

**Cce Vs. Pamwi Tissues Ltd.**

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

**Decided On :** Jun-26-2003

**Reported in :** (2003)(89)ECC193

**Judge :** N T C.N.B., P Chacko

**Appellant :** Cce

**Respondent :** Pamwi Tissues Ltd.

**Judgement :**

1. This application was filed by the department claiming that there is an apparent mistake in our Final Order No. 19/2001/C dated 8.2.2001 in Appeal No. E/3132/2000/C.2. The appeal of the assessee was directed against Order-in-Original No. 51/99 dated 30.9.99 passed by the Commissioner of Central Excise, Chandigarh denying the benefit of Notification No. 138./86-CE dated 1.3.86 to four varieties of paper manufactured and cleared by them during the period 1.3.86 to 20.3.90 and accordingly confirming a demand of duty of over Rs. 4 crores against them under Section 11A(1) of the Central Excise Act, 1944. The demand so confirmed was passed on the basis of a finding that the goods were correctly classifiable under Sub-heading 4806.20 (and not under Sub-heading 4805.90 claimed by the assessee) of the Central Excise Tariff Schedule. In the final order which we passed in the appeal, we allowed the appeal on the ground of limitation, without going into the merits of the classification dispute. We had found that the ingredient of wilful suppression of facts with intent to evade payment of duty [under the proviso to Sub-section (1) of Section 11A] was absent in the appellant's case

and, therefore, the show-cause notice issued on 1.4.91 for demanding duty for the period 1.3.86 to 20.3.90 was barred by limitation.

3. Examined the records and heard both the sides. The alleged mistake in our final order is seen stated in para-4 of the present application, which is extracted below: "That the submission of the Senior Departmental Representative before Tribunal (para-4 of the CEGAT order supra) i.e. 'the findings in the impugned order wherein the Adjudicating Authority held that the appellants have wilfully suppressed material facts by not disclosing laboratory test report and the super-calendering report on which the whole demand is based' have neither been discussed nor any findings in this regard have been given by the Tribunal in the Order supra. The party "wilfully suppressed the material facts from the department inasmuch as they manufactured and cleared those four varieties of paper in question during the period 1,3.86 to 20.3.90 which were only glazed translucent paper and correctly classifiable under CET heading 48.06 and not under CET heading 48.05." It has been pointed out that the submission of the DR that the appellants had wilfully suppressed material facts by not disclosing their laboratory test reports and supercalendering reports (on which the demand was based) was not discussed and any finding thereon not given in the final order. The show-cause notice had alleged that the appellants had not disclosed their own laboratory test reports and supercalendering reports in the declaration they had filed under Rule 173G(5) and had suppressed the materials with intent to evade payment of duty. This allegation was upheld by the adjudicating authority and the finding of that authority was defended by the DR before us. The present grievance is that we did not record any finding in relation to the above allegation. Learned Sr. Advocate has pointed out to us that the DR had not raised any such objection when the Final Order was dictated and pronounced in court.

4. It appears from the record that the department had filed an appeal in the Supreme Court against our Final Order and that the present application has been filed after withdrawing that appeal.

5. We have carefully considered the matter. We had passed the Final Order after duly considering the department's allegation and the assessee's answer thereto.

We had noticed the allegation that it appeared from the assessee's test/supercalendering reports that the four varieties of paper manufactured during 1.3.86-20.3.90 were translucent and glazed and hence classifiable under SH 4806.20 to which the concessional rate of duty under the Notification was not applicable. At the same time, we had also taken note of the fact that all the chemical test reports gathered by the department from their own laboratory from time to time in respect of the goods in question had shown to the department that the paper was inter alia translucent and glazed. We had seen the Chemical Examiner's test reports to this effect given in respect of samples of the goods drawn in 1984 and 1989. Thus the fact allegedly suppressed by the assessee by non-disclosure of their own records was not anything different from what was disclosed to the department by the Chemical Examiner's reports on the samples drawn from the assessee's factory. Thus we found no suppression on the assessee's part in relation to the translucency etc. of the goods. This finding is discernible from our references, in the Final Order, to the 1984 drawal of samples by the department for testing to ascertain whether the benefit of concessional rate of duty was available to the goods. Para (5) of our order is also explicit about other aspects of our finding that the assessee did not suppress anything with intent to evade duty. Therefore, there is no apparent mistake to be rectified in the Final Order. The present application is rejected.

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