

**Commissioner of Central Excise Vs. Syncom Formulation (i) Ltd.**

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

**Decided On :** May-12-2004

**Reported in :** (2004)(172)ELT77TriDel

**Judge :** A T V.K., P Bajaj

**Appellant :** Commissioner of Central Excise

**Respondent :** Syncom Formulation (i) Ltd.

**Judgement :**

1. In this Appeal filed by the Revenue, the issue involved is whether extended period of limitation for demanding duty under Section 11A(1) of the Central Excise Act can be invoked after the detection of short payment of duty by the Central Excise officer.

2. Mrs. Charul Baranwal, learned Senior Departmental Representative, submitted that M/s. Syncom Formulation (I) Ltd. manufacture medicines namely Pefloxacin and diclofenac sodium which were classified by them under subheading 3003.20 of the Schedule to the Central Excise Tariff Act whereas those medicines were appropriately classifiable under sub-heading 3003.10 as P or P medicine; that a show cause notice dated 4-8-2000 was issued to them for demanding the duty for the period from August, 1995 to February, 2000; that the Additional Commissioner, under the Order-in-Original No. 44/2002, dated 23-12-2002, confirmed the demand after classifying the impugned products under sub-heading 3003.10 of the Central Excise Tariff besides imposing equal amount of penalty; that on Appeal

the Commissioner (Appeals) under the impugned order has upheld the classification of the impugned product; that however, the Commissioner (Appeals) has held that extended period of limitation prior to discovery of the facts by the officer could be invoked and as the fact of misdeclaration was discovered on 11-9-96 during the visit of the officer, the demand for extended period would survive only for the period from August, 1995 to 11-10-96; that the Commissioner (Appeals) has also accordingly restricted the amount of penalty under Section 11AC of the Central Excise Act to the amount of duty payable for the period from August, 1995 to 11-9-96.

3. Learned Senior Departmental Representative further submitted that as per law period of five years provided under the proviso to Section 11A(1) of the Central Excise Act for demanding duty is not curtailable because the Department has knowledge about the fraud, suppression etc.

committed by the respondents; that there is nothing in the language of the Section 11A(1) proviso or the definition of the term "relevant date" under Sub-section (3) of Section 11A to take the date of the department's knowledge of the alleged irregularity as statutory period of limitation. Reliance has been placed on the decision in the case of Nizam Sugar Factory v. Collector of Central Excise, Hyderabad [1999 (114) E.L.T. 429 (Tri-LB)].

4. Countering the arguments Shri B.L. Narasimhan, learned Advocate, submitted that once the Department has come to know about the misdeclaration for the products in question, the department is aware of the fact and the extended period of limitation stops applying; that it has been held by the Tribunal in the case of Rubicon Steels v. CCE, Chandigarh, [2003 (153) E.L.T. 73 (Tri.)] that once the Department was aware of the facts the extended period of limitation is not available to Revenue for demanding the duty from 30-4-96; that the Tribunal has relied upon the decision in the case of Nizam Sugar Factory (supra); that in the said decision also, the Tribunal has held that the extended period of limitation would be invocable for the period prior to 30-4-96; that the said decision has been affirmed by the Supreme Court as Appeal filed by Commissioner of Central Excise has been dismissed by the Supreme Court after condoning the delay vide Order

dated 7-5-03 in Civil Appeal No. Nil of 2003 (D.No. 7145/2003) [2004 (171) E.L.T.A82(S.C.)].

5. We have considered the submissions of both the sides. It is not disputed by the Revenue that the Central Excise officer had visited the factory premises of the respondents on 11-9-96 to verify the position as to whether they were misdeclaring the impugned products as a pharmacopoeial medicines. The officers had also recovered and seized certain relevant records from the premises of the respondents. The show cause notice, however, has been issued only on 4-8-2000 for changing the classification of the impugned products and for demanding the duty for the period from August, 1995 to February, 2000. Once the Central Excise officers had visited the factory to examine as to whether the impugned products are classifiable as P or P medicine or as a non-P or P medicine on 11-9-96, it cannot be claimed by the Department that the facts were not known to them. Once the facts are known to the Department or are within the knowledge of the Department, the extended period of limitation for demanding the duty cannot be invoked because the same can be invoked only if the duty has not been levied or short-levied on account of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of Central Excise Act or Central Excise Rules with intent to evade payment of duty. The Commissioner (Appeals) under the impugned order has rightly held that once it came to the notice of the Department that the products were not P or P medicine, show cause notice for the subsequent period should have been issued from time to time within the normal limitation period. The reliance of the Department on the decision in the case of Nizam Sugar does not help the Revenue's case since what was held by the Larger Bench in Nizam Sugar case was that "any show cause notice issued beyond the period of six months from the date of acquiring knowledge will not be barred by limitation, if the duty has not been levied or not paid or short-paid or short-levied or erroneously paid by reason of fraud, collusion, or wilful misstatement or suppression of facts .... and the show cause notice has been issued within 5 years from the relevant date as defined under Sub-section (3) of Section 11A of the Central Excise Act." This does not mean that the extended period of limitation remains invocable even if the facts have come to the knowledge of the Department. This was the view expressed by the Tribunal in the

case of Rubicon Steels (supra) which has been confirmed by the Supreme Court also. We, therefore, find no reason to interfere with the impugned order passed by the Commissioner (Appeals).

Accordingly, we reject the Appeal filed by the Revenue.

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