. (J 399) (S.C). Para 18 from that decision is extracted below - "18. This now takes us to the question of proper interpretation to be placed on the expression "short levied" and "paid" in Rule 10.

Does the expression "short-levied" mean that some amount should have been levied as duty as contended by Dr. Syed Mohammad or will that expression cover even cases where the assessment is of 'nil duty' as contended by Mr. Daphtary. What is the meaning of the word "paid" in Rule 10 It is contended on behalf of the appellants that it means "actually paid", whereas, according to the respondents, it means, "ought to have been paid". Taken literally the word "paid" does actually mean paid in cash. That means that a party or an assessee must have paid some amount of duty whatever may be the quantum. If this literal interpretation is placed on the expression "paid" in R. 10, it is needless to state that it will support in a large measure the contention of Dr. Syed Mohammad that R. 10 contemplates a short-levy in the sense that the amount which falls short of the correct amount has been assessed and actually paid. In our opinion the expression "paid", should not be read in a vacuum and it will not be right to construe the said word literally, which means actually paid. That word will have to be understood and interpreted in the context in which it appears in order to discover its appropriate meaning. If this is appreciated and the context is considered it is apparent that there is an ambiguity in the meaning of the word "paid". It must be remembered that Rule 10 deals with recovery of duties or charges short levied or erroneously refunded.

The expression "paid" has been used to denote the starting point of limitation of three months for the issue of a written demand. The Act and the Rules provide in great detail the stage at which and the time when the excise duty is to be paid by a party. If the literal construction that the amount should have been actually paid is accepted then in case like the present one on hand, when no duty has been

levied, the Department will not be able to take any action under Rule 10. Rule 10-A cannot apply when a short levy is made through error or mis-construction on the part of an officer, as such a case is specifically provided by Rule 10. Therefore, in our opinion, the proper interpretation to be placed on the expression "paid" is "ought" to have been "paid". Such an interpretation has been placed on the expression "paid" occurring in certain other enactments as in *Gursahai Saigal v. Commissioner of Income Tax, Punjab* (1963) 3SCR 893 = (AIR 1963 SC 1062, and in *Allen v. Thron Electrical Industries Ltd.* (1968) 1 QB 487. In (1963) 3 SCR 893 = (AIR 1963 SC 1062), the question arose as follows : In certain assessment proceedings under the Indian Income tax Act, 1922, an assessee was charged with interest under Sub-section (8) of Section 18-A of that Act. Under that sub-section interest calculated in the manner laid down in Sub-section (6) of Section 18A was to be added to the tax assessed. Subsection (3) of Sub-section 18-A dealt with cases of a person who has not been assessed before and he was required to make his own estimate of the tax payable by him and pay accordingly. Sub-section (3) of Section 18-A was applicable to the assessee in that case. However he neither submitted any estimate nor did he pay any advance tax. Under Sub-section (6) of Section 18-A it was provided : "Where in any year an assessee has paid tax under Sub-section (2) or Sub-section (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent of the tax determined on the basis of regular assessment, simple interest at the rate of six per cent per annum from the 1st day of January in the financial year in which the tax was paid up to the date of the said regular assessments shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent." 20. The expression 'amount specified in the notice' had come up for consideration before the Tribunal in the case of *Simon Carves India Ltd. v. CCE, Patna*, 1987 (32) E.L.T. 186 (T), with reference to the erstwhile Rule 10 (as in force at the relevant time) of the Central Excise Rules, 1944 (hereinafter referred to as the 'Rules'). The Tribunal observed that the words amount specified in the notice' do not necessarily mean that either the exact figure should be specified or the figure might be discernible by arithmetical calculation. Para 31 from that decision is extracted below - "31. The Bench drew Shri Bagaria's attention to another example of the use of the same term. Clause (d) of Section 2,

defined "excisable goods" as "goods specified in the First Schedule as being subject to a duty of excise ...". The last item in the First Schedule related to other goods, not elsewhere specified...", which could hardly be called a specific description in the usual sense.

This would appear to indicate that the Act contemplated some latitude in the matter of what would constitute a "specific" description. Shri Bagaria agreed that there was a scope for some latitude. However, the latitude could only be with respect to the arithmetical calculation of the amount, provided the information necessary for such calculation was furnished." 21. It is seen that the matter is entirely covered by the Delhi High Court decision in the case of Hindustan Aluminium Corporation Ltd. (HINDALCO) v. Supdt. of Central Excise, Mirzapur, 1981 (8) E.L.T. 642 (Delhi). Under the then existing Rule 10 of the Rules, central excise duty (CED) was demanded for the period 17-5-1969 to 23-6-1979 under show cause notice dated 31-10-1979. The said show cause notice did not specify the amount which M/s. HINDALCO were required to pay. The appellants has referred to the Bombay High Court single Judge decision in the case of J.B.A. Printing Inks Ltd. v. Union of India, 1980 (6) E.L.T. 121 (Bombay), wherein the assessee had been called upon to pay duty under the then Rule 10 of the Rules for the period 7-1-1972 onwards. The Delhi High Court in two Judge decision observed that the Bombay High Court decision was of no assistance when though the exact amount in terms of rupees and paise was not specified, the specification was broadly done by pointing out that the duty payable was the differential between the duty leviable and the amount of CED rebatable in terms of applicable exemption notification. The High Court observed "though it would have been certainly better if the exact amount was specified, it cannot be said that the petitioner cannot know as to how much duty is being demanded or in what manner to calculate the duty demanded of it." It was added after referring the single Judge decision of the Bombay High Court - "The whole purpose of the show cause is to indicate the amount that is demanded of the petitioner. If instead of mentioning the amount, the show cause indicates the difference between the duty demanded and the duty not paid that would be sufficient compliance. Even if there was a total silence to specify any amount all that this would mean that the petitioner would be entitled to ask the respondents to indicate the specified amount to the petitioner

and then to give his reply to it. But that would not mean that the notice per se would become illegal. The requirements of specifying the amount is a salutary one and must in all cases be followed but the absence of it would not make the notice bad." The Delhi High Court ruled that the Bombay High Court decision in J.B.A. Printing Inks Ltd. v. UOI, 1980 (6) E.L.T. 121 (Bom.), did not lay down the correct law.

Thus the single Judge decision of the Bombay High Court has been clearly overruled by the two Judge decision of the Delhi High Court.

22. In the case of Gwalior Rayon Mfg. (Wvg.) Co. v. UOI, 1982 (10) E.L.T. 844 (MP), the Madhya Pradesh High Court at Jabalpur had also affirmed the same position when it was held that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient. The assessee had contended before the High Court that the necessary particulars to enable them to show cause have not been stated in the show cause notice. The High Court held that this cannot be a ground for quashing the notice.

23. It is also seen that this Tribunal has been consistently taking a view that the contention that the show cause notice did not mention the amounts and hence the show cause notice was bad in law, was a untenable contention. In this connection, reference may be made to the following decisions - (1) Tinplate Co. of India Ltd., Jamshedpur v. CCE, Patna, 1983 (14) E.L.T. 1807 (T) (para 7); (2) Chokshi Tube Ltd., Bombay v. CCE, Bombay, 1983 (14) E.L.T. 2362 (T) (para 7); M/s Entremonde Polycoaters Pvt. Ltd., Nasik v. CCE, Pune, 1984 (16) E.L.T. 389 (T) (para 8); and In the last mentioned decision of Sundaram Fasteners Ltd., supra, the Tribunal had referred to the Supreme Court decisions in the case of (i) N.B. Sanjana, Asstt. Collector of Central Excise, Bombay v. The Elphinstone Spinning & Weaving Mills Co. Ltd., 1978 (2) E.L.T. (J 399) (S.C.); and (ii) J.K. Steel Ltd. v. UOI, 1978 (2) E.L.T. (J 355) (S.C.).

24. The facts in the case of Davanagere Cotton Mills Ltd. v. Chairman, CBEC, 1991 (55) E.L.T. 295 (Karnataka), were entirely different. In that Single Judge

decision, the Superintendent of Central Excise had issued a demand under letter dated 2-5-1986 for the period 18 September, 1981 to 20 July, 1985 computing the duty payable as per the monthly returns filed by the assessee, calling upon them to pay the excise duty payable by them for the period covered by the stay order of the High Court dated 18-9-1981; after the writ petition of the assessee was dismissed by the High Court on 3-3-1986. The demand notice called upon the mill to pay a sum of Rs. 2,11/86,467.27. No show cause notice had been issued in that case and the demand of Rs. 2,11,86,467.27 was made by the letter dated 2-5-1986. The issue before the High Court was about the justification of such a demand without an order of adjudication. It was also for consideration whether the statutory requirement and procedural requirement to be observed for determining the duty payable in accordance with law could be dispensed with in the facts and circumstances of that case. The High Court held that the issue of show cause notice to recover any duty not paid or short paid was mandatory. Thus it is seen that the facts in the present case had no similarity with the facts in the case before the Karnataka High Court in the case of Davanagere Cotton Mills Ltd., supra.

25. Accordingly, the question referred to in para 2(a) above is answered as follows - "A show cause notice issued without quantification of demand is not illegal or invalid." As regards the question referred to in para 2(b) above, we agree with the view taken by the learned brother Shri A.C.C. Unni, Member Judicial.

(Lajja Ram) (G.R. Sharma) (P.S. Bajaj) Member (T) Member (T) Member (J) 27. By majority it is held that "A show cause notice issued without quantification of demand is not illegal or invalid." Sd/- Sd/- Sd/- Sd/- Sd/-(G.A. Brahma Deva) (Lajja Ram) (G.R. Sharma) (A.C.C. Unni) (P.S. Bajaj) Member (J) Member (T) Member (T) Member (J) Member (J)

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