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**Devidayal Electronics and Wires Ltd. and anr. Vs. Union of India (Uoi) and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/360288](http://sooperkanoon.com/360288)**

**Court : Mumbai**

**Decided On : Oct-23-1990**

**Reported in : 1991(2)BomCR451; (1991)93BOMLR416**

**Judge : Sujata Manohar and ; M.F. Saldanha, JJ.**

**Acts : [Central Excise Act, 1944](#) - Sections 11A**

**Appeal No. : Writ Petition No. 180 of 1983**

**Appellant : Devidayal Electronics and Wires Ltd. and anr.**

**Respondent : Union of India (Uoi) and ors.**

**Advocate for Def. : R.V. Desai and ;P.N. Menon, Advs.**

**Advocate for Pet/Ap. : Manoj Sankhleja, Adv., i/b., Matubhai Jamiyram & Madon**

**Judgement :**

**Sujata Manohar, J.**

1. The petitioners, inter alia, produce wire out of wire rods. For this purpose, the petitioners purchase duty paid iron and steel wire rods from which wire is drawn by the petitioners. Both, wire rods purchased by the petitioners as well as wire

produced from such wire rods fall under Tariff Item 26AA(ia) of the Central Excises & Salt Act, 1944. This tariff item is as follows:

'Iron or steel products, the following namely :

ia) Bars, rods, coils, wires.'

It is the contention of the petitioners that both wire rods as well as wire fall under the same tariff item and that converting wire rods into wire does not amount to an activity of manufacture as defined in section 2(f) of the Central Excises & Salt Act, 1944.

2. We need not examine this contention on merit because in any event, by virtue of certain notifications issued by the Government of India, it is an accepted position that upto 19th of June, 1980, these items were exempt from payment of any excise duty. On 19th of June, 1980, by a Notification No. 113/80, the earlier exemption Notification No. 75 of 67 was withdrawn. Thereafter by another Notification No. 103 of 81 dated 7-4-1981, once again, these items produced by the petitioners were exempt from payment of excise duty.

3. On 9-11-1981, a show cause notice was given to the petitioners by the respondents under section 11-A of the Central Excise & Salt Act, calling upto the petitioners to show cause why excise duty amounting to Rs, 5,39,819- should not be recovered from the petitioners for the period 1-8-1980 to 6-4-1981. The show cause notice also referred to imposition of penalty as set out therein. The petitioners replied to the show cause notice. Thereafter, by order dated 25-9-1982, the Assistant Collector, Central Excise has confirmed the demand of duty and imposed a penalty of Rs. 250/- on the petitioners. The petitioners filed an appeal on 23-12-1982. Along with the appeal, they also made an application for stay of recovery of duty. That stay application was rejected under an order conveyed to the petitioners on 19th of January, 1983. The present writ petition challenges the order imposing excise duty and penalty which is dated 25-9-1982 as also the order of 19th of January, 1983 refusing stay of the recovery of duty. We may add that during the pendency of the present petition, appeal proceedings were not stayed. We are informed that the appeal was in fact heard but till date, no order has been

passed in the appeal filed by the petitioners although about seven years have passed since the appeal was filed. In these circumstances, we do not see why we should direct the petitioners to await the result of the appeal especially in view of the contentions which have been raised before us relating to the original show cause notice dated 9-11-1981.

4. Section 11-A of the Central Excises & Salt Act, 1944 reads as under:

'Section 11-A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

(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 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:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the word 'six months', the words 'five years' were substituted.'

In view of this section, a show cause notice under section 11-A must be issued within six months from the relevant date. The present show cause notice which is dated 9-11-1981 is in respect of the period 1-8-1980 to 6-4-1981. The notice is, therefore, issued clearly beyond the period of six months prescribed under section 11-A. The show cause notice does not rely upon the proviso to section 11-A for the purpose of extending the period of limitation prescribed under section 11-A to five years. There is no statement in the show cause notice to the effect that there has been any fraud, collusion or wilful mis-statement or suppression of facts by the petitioners with intent to evade payment of duty. The order, however, of the

Assistant Collector which is dated 25-9-1982 states that the petitioners have suppressed facts and hence the show cause notice is within time. This finding of the Assistant Collector clearly cannot be sustained in view of the fact that the show cause notice does not allege any such suppression of facts by the petitioners. The finding of the Assistant Collector, therefore, is clearly contrary to the principles of natural justice. In the case of Universal Autocrafts Pvt. Ltd. v. Union of India & anr., reported in : 1987(31)ELT912(Bom) , our High Court dealt with Rule 10 of the Central Excises Rules, 1944, which is in terms similar to section 11-A which is before us. The Court held that when the show cause notice does not refer to any fraud, collusion, wilful mis-statement or suppression of facts, these circumstances cannot be availed of for the purpose of extending the period of limitation. The Court held that when the show cause notice did not call upon the petitioners to meet such a charge of fraud, mis-statement, wilful suppression of facts etc., no finding to such an effect can be given. In the case of Collector of Central Excise, Baroda v. Kosan Metal Products Ltd., reported in 1988 (38) E.L.T. 537 (S.C.), the Supreme Court has held that a proper notice under section 11-A is necessary for the purposes of claiming excise duty and the period of limitation of six months has to be with reference to the show cause notice under section 11-A. In the present case, the show cause notice is clearly time-barred. The order of the Assistant Collector in so far as it seeks to avail of the provisions of section 11-A is not sustainable in view of the show cause notice which was issued to the petitioners. Even otherwise, it has been pointed out by the petitioners that at no point of time, has there been any suppression of facts by the petitioners. According to the petitioners, the respondents have throughout been aware of the activity of the petitioners of producing wire out of wire rods. The Superintendent of Central Excise by his letter dated 5th of August, 1978 had referred to the fact that the petitioners are bringing iron rods from M/s. Mukand Industries as well as Bhilai Steel Plant which are subjected to reduction of gauge i.e., for manufacture of wire. In reply, the petitioners by their letter of 15th of September, 1978 have pointed out that since their product is exempt as per Clauses 2(C) of Notification No. 111/78 dated 9-5-1978, it is not necessary for them to maintain various records under the Excise Act. The respondents by their letter of 4-7-1980, issued by the Superintendent of Central Excise have again referred to the petitioners' activity of

producing wire from wire rods.

5. In the present case, therefore, there is no question of any suppression of facts by the petitioners which would entitle the respondents to avail of the extended period of limitation. The entire proceedings adopted by the respondents of issue of show cause notice dated 9-11-1981 are, therefore barred by the law of limitation. In these circumstances, we need not examine the contention of the petitioners that in any event, the activity of the petitioners does not amount to manufacture.

6. In the premises, the rule is made absolute in terms of prayer (a): in the circumstances, there will be no order as to costs. The bank guarantee given by the petitioners under the interim order dated 27-1-1982 to stand discharged.

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