

**Spln Packaging Ltd. Vs. Commissioner of Central Excise and**

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

**Decided On :** Oct-31-2002

**Judge :** S T Gowri, G Srinivasan

**Appellant :** Spln Packaging Ltd.

**Respondent :** Commissioner of Central Excise and

**Judgement :**

2. The appeal is against the order of the Commissioner (Appeals) disposing of the appeal before him for failure to deposit the entire duty demanded, and penalty imposed by the order of the Additional Commissioner, which was in appeal before him.

3. The notice issued to the appellant alleged that quantities of woven fabrics of high density polyethylene and sacks made therefrom which the appellant manufactured in its factory at Akola and transferred to its factory at Bilaspur, either for the manufacture of fabrics or for further processing of sacks have not discharged the correct duty that was payable. It alleged that the cost of the manufacture of the goods which was the basis for the value on which duty was payable was incorrect, since it did not take into account the relevant figures for the period when the goods were manufactured but were based on figures of the preceding year. The demand for duty entirely relates to the goods cleared beyond the normal period of limitation. The notice therefore invoked the extended period of limitation contained in the proviso under Sub-section (1) of Section 11A of the Act. The order of the Additional Commissioner adjudicated on the notice.

4. The ratio of the decision of the larger bench of the Tribunal in Jay Yuhshin Ltd. v. CCE 2000 (119) ELT 718 holding that in this kind of situation, the extended period of limitation would not be invoked because there would be n intent to evade duty, since whatever duty the appellant paid at the factory, where the goods are manufactured, would be available as modvat credit at the factory to which it was sent before it is manufactured, would prima facie apply to the facts before us. The nature of the further processing undertaken of the sacks that were cleared from the Akola factory to its factory at Bilaspur is not clear and is also not very clear as to whether its processes amounted to manufacture justifying taking modvat credit. However, the duty involved on these goods is only Rs. 46,188/- out of the total duty demanded of Rs. 15,49,668/-. The remaining duty is demanded on the fabric. The decision of the Tribunal has not been cited before the Commissioner (Appeals).

5. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals) for decision in accordance with law without insisting on any deposit.

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