

Surya Agroils Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-11-2005

Reported in : (2005)(188)ELT97TriDel

Judge : R Abichandani, M T K.C.

Appellant : Surya Agroils Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Both these appeals raise common questions and are arising from the same impugned order. They are argued together and are, therefore, disposed of by this common order.

2. These two appeals were earlier decided by the Tribunal on 30th November 1999 by Final Orders Nos. 1014 & 1015/99 [2000 (116) E.L.T.514 (Tribunal)]. Orders which were made in these two matters were set aside in C.A. Nos. 3437-3438 of 2000 which were disposed of along with a group of other matters and the following remand order was made by the Supreme Court on 13-1-2003 "We have heard the learned Counsel for the parties. It is agreed by the learned Counsel for the parties that the question - whether extended period of limitation could be invoked in the present case by the Revenue or not-requires to be re-determined by the Tribunal.

In the result, the appeals are allowed and the matters are remitted to the Tribunal for deciding the matters in accordance with law." 3. Since the matters were remitted to this Tribunal for deciding in accordance with law, we have heard both the sides on all the issues with special emphasis on the question whether extended period of limitation could be invoked on the basis of which it was submitted before the Supreme Court by the learned Counsel for both the sides that the matters required to be redetermined by the Tribunal.

4. The show cause notice dated 31-3-93 was issued to the appellant on an allegation that during the period between March 1988 to December 1992 the appellant had evaded Central Excise duty to the tune of Rs. 1,18,40,271/- (Rs. 10,30,733/- as Basic Excise duty and Rs. 8,09,538/- as Special Excise duty) on pasta food "put up in unit containers" under the guise of pasta food, "other" in bulk, with the intention to evade payment of appropriate duty. It was alleged that the appellant had knowingly violated the provisions of Rule 9(1) read with 173G(i) and Rule 173F of the Central Excise Rules and had rendered itself liable to penal action in terms of Rules 173Q and 209. It was alleged in the notice that during the visit to the factory it was seen that the noticee was packing pasta food in 20 Kgs. HDPE sacks, a fact which was not declared by them either in the classification list or any other document. It was alleged that in its pasta food plant the assessee was first collecting pasta food in LDPE bags which were then weighed to ensure that each of such LDPE bags contained 10 Kgs, of pasta food.

After 10 Kgs. of pasta food was weighed in LDPE bag the prepared packing slips mentioning variety of the pasta food, date of packing and weight as 10 Kgs. were put in the bag. These slips bore signatures of the plant operator and on the reverse side the name of person collecting pallets in LDPE bags. Thereafter, two such LDPE bags of 10 Kgs. net each were put in one large 20 Kgs. HDPE sack which was then stitched. It was further alleged that these HDPE sacks which contained 20Kgs. pasta food were then transferred to a godown and stacked there.

At that place, the godown keeper kept a "bin card" indicating the opening balance, quantity received, quantity issued and closing balance. It was alleged that entries

were made in RG.I on the basis of production reports received from the plant that packing of pasta food was done in 20 Kgs. sacks. The duty was, however, paid only on the items packed and cleared in 200 gms. Pouches. The notice referred to the evidence on the basis of which it was alleged that the quantity was supplied in the sacks of 20 Kgs. and alleged that though clearing of pasta food contained in 20 Kgs. HDPE sacks was done as bulk in loose, they had not declared such HDPE sacks as unit container falling under sub-heading 1902.10. Similar show cause notice dated 31-3-93 was issued for the period January 1993 to April 1993 to the appellant alleging that they had evaded payment of Central Excise duty to the tune of Rs. 13,19,173.23 (Rs. 11,94,261.30P as Basic Excise duty and Rs. 1,24,913.93P as Special Excise duty) on pasta food put in unit container i.e. HDPE bags of 20 Kgs. each and removed under the guise of pasta food, "other" in bulk, with intention to evade payment of appropriate Central Excise duty.

5. It appears that the petitioner had filed Misc. Petition Nos. 1239/93 in the High Court of Madhya Pradesh challenging the show cause notice and the High Court by its order dated 15-3-94 upheld the objection and refused to set aside the show cause notice reserving the opportunity to the petitioner to submit reply before the appropriate authority. It appears that the matter was carried to the Supreme Court and the Supreme Court by its order dated 28-4-95 in Special Leave to Appeal (Civil) No. 14414/95, holding that there was no ground to interfere with the order of Madhya Pradesh High Court, dismissed the application while granting time for reply to the show cause notice in accordance with the directions of the High Court. Thereafter, the appellant filed a detailed reply dated 31-8-95 to the show cause notice through their Counsel contending that the classification list filed by the appellant carefully described all the goods being manufactured by the appellant and that the classification was duly approved after following the procedure given in Rule 173B. It was stated that it was clearly mentioned in the classification list that the appellant would be manufacturing and clearing pasta food in unit containers and packings which are covered under sub-heading 1902.10. It was contended that the expression "unit container" was used with reference to prepared and preserved foods ordinarily intended for sale. It was also contended that the removals were accompanied by appropriate gate passes and that there was no intention on the part of the appellant to conceal anything and the charge of

clandestine removal made in the show cause notice was baseless. It was further also contended that only those packings which were intended for sale directly to the consumer in the form in which they were removed, were covered under sub-heading 1902.10.

6. The Commissioner on the basis of the material on record found that as regards the goods classified by the assessee under sub-heading 1902.90, the assessee was clearing and packing the same in HDPE sacks containing 20 Kgs. weight. He found that pasta food coming out of the plant was collected in LDPE bags which were weighed to ensure that contents in the said bags were of predetermined quantity of 10 Kgs. of pasta food and after such weighment a packing slip containing details of variety of pasta food, date of packing and weight as 10 Kgs. were being inserted in such LDPE bags. Two of such LDPE bags containing 10 Kgs. each were then packed in large HDPE bags which were packed by stitching machine and transferred to the godown for onward despatch for sale. It was found that the assessee was maintaining production report wherein production was accounted on the basis of number of bags packed which contained fixed quantity of production i.e. 20 Kgs. The orders received from customers and despatch documents, namely invoices, delivery orders, loading advises also indicated that each bag of pasta food shown under sub-heading 1902.90 also contained fixed quantity of product of 20 Kgs. each. It was held that the assessee was selling the product in HDPE bags which contained uniform quantity of the said product. It was held that not even a single instance was brought on record by the noticee to show that such bags were packed with a quantity different than what was intended and decided to put in the bags for sale. The bags in ready for sale condition were containing a definite and pre-determined quantity of pasta food i.e. 20 Kgs. It was, therefore, held that the goods said to have been cleared as "loose" pasta under sub-heading 1902.90 (for which "nil" duty was payable) were infact packed and cleared in unit containers and as such were excisable goods classifiable under sub-heading 1902.10 and chargeable to duty thereunder.

7. The Commissioner specifically dealing with the question of limitation in Paragraph 32 of the impugned order referred to the documentary evidence of visit and verification of stock from time to time conducted by the officer produced by the

noticee. He then referred to the letter dated 7-3-98 written by the noticee to the Superintendent Central Excise, Range IV, Bhopal in which the noticee i.e. the present appellant had stated that "As far as the bulk sale is concerned it is clarified that the product after it is manufactured is kept stored in HDPE bags which are not packed and stitched. Moreover, the quantity kept therein is never uniform in weight". This letter dated 7-3-88 was written in response to the enquiry made by the Superintendent by his letter dated 2-2-88 in which the Superintendent had sought detailed clarification from the appellant and on the pattern of sale adopted by the appellant and as to in what condition the appellant was selling these goods as "bulk in loose". The appellant was specifically asked whether the appellant was using any container like gunny bag, cotton bag, polythene bag while selling of these goods. It was mentioned in that letter that on checking of RT.12 returns of pasta food submitted by the appellant it had been observed that the appellant had cleared pasta food products in bulk and the enquiry was clearly directed in that context. The Commissioner found that investigation clearly brought on record that "pre-determined and uniform quantity was packed by the noticee and held that the contention raised in the letter dated 7-3-88 was a misstatement made by noticee." The Commissioner held that although the goods in question were cleared in bags containing definite quantity i.e. 20 Kgs. the noticee had admittedly misdeclared them in the Gate Passes (GP 1) as loose. It was held that if the noticee had no intention to evade payment of Central Excise duty, why would they misdeclare Gate Passes and also misdeclare the details of sales pattern intimated to the department. He concluded : "Under these circumstances, beyond recovery of duty on the goods manufactured and cleared by invoking extended period, the noticee also deserves penalty under Rule 173Q of the Central Excise Rules, 1944".

8. It was contended before us by the learned Counsel appearing for the appellant that the officers of the department were visiting the factory of and on and they could have known from the stock-taking whether the bags were stitched or not or whether there was any anomaly against the assessee. It was submitted that irrespective of whether the declaration by the assessee was right or wrong, it was for the officer to find out the default, if any, by the assessee. It was also argued that the Commissioner had not given any finding as to why he was not accepting the explanation given by the assessee. The learned Counsel submitted that the

order of the Commissioner was virtually non-speaking as it did not give reasons in support of the findings. The learned Counsel also argued that no show cause notice for change of classification was given. He submitted that in the absence of such show cause notice for change of classification, the impugned action could not have been taken against the assessee. The learned Counsel referring to the written submissions which were on record submitted that HDPE bags will not come under the category of unit container since it was not designed to hold a pre-determined quantity. He also submitted that the expression "ordinarily intended for sale" occurring in Heading 1902.10 necessarily implied the sale of pasta food put up in unit containers intended to be ordinarily sold to consumers. Referring to the submission made in Para 5 of the written submissions, he argued that, the expression "put up" in the context in which it appeared must be understood to mean that the packing in which pasta food is packed should be put up on the shelf of a retail store where the consumer has a choice to buy the unit packed and that it did not apply to HDPE bags of 20 Kgs. which can never be put up on the shelf of a retail store. It was submitted that in the classification list the appellant had specifically mentioned pasta sold "bulk in loose". These lists were finally approved. Regularly, gate passes were issued for pasta sold in 20 Kgs. bags and all the information that the goods were sold in 20 Kgs., bags was available with the department. It was submitted that the letter dated 7-3-88 in fact showed the genuineness of the appellant and it did not amount to any deliberate attempt on the part of the appellant to conceal the facts from the department. Moreover, the weight of HDPE bags was not indicated on the bags, since pasta was not to be sold in 20 Kgs. HDPE bags to the ultimate retail customers.

9. In support of his contentions the learned Counsel placed reliance on the following decisions :-Commissioner of Central Excise, Mumbai v. CMS Computers P. Ltd. reported in 2005 (182) E.L.T 20 (S.C.), was cited to point out that in Paragraph 6 of the judgment, the Supreme Court had upheld the decision of the Tribunal by holding that it was right in holding that the demand was barred inasmuch as the classification had been approved and that all facts were, therefore, within the knowledge of the department. Therefore, the extended period of limitation was not available to it. Union of India and Ors. v. Madhumilan Syntex Pvt.

referred to for the proposition that if the approved classification has been modified by the Assistant Collector without any opportunity and show cause notice is given only with regard to quantification of the amount of short-levy, such a show cause notice cannot be regarded as for modification of classification list hence it is not covered under Section 11A of the Central Excise Act. The Supreme Court held that the notice in that case set out as an established fact that the classification list submitted by the petitioners had been modified by the Assistant Collector and the only matter with respect to which the petitioners were asked to show cause was with regard to quantification of the amount of the short-levy and consequently, the amount which was liable to be recovered from the Petitioner No. 1. It was in this context that the Supreme Court held that this notice cannot be regarded as a show cause notice against the modification of the classification list in respect of the relevant period and the show cause notice was held bad in law and of no legal effect as far as the earlier period was concerned. The Supreme Court held that under Section 11A of the Act, the notice can only relate to a period of six months from the issue of that notice except in cases where it was alleged that the short-levy or short payment had occurred by reason of fraud, collusion or wilful misrepresentation or suppression of facts or contravention of the provisions of the said Act or rules made thereunder.

(iii) Reference was made to the decision of the Supreme Court in Collector of Central Excise v. Maheshwari Mills Ltd. reported in 2002 (142) E.L.T. 520 (S.C.), in which it was held that the decision of the Supreme Court in Elson Machines Pvt. Ltd. v. Collector of Central Excise estoppel to seeking a different view from that taken in an approved classification list.

10. The learned Authorized Representative of the department contesting the appeal submitted that the impugned order of the Commissioner was based on the material on record and passed for cogent reasons. He also submitted that the impugned order mentioned the ground for extended period of limitation. He submitted that the evidence collected during the enquiry clearly disclosed that pasta food was weighed and packed in LDPE bags of 10 Kgs. each and two such bags were packed in a HDPE bag designed to contain 20 Kgs. of pasta material. Those 20 Kgs. bags were stitched and were removed from the premises of the

appellant for sale.

The learned Authorized Representative of the department took us through the evidence on record, both documentary and oral, to point out that there was reliable evidence for holding that pasta food was packed in these bags in a pre-determined quantity of 20 Kgs. and therefore, these bags were "unit containers ordinarily intended for sale", thereby bringing the removal of the assessee's product under sub-heading 1902.10 under which duty was payable. He submitted that the expression "put up" was required to be construed in its ordinary grammatical sense and it has reference to the product which was put in the container and not a container which was to be put on some shelf of a shopkeeper, as was sought to be contended on behalf of the appellant. He further argued that the definition of the expression "unit containers" occurring in Section IV of the Central Excise Tariff was squarely applicable to the appellant's case which fell in Chapter 19 to which also the said definition applied. He submitted that both large and small containers were covered under the expression "unit containers" and there was no valid reason to confine the definition of unit containers only to small pouches and not to apply to the bags containing the pre-determined quantity of 10 Kgs. or 20 Kgs. He submitted that the concept of eventual buyer or consumer buyer was alien to the definition of "unit containers" as well as to the entries of Chapter 19. He also submitted that definition of "unit containers" in Section IV did not require that the container should have a marking of its content and that as long as the unit container contained a predetermined quantity of goods it would be considered as a unit container. He further submitted that the classification lists filed by the appellant referred to standard packing of 100 gms., 200 gms and 400 gms and they nowhere mentioned 10 or 20 Kgs. Therefore, this was a clear case of suppression and misdeclaration. He submitted that from the private records, bin cards, invoices, purchase orders, etc. it clearly transpired that pasta food packings were done in pre-determined quantity of 10/20 Kgs. while in the Central Excise record like RG 1 the contents of unit containers containing pre-determined quantity of 20 Kgs. each were shown as "loose". The learned Authorized Representative also placed reliance on the written submissions of the department which are placed on record.

10.1. The learned Authorized Representative in support of his contentions relied on the following decisions :Commissioner of Central Excise, Ahmedabad v. Srivallabh Glass Works Ltd. was cited to point out that in a case where approved classification list showed glass cleared and sold by the assessee was of a particular thickness whereas what was actually cleared and sold was glass of a greater thickness, it was held that a different product in respect of which no classification list had been filed was cleared and sold, and that on the basis of the finding given by the Tribunal the demand was justified. It was held that the principle laid down in Cotspun's case that, so far as the classification list subsists the differential duty cannot be claimed on the same product, had no application in such a case.Commissioner of Central Excise, Mumbai-II v. Simba Chips P. Ltd. reported in 1997 (96) E.L.T. 381 (Tribunal), was cited to point out that in the context of expression "unit containers" it was held by the Tribunal that the fact that the product containing "potato salli" did not bear any indication of the weight of the product was of no significance since, in the context of the definition of "unit container" under the Note to Section IV, every buyer would know that 1 Kg. of the product would invariably be contained in a unit container and that in that context the fact that the packet did not bear any indication of the product's weight, had no significance.Foods & Inns Ltd. v. Commissioner of Central Excise, Bombay-II reported in 2000 (118) E.L.T. 486 (Tribunal), which was rendered in the context of sub-heading 2001.10 of the Central Excise Tariff Act, 1985 was cited to point out that it was held therein that the containers used were tins of 10 Kgs., 12.5 Kgs., 20 Kgs., 40 Kgs. and 50 Kgs., and that the fact that there was more than one size of containers did not mean that each of the container cannot be considered to be a "unit container". It was held that each of them was designed to hold a pre-determined quantity and therefore, the goods were sold in unit containers.Nizam Sugar Factory v. Collector of Central Excise, Hyderabad, reported in 1999 (114) E.L.T. 429, was cited for the proposition that Section 11A(3) nowhere provided that the relevant date means the date of acquiring the knowledge by the department, and therefore, acquiring the knowledge by the department does not take away the period of five years provided under Section 11 A(I) of the Act.Chamundi Die Cast (P) Ltd. v. CCE, Bangalore-II Commissionerate cited to point out that it was held that since the appellants knowingly did not declare the

parts in dispute as the parts of IC engine but declared as parts of power tillers, there was a clear suppression with intent to evade payment of duty and the extended period of five years limitation would be applicable.

12. The foremost question arising for our consideration is whether the HDPE bag in which "pasta food" was packed by putting it in two smaller bags of 10 Kgs. each, was a "unit container" or, whether removal in such bags should be considered as removal in "loose" or "bulk in loose", that was sought to be shown by the appellant. Section IV of the Tariff Act deals with prepared foodstuffs, beverages and vinegar, tobacco and manufactured tobacco substitutes, and contains Chapters 16 to 24. The note which is meant for Section IV records at the outset that in this Section, the expression "unit container" means a container whether large or small (for example, tin, can, box, jar, bottle, bag or carton, drum, barrel or cannister) designed to hold a pre-determined quantity or number. The words "large or small" occurring in this Note would include any size of container of the types illustrated in the note which is designed to hold a pre-determined quantity. The expression "pre-determined quantity" would include both large or small pre-determined quantity. "Bag" would be one type of unit container, if it is designed to hold a pre-determined quantity. The expression "designed to hold a pre-determined quantity" would, in the context of a bag would mean a bag that is designed to hold in it a pre-determined quantity.

13. In the present case, there is a reliable evidence on record to show that initially, pasta food pallets were collected and weighed in LDPE bags of 10 Kgs. The evidence also shows that two small LDPE bags contained a predetermined quantity of 10 Kgs., were placed in a larger bag which was designed to hold them their capacity of being to hold such two bags of 10 Kgs. each. The HDPE bags were thus designed to hold a pre-determined quantity of 20 Kgs. or two smaller bags of 10 Kgs.

each. Evidence on record clearly establishes that such bags were duly stitched and stacked. The bin card indicated their movement after they were duly stitched and stacked. In this context we may refer to statements of Hemant K. Tata who was a Chief Manager of the appellant.

In the statement which was recorded on 17-10-92 under Section 14 of the Central Excises & Salt Act, 1944, in answer to question No. 5 as to what was the weight of each packing, he replied, "The average weight of each pack on the above mentioned date is 20 Kg.". In answer to question No. 6 as to what was the standard package weight in which pasta food was packed for marketing, he replied "Presently we are packing in 20 Kgs. bags. However, in the past we have packed in 15 Kgs. Bags also".

Again in answer to question No. 7 as to how pasta food was being marketed, he replied "we are packing pasta food in HDPE bags and presently the average weight of each pack is 20 Kgs.". He admitted in answer to question No. 9, that for removal in HDPE bags the appellants were not paying any duty. On being asked as to why clearance was shown as "bulk in loose" in gate passes and invoices when it was done in packings of 20 Kgs. each, the Chief General Manager of the appellant answered that they were showing in "loose", since it was bulk packing on which there was no marking of any kind.

13.1 In his subsequent statement recorded on 19-1-93, the Chief General Manager of the appellant again admitted, in answer to questions (1) and (2) that it was a practice in their factory that the goods were first weighed and placed in quantity of 10 Kgs. in a polythene bag in which packing slip for 10 Kgs. was put and that two such polythene bags of 10 Kgs. each were then packed in one HDPE sack. His stand in the answer to question 3 was that material in polythene bags cannot be termed as "unit containers as they were marketed to the end customer.

13.2 The Deputy Manager of the appellant Shri Rajesh Kumar Saxena also stated in his statements recorded on 17-10-92 and 19-1-93 that pasta food was kept in the bags weighing 20 Kgs. each and that the particulars were mentioned including those of despatches in the "bin cards". He stated that since pasta food was kept in bags of 20 Kgs.

after multiplying the number of bags with that quantity, the total weight was calculated and entered in the RG. 1 register, and, at the time of despatch, the quantity as per delivery order was mentioned.

14. The above documentary evidence as well statements of the responsible employees of the appellant have categorically established in this case that pasta food was packed in HDPE bags in a pre-determined quantity. It was initially weighed and put in LDPE bags in a pre-determined quantity of 10 Kgs. and two such bags were placed in a larger bag i.e. HDPE bag having capacity of holding 20 Kgs. Thus, pasta food, in our opinion, was clearly packed in "unit container" as defined in note under Section IV. The said definition lays emphasis on putting in a pre-determined quantity of the goods in the container which is designed to hold such quantity, whether it is for a large or small quantity. It does not require putting any markings thereon. The capacity of such containers which are designed to hold a pre-determined quantity is usually within the knowledge of those who used such containers for packing purposes and also those who buy the goods in such containers. The evidence regarding bags designed to hold a pre-determined quantity is found to be reliable and proves the way in which the bags have been prepared and removed, leaving no scope for the contention that these bags were not unit containers. The bags of 20 Kgs. were duly stitched after putting them in smaller unit containers of 10 Kgs. each. The large bags of 20 Kgs. which were designed to hold such smaller containers, were therefore, multiple unit containers which also fell within the definition of "unit containers". The nature of condition of packing considered by the manufacturers having 20 Kgs.

packing required by them, would depend on the nature of business, type of goods sold, the unit of sale in the wholesale market and other relevant considerations in general, for placing the goods for sale in the wholesale market at the factory gate. The contention that a unit container should be small container which can be placed on a shelf in a shop canvassed by the learned Counsel for the appellant, is required to be stated only for rejection. Since the unit containers can be large or small in any unit of measurement it hardly matters whether such unit container can be kept on a shelf of a shop or elsewhere. The products are not designed to cover only unit containers which are purchased by consumers of smaller quantities of goods. There can be consumers for large quantity of goods who would prefer to purchase them in large unit containers. We, therefore, cannot accept the contentions raised on behalf of the appellant for urging that the bags containing 20 Kgs. of pasta food despatched by the appellant were despatched in loose and not

in unit containers, in the classification list the appellant had indicated that the said goods will be put up in unit containers ordinarily intended for sale in the pre-determined quantities, in corrugated boxes and HDPE bag or any other bag, pouches, boxes.

However, the 20 Kgs. bags instead of being removed under item (i) 'D' relating to unit containers in which HDPE bag was mentioned, were removed under item (ii) as 'bulk in loose'. We, therefore, hold that the Commissioner was right in concluding that the goods said to have been cleared in "loose" falling under sub-heading 1902.90, were in fact packed and cleared in "unit containers" and as such, they were excisable goods rightly covered and classifiable under sub-heading 1902.10 chargeable to duty.

15. As regards the contention, that the notice was time barred, we find that there is clear evidence on record which indicates that the appellant misled the officers of the department by representing as if pasta food was being removed in unstitched bags in loose state. In their letter dated 7-3-88 addressed to the Superintendent of Central Excise, the appellant misled him, in response to the enquiry regarding the pattern of sale of pasta food, that, as far as the bulk sale was concerned, the product, after it was manufactured was stored in HDPE bags which were not packed and stitched. It was also stated that the quantity kept in HDPE bags were not uniform in weight. It was further mentioned that generally the customers brought their own bags and the product after weighment was delivered in loose condition without any sort of packing. It was stated that clearance of such loose sale was covered with "nil" duty, in gate form in GP-1. Thus, the appellant clearly led the Department into a belief that pasta food despatched was removed in unstitched condition in HDPE bags in a loose state without containing any predetermined quantity. From the evidence which is on record, it is quite clear that such information was palpably false and amounted to misleading the Department. Pasta food was put in a pre-determined quantity of 20 Kgs. in the HDPE bags designed to hold such quantity contained in two bags of the capacity of 10 Kgs. each, which larger bags were stitched and despatched for sale. The movement noted in the "bin card", invoices and other documents, coupled with the statements of the responsible officers of the Department has established that all throughout,

the goods were removed in unit containers, and that, by stating that the 20 Kgs. bags were not stitched and customers would bring their own bags and take away pasta food in a loose state, the appellant tried to mislead the Department for claiming that the removal was not covered under the sub-heading 1902.10 and liable to duty, but was covered under 1902.90 on which 'nil' rate of duty was leviable. There is no substance in the contention that the Commissioner has not directed himself to the fact whether the appellant had misrepresented the manner of removal of goods or that he has not given the reasons on the aspect of limitation. As noted above, the Commissioner, in Paragraph 32 of the order, has elaborately dealt with the grounds on which the extended period of limitation was attracted in the appellant's case. The Commissioner after referring to the evidence including the statements of the responsible officers of the appellant and also to the production register, production reports/slips, invoices, delivery orders, loading advices file, orders forms and invoices raised from Bhopal Office and coming to the conclusion that the goods received in containers designed to hold a pre-determined quantity and that sub-heading 1902.90, proceeded to delve upon the question of limitation in Paragraph 32 of the order in which he highlighted the nature of misstatements made by the noticee and came to the conclusion that although the goods were cleared in a definite quantity i.e. 20 Kgs., the noticee had deliberately misdeclared the same in gate passes GP-1. He rightly found that if the assessee had no such intention to evade duty, there was no need to misdeclare in the gate passes and also in the details of sales pattern intimated to the Department. We uphold the finding of the Commissioner that the facts of the case, clearly merited invoking the extended period of limitation. Proviso to Section 11A(1), inter alia, lays down that where any duty of excise has not been levied or paid, by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of the provisions of the Act or of the rules made thereunder with intent to evade payment of duty, by such person, the provisions shall have effect, as if for the words six months, the words "five years" were substituted. The contention that the relevant date would be the date on which the officer had knowledge about such fraud, is not warranted from the definition of the words "relevant date" contained in Sub-section (3)(ii)(a) of Section 11A of the Act. We are, therefore, satisfied that the Commissioner has rightly invoked the provisions

of the proviso to Section 11A(1) of the Act.

16. For the foregoing reasons, we do not find any substance in any of the contentions raised on behalf of the appellant. Both the appeals are, therefore, dismissed.

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