

**Commissioner of Central Excise Vs. Gemag Rotoplast and Containers P.**

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

**Decided On :** Nov-28-2005

**Judge :** A Wadhwa, S T S.S.

**Appellant :** Commissioner of Central Excise

**Respondent :** Gemag Rotoplast and Containers P.

**Judgement :**

1. When the matter was called none appears for the respondent, in this appeal filed by Revenue.

2. The respondent is an assessee availing benefit of Notification No.1/93. During the period 1993-94, January, 1995 to March, 1995, 1995-96, 1996-97 up to July, 1996 plastic tank of expected 300 litres. However, they were found manufacturing Pulverized Powder through the process of pulverization which was actually used in the factory for manufacture of storage tanks. As such this power was excisable and was cleared without classifying and declaring the activities and the value of such pulverized powder used in the manufacture of 300 liter tanks for working out value of clearance in terms of notification 1/93.

Commissioner (Appeals) observed that assessee's action of treating value of pulverized powder to be outside scope of computation was a bona fide mistake of belief and therefore, he dropped the proceeding after arriving at a conclusion that department was in knowledge of the production of exempted water tank and also intermediate pulverized powder. Therefore, it appeared to him that even though

pulverized powder was a dutiable product on which discharge duties was to be made before it was taken for the manufacture of tanks, he holds that on the issue of limitation and wilful intent to evade duty are not available.

The Commissioner (Appeals) concluded that there was ignorance of provisions on both sides therefore, the demand for duty beyond the normal period of limitation could not be upheld and imposition of penalty were not justified. Finding the entire period to be out side the required period of demand he sets aside duty demands and penalty on the grounds on limitation.

3. On perusal of the grounds taken in the present appeal we find there is no challenge to the findings of the Id. Commissioner (Appeals) as regards the non-applicability of the larger period under proviso of Section 11A in the facts of this case. The only challenge is as regards ignorance on part of assessee cannot be an excuse. While ignorance of, law on part of assessee cannot be an excuse. In this case as arrived at by the Id. Commissioner (Appeals) ignore and on part of departmental officers also cannot be an excuse to be tardy in issue of demands of duty. We cannot find any reason to set aside the order of the Commissioner (Appeals) holding demand up to July, 1996 by show cause notice dated 1-7-1998 to be barred by limitation. When duty demands are not upheld we find no reason to uphold the penalty.

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