

**Ema India Ltd. Vs. Cce**

**Ema India Ltd. Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/37157](http://sooperkanoon.com/37157)

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

**Decided On :** Nov-22-2004

**Reported in :** (2005)(98)ECC588

**Judge :** M T K.C.

**Appellant :** Ema India Ltd.

**Respondent :** Cce

**Judgement :**

1. Shri R. Santhanam, Ld. Advocate for the appellants pleaded that the appellants have purchased certain inputs which were used by them in their factory for manufacture of the finished goods and they have also cleared these inputs as such after reversing the credit taken by them on these goods. The department's charge is that these inputs (bought out items) were cleared by them as parts and components as if the goods were manufactured by them. A demand of Rs. 7,63,747 was raised in the Show cause notice. The case was adjudicated by the Addl. Commissioner, who confirmed the demand of Rs. 79,178 and imposed equal amount of penalty under Section 11AC and the balance amount of the demand was dropped on the ground of being beyond the period of 5 years. The confirmation of the demand is totally wrong as they had submitted a detailed chart of the goods cleared by them as given at pages 143 to 158 of the paper book. This was not verified by the adjudicating authority and despite being satisfied, that bought out items were cleared by the appellants by reversing the Modvat credit, he confirmed the demand of Rs. 79,178 on these items treating them as

manufactured by appellants. This finding of the original authority and confirmed by the Commissioner (Appeals) is being contested by them. He also pleaded that they have filed RT-12 Return with all necessary documents for assessment and the same were assessed finally and all the information was disclosed to the department, therefore, extended period of 5 years for demanding duty is not applicable in the present case. He also relied on the following other decisions: Cosmic Dye Chemicals v. CCE, 1995 (75) ELT 721 (SC) wherein it was held that extended period of 5 years was not applicable just for any omission of assessee unless it is deliberate to escape from payment of duty. Expression "suppression of facts" in proviso to Section 11A (1) to be interpreted strictly because it has been used in company of such strong words as fraud, collusion or wilful default where facts are known to both the parties the omission by one to do what he might have done and not that he must have done does not render it suppression of facts.

2. He also pleaded that Larger Bench of the Tribunal in case of CCE, Vadodara v. Asia Brown Boveri Ltd., 2000 (120) ELT 228 (LB) has held that when input on which credit was taken, are not used but cleared as such for home consumption by the manufacturer from the factory then debiting the same rate of duty at which credit was taken meets the requirement of Rule 57F(I){ii} of Central Excise Rules. They cleared these goods by debiting the credit taken.

3. Shri S. Bhatnagar, Ld. JDR appearing for the Revenue pleaded that this is a case of dispute of classification and this should be referred to Division Bench, which is the competent court to decide the classification matter. He referred to para 8 & 9 of the show cause notice and stated that this is a classification matter and classification of product has to be decided by the Division Bench.

4. The Ld. Counsel for appellants pleaded this is not a classification matter as the classification has not been disputed by the appellate authority. He has observed in his order that the appellants have filed correct classification declaration under Rule 173 B and 57G. The only charge sustained was that the items manufactured by appellants as spares for induction heating equipments were cleared as parts and components. Thus, by clearing these spares, they have paid lesser duty and they

have wrongly declared the goods cleared as bought out items.

He pleaded that they had demonstrated that all these goods cleared were bought out items and not spares manufactured by them.

5. I have carefully considered the submissions made by both the sides.

Without going into the merits of the case, I find that in this case, there is no dispute that RT-12 Return were filed by the appellants and these were finally assessed and all the facts were disclosed to the department. The Commissioner (Appeals) in the impugned order has given the following findings: "The appellants had been submitting all the relevant papers namely monthly RT-12 return, declaration under Rule 173-B & 57-G to the Department well in time. They had been paying duty on Spares which was intimated to the Department through monthly return i.e. RT-12's.

When the duty paid on the Spares was short or low than what should have been paid, I am surprised to note, why the Department could not detect the same. How the RT-12 returns were scrutinized without making an enquiry on this score. Therefore, I am of the opinion that the appellants cannot solely be held responsible for the short payment of duty." 6. In view of these findings of Commissioner (Appeals), it is cleared that appellants had not suppressed the facts with an intent to evade duty. Therefore, following the ratio of the decision of the Supreme Court in the case of Pushpam Pharmaceuticals Co., 1995 (78) ELT 401 (SC), I find that the extended period of 5 years is not applicable for demanding the duty. I, therefore, allow the appeal on time bar issue as the duty has been confirmed for a period from August 1997 to October 1999 whereas the show cause notice was issued on 4.9.2002, which is beyond the period of six months.

7. In view of the above, the order of the Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief if any.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**