

U.P. Laminations Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-1988

Reported in : (1989)(19)ECC321

Appellant : U.P. Laminations

Respondent : Collector of Central Excise

Judgement :

1. The main question arising for decision in this appeal by the appellant-manufacturer - a proprietary concern in the small scale sector is whether for judging the eligibility of the appellants to benefit of exemption under notifications 71/78 dated 1-3-1978 and 80/80 dated 9-6-1980 in respect of laminated paper cleared by them during the period 1978-79 to 1981-82 till 28-2-1982 when laminated paper itself was exempt from payment of Central Excise duty under notification 63/82 dated 28-2-1982, the value of clearances of laminated cotton fabrics and laminated man made fabrics (HDPE) the two exempt under notification 100/77 dated 3-6-1977 as amended by notification 192/77 dated 18-6-1977 are includible as excisable goods or not 2. Present proceedings arise against the appellants under the following circumstances. The appellants are engaged in laminating cotton fabrics, man made fabrics and paper on job work basis. As already said laminated cotton fabrics and laminated man made fabrics were exempt from Central Excise duty under notification [00/77 dated 3-6-1977 as amended by notification 192/77 dated 18-6-1977. Laminated paper also became exempt from 28-2-1982 under "notification 63/82. Before 28-2-1982 laminated

paper falling under T.I. 17(2) was chargeable to Central Excise duty in terms of notification 71/77 dated 18-4-1977 as amended by notification 25/79 dated 1-3-1979. Earlier the appellants had licences in respect of the three items of manufacture but after laminated cotton fabrics and laminated man made fabrics became exempt from duty they held licence only for laminated paper. With respect to laminated paper the appellants claim to avail benefit of exemption under notification 71/78 till 18-6-1980 and notification 80/80 thereafter. Notification 71/78 dated 1-3-1978 granted exemption in respect of first clearances of excisable goods specified in the notification cleared for home consumption upto an aggregate value not exceeding rupees five lakhs cleared on or after the first day of April in any financial year,' by or on behalf of a manufacturer, from one or more factories from the whole of the duty of excise leviable thereon subject to the conditions set out in the notification. There is no dispute that laminated paper is specified at serial 22 in the Table appended to the notification.

The main condition relevant for the purpose of appeal is condition (a) reproduced below : (a) "the exemption contained in this notification shall not be applicable to a manufacturer - (i) during the financial year 1978-79, if the aggregate value of the specified goods cleared, if any, by him or on his behalf, for home consumption, from one or more factories, during the period commencing on the 1st day of April 1977 and ending on the 28th day of February 1978 had exceeded Rs. 13.75 lakhs; and (ii) during financial years subsequent to the financial year 1978-79, if such clearances if any of the specified goods during the preceding financial year, had exceeded fifteen lakhs." Notification 141/79-CE dated 30-3-1979 issued by Central Govt. amended notification 71/78 dated 1-3-1978. It inserted in condition (a), after Clause (ii), the following :- "(iii) who manufactures excisable goods falling under more than one item Number of the said First Schedule and the aggregate value of all excisable goods cleared by him or on his behalf for home consumption from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs." "Explanation IV. - For the purpose of computing the aggregate value of clearances under this notification, the clearances of any specified goods, which are exempted from the whole of the duty of excise leviable thereon by any other notification issued under Sub-rule (1) of Rule 8 of the aforesaid Rules and for the time being in force, shall not be taken into account." Notification 80/80-CE dated

19-6-1980 superseded notification 71/78. It also gave similar exemption in case of first clearances of specified goods upto an aggregate value not exceeding rupees five lakhs from the whole of duty of excise leviable thereon and a further concession in case of clearances immediately following the abovesaid clearance from the duty in excess of 75%. This notification also had certain conditions. The condition No. (ii) and an Explanation V which are reproduced below : "Nothing contained in this notification shall apply a manufacturer- "Condition (ii) who manufactures excisable goods falling under more than one Item Number of the said First Schedule and the aggregate value of clearances of all excisable goods by him or on his behalf for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs.

Explanation V.--For the purpose of computing the aggregate value of clearance under this notification, the clearances of any specified goods, which are exempted from whole of the duty of excise leviable thereon by any other notification issued under Sub-rule (1) of Rule (8) of the Central Excise Rules, 1944 and for the time being in force, shall not be taken into account." In the Table appended to the notification at serial No. 24 "Paper and paper board, all sorts" falling under Item 17 are specified. It is not in dispute that laminated paper would be covered under this description.

3. The present proceedings against the appellants are the outcome of visit dated 10-6-1982 to the appellants factory. On examination of the appellants private records maintained during normal course of their business showing clearances of laminated paper, laminated cotton fabrics and laminated man made fabrics the Central Excise Team found the following value of clearances for the financial years

1978-79		to		1981-82:		Period
Laminated Paper	Laminated	Laminated	Total	Cotton	Man	Made
2,46,043.10	20,11,843.90	61,716.37	23,19,603.37	1,99,366.86	55,78,117.19	8,89,837.17
66,67,321.82						

Central Excise officers felt that as aggregate value of clearances of all excisable

goods during the relevant preceding financial years exceeded rupees twenty lakhs the appellants were not eligible to benefit of exemption under notification 71/78 dated 1-3-1978 and 80/80 dated 19-6-1980. Show cause notice dated 20-10-1982 alleging contravention of certain provisions of excise rules and calling upon the appellants to show cause why duty in respect of laminated paper valued at Rs. 19,10,982.39 cleared during the period 1979-80, 1980-81 and 1981-82 upto 27-2-1982 as per detail set out in the impugned order was served upon the appellants. The appellants filed reply taking up several pleas like the products being at an intermediate stage and therefore not goods and attracting Central Excise duty; exempted goods not being excisable hence not includible in determining the value of clearances for the purposes of notifications 71/78 and 80/80; only the job work value being includible in the value of clearances; Rule 9(2) and the longer time limit not being applicable but time limit for raising demand being shorter time limit of six months apply to the demand. After following the usual procedure the adjudicating officer Collector, Kanpur negated all the pleas of the appellants and confirmed demand of duty as set out in the show cause notice. He also imposed penalty of rupees one lakh against the appellants. Aggrieved with this decision the appellants have filed this appeal to the Tribunal.

4. At the hearing of the appeal Shri V. Sridharan, learned Chartered Accountant representing the appellants advanced the following contentions: (1) That Hon'ble Allahabad High Court within whose jurisdiction the appellants and the Collector of Central Excise, Kanpur are located had in Nagarath Paints Pvt. Ltd. v. The Union of India and Ors. 1978 TLR NOC 45 [now in 1988(33) ELT 58] followed and referred to in E. Septon & Co. Private Limited v. Superintendent of Central Excise and Anr. 1985 (19) ELT 57 (All.) held that once a commodity is exempted from excise duty the same shall be deemed to have been taken out of the First Schedule to the Act and becomes non-excisable. The Collector of Central Excise was in error in disregard of the law laid down by the Hon'ble Allahabad High Court in issuing show cause notice and launching proceedings contrary to the law declared by the Hon'ble High Court and the show cause notice and adjudicating order confirming the same was invalid and without jurisdiction. For the later proposition Shri Shridharan relied on the Supreme Court decision in East India Commercial Co. Ltd., Calcutta v. Collector of Customs, Calcutta 1983 ELT 1342

(S.C). This ground is not urged in the Memo of Appeal but was permitted to be urged during arguments being purely a legal one.

(2) The adjudication proceedings confirming the demand of duty were held by the Collector of Central Excise when under Section 11A(2) of Central Excises & Salt Act, 1944 as it stood at the material time before its amendment on 20-12-1985 this power vested only in the Assistant Collector of Central Excise. The adjudication proceedings were thus void, illegal and without jurisdiction. For this submission Shri Shridharan relied on the Tribunal decision in Kwaliti Containers (P) Ltd., Bombay v. Collector of Central Excise, Bombay (3) Goods on being wholly and unconditionally exempted under a notification issued under Rule 8(1) of Central Excise Rules, 1944, in fact, become non-excisable. This he contended in spite of a series of decisions to the contrary which would be referred to in arguments of the learned 3DR representing the respondent. The value of clearances of such non-excisable goods could not be clubbed for determining the appellants eligibility to benefit of exemption under notifications 71/78 and 80/80.

(4) Wholly and unconditionally exempted goods are not covered within the expression "clearances" used in the notifications. According to him cleared in the context means free from obstruction or free from obligation or encumbrances. Therefore, excisable goods cleared will only mean those excisable goods on which excise duty is payable and has been paid i.e., free from obstruction or obligation or encumbrances. On this test value of man made fabrics and laminated cotton fabrics wholly and unconditionally exempted under notification 100/77 dated 3-6-1977 were not includible for judging the appellants eligibility to benefit of exemption under notifications 71/78 dated 1-3-1978 and 80/80 dated 19-6-1980. For this submission he relied on relevant observations of Hon'ble Patna High Court in Shri Madhav Mill Private Limited v. Collector of Central Excise and Ors. 1984(17) ELT 310 (Pat.) (paras 9, 10, 11, 12 and 13).

5. Earlier the appellants held a licence in respect of the three items of manufacture. After exemption notifications were issued in respect of laminated man made fabrics and laminated cotton fabrics the appellants continued to held Central Excise licence in respect of laminated paper.

Central Excise Officers had been time and again visiting the appellants factory. In particular, attention was drawn to stock taking report dated 27-2-1979 in respect of three items of manufacture (Annexures, J, K & L) for the argument that jurisdictional officers were aware of the fact. Further on 1-4-1980 and again on 1-4-1981 the appellants had submitted declaration prescribed under notification 111/78 dated 9-5-1978 claiming exemption from licensing control with respect to laminated man made fabrics and laminated cotton fabrics. The Central Excise Officers could have then enquired into the appellants value of clearances for the relevant preceding years. That they did not do.

Further even with respect to laminated paper after the appellants had reached the exemption limit of rupees five lakhs and Rs. 7.5 lakhs as stipulated under the two exemption notifications 71/78 and 80/80 the excess clearances were effected under regular gate passes and the R.T.12 Returns submitted in relation thereto were duly assessed. It was the duty of the assessing officer to examine all the facts before finalising the monthly Returns. On these facts he submitted that no case invoking longer time limit of 5 years under Section 11A(1) was justified and demand can only be for the shorter time limit of six months.

6. On the facts and circumstances obtaining in the case as set out in para above it could not be said that there was any clandestine removal on the part of the appellants and therefore Rule 9(2) would not be attracted to the case. For the argument he relied on Guardian Plasticote Ltd., Calcutta v. Collector of Central Excise, Calcutta And Ors.

7. In any case, no case for imposition of penalty was made out because the appellants within the jurisdiction of the Hon'ble Allahabad High Court was under the bona fide belief that goods wholly and unconditionally exempt were not excisable and therefore not includible in the value of clearances for the purpose of two notifications aforesaid. No case for imposing penalty was therefore called for. He relied on Chibramau Cold Storage v. Collector of Central Excise, New Delhi 8. The show cause notice did not allege any misstatement or suppression against the appellants. Therefore longer time limit of 5 years for raising demand of duty would not apply.

9. Controverting Shri Shridharan's contentions, Smt. J.K. Chander, JDR submitted that excisable goods even after wholly and unconditionally being exempted under a notification issued in exercise of powers under Rule 8(1) of Central Excise Rules, 1944 by the Central Government did not cease to be excisable and did not become non-excisable and they still continue to be excisable goods. For the purpose she relied on a Tribunal decision in Shree Shankar Industries, Bombay v. Collector of Central Excise, Bombay 1984(17) ELT 402 (Tribunal). In this decision the Tribunal, inter alia, following the Delhi High Court decision in Vishal Andhra Industries v. Union of India (1983 ELT 2265) as also a Madras High Court decision in Tamil Nadu (Madras State) Handloom Weavers Cooperative Society Ltd.v. Asstt. Collector of Central Excise, Erode (1978 ELT 157) held that goods even wholly and unconditionally exempted do not cease to be excisable. They still remain excisable. As for the other argument as to meaning of the word "clearance" relying on this very decision she submitted that the Tribunal had taken note of the Patna High Court decision in Madhav Mills Private Ltd. case and had preferred to follow the Delhi and Madras High Court view (para 25 of the decision). Therefore the appellants could not derive any help from the observations of Patna High Court in the decision. As to Rule 9(2) of Central Excise Rules being applicable she submitted that the appellants while claiming exemption under the two notifications 71/78 and 80/80 were required to declare the value of clearances of excisable goods for the preceding year. Even if they felt that goods were not excisable they should have in the appropriate columns of the declaration mentioned the fact of being engaged in the manufacture of two exempted items laminated man made fibres and laminated cotton fabrics. Having failed to do the same, the appellants cannot merely on the basis of the fact that Central Excise officers visited their factory or at some earlier point of time they held licence with respect to the two items of manufacture, not them exempted, would not justify invoking shorter time limit for raising demand of duty against them.

The appellants have to show that their particular activity and in particular value of their clearances for the preceding years were within the knowledge of the Central Excise officers. In absence of proof on these lines the Department was fully justified in invoking the longer time limit for raising demand under Section 11A of the Central Excises & Salt Act, 1944 and invoking Rule 9(2) of the Rules. For this

argument she relied on *Piya Pharmaceutical Works v. Collector of Central Excise* 1985(19) ELT 272 (Tribunal). As to jurisdiction of the Collector to hold the adjudication proceedings she submitted that the Collector undoubtedly was higher in hierarchy to the Assistant Collector and there was no prohibition in the Collector himself holding adjudication proceedings. The fact that in Section 11(2) Assistant Collector was mentioned would not deprive the Collector of the jurisdiction to hold adjudication proceedings. As to the first ground urged by Shri Shridharan she submitted that even though the Revenue may have been in error in issuing show cause notice to the appellants in disregard of the law laid down by the Hon'ble Allahabad High Court, now that the matter had come up to the Tribunal the Tribunal had to decide the question of classification in accordance with law and taking an overall view of the conflicting decisions on the point of various High Courts. For this submission she relied on *Chibramau Cold Storage v. Collector of Central Excise, New Delhi* 1985(19) ELT 269 (Tribunal). She submitted that on the facts and circumstances obtaining in the case the demand of duty, longer time limit applied and imposition of penalty were wholly justified.

10. From Explanation V of notification 80/80 and Explanation IV of notification 71/78 the intention appears to be to exclude the value of clearances of goods specified in the notification in computing the aggregate value of clearances under the notifications but the problem arises due to the expression "excisable goods" used in the notification in the conditions reproduced above whether for the purpose of the notification wholly and unconditionally exempted goods are to be treated as non-excisable goods 11. We have carefully considered the arguments advanced by the parties.

Taking up the first point urged by Shri Shridharan it is not in dispute that the appellants unit and the respondent are both located in U.P. and are under the jurisdiction of the Hon'ble Allahabad High Court.

From the submissions of the appellants through their Counsel before the Collector of Central Excise, Kanpur at internal pages 6 and 7 of his order (Ground Nos. vi and vii) it is seen that the appellants did make a submission that laminated cotton fabrics and laminated man made fabrics exempt under notification 100/77 dated 3-

6-1977 were not includible within the expression "aggregate value of clearances of all excisable goods" used in the notifications 71/78 and 80/80. It is also seen from the order of the Collector that reference was made, inter alia, to Hon'ble Allahabad High Court decision in Nagarath Paints v. Union of India (internal page 5 of his order).. The discussion of this plea is to be had at internal page 9 of the order. The Collector, however, does not say how he gets over the decision. The Allahabad High Court decision in E. Septon & Co. Private Ltd. case does not appear to have been cited before the Collector of Central Excise because neither the order of the Collector nor the appellants reply to the show cause notice refers to the same. It was not disputed before us that if the ratio of the decision in the two Allahabad High Court case be applied to the present case and laminated man made fabrics and laminated cotton fabrics exempt under notification 100/77 dated 3-6-1977 be held not excisable then the value of the goods cleared would not be includible within the expression aggregate value of clearances used in the two notifications for judging their eligibility to benefit of the two notifications based on relevant preceding years clearances. The question to be seen is whether in the face of the High Court decisions the Revenue could issue show cause notice and the Collector of Central Excise could confirm demands raised in the show cause notice. It would be useful to reproduce the relevant extract from the Allahabad High Court decision in E. Septon Co.'s case as also the Supreme Court decision in East India Commercial Co. Ltd., Calcutta.

"5. Lastly it was argued by the Additional Standing Counsel appearing for the Union of India, that even if the ice is exempted from payment of excise duty; it does not cease to be excisable goods within the meaning of Section 2(d) of the Act and the petitioner is legally obliged to take a licence for manufacturing excisable goods as contemplated under Rule 174 of the Rules. This argument is also wholly untenable. A Division Bench of this Court in Nagarath Paints Private Limited v. The Union of India and Ors. (Civil Misc. Writ No. 2615 of 1972) decided on 5th December, 1977 expressed its agreement with the observation made in a decision of the Delhi High Court in Sulekh Ram and Sons v. Union of India (1972 Tax Law Reports 1771) which followed the decisions of the Supreme Court in Kailash Nath v. State of U.P. (A.I.R. 1957 SC 790) and J.K. Steel Ltd. v. Union of India (A.I.R. 1970 SC 1173) that if the Central Excises and Salt Act and the

notification are read together, the effect is that goods exempted from excise duty are taken out of the First Schedule to the Act and, therefore such goods cease to be excisable goods within the meaning of Section 2(d) of the Act. In view of the aforesaid decision of this Court as well as the facts stated in the preceding paragraphs the stand taken by the respondents appears to be palpably unjustified and illegal inasmuch as the commodity produced by the petitioner is exempted from payment of excise duty and once it is exempted from excise duty, the same shall be deemed to have been taken out of the First Schedule to the Act and the petitioner cannot be compelled to obtain a licence as contemplated under Rule 174 of the Rules. In this view of the matter it must be held that the petitioner is not required to obtain a licence for manufacturing the ice in the Ice Factory." In para 29 of the majority judgment of Their Lordships Subba Rao, J and Mudholkar, J it was held as under : "...This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared.

Under Article 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence and they

cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction." It is not in dispute that the show cause notice issued to the appellants and the order of adjudication confirming the show cause notice of demand of duty and imposing penalty is in direct violation of the law laid down by the Hon'ble Allahabad High Court. The Tribunal would not be a silent spectator to disregarding of law laid down by the High Court by a subordinate officer or authority and do everything within its power to see that Rule of law is maintained. We may mention that it has not been suggested or argued that the expressions used in the notification with reference to which Allahabad High Court decisions were taken were different from the expressions used in the present notification and that the ratio of these decisions would not apply to the case. It is true that the Tribunal in Chibramau Cold Storage 1985 (19) ELT 269 (Tribunal) in spite of the appellants argument in that case that the appellants factory is situated within the jurisdiction of the Allahabad High Court and the decision of Gujarat High Court should not be applied to their factory preferred to follow the Gujarat High Court decision in 1984 ELT 333, but the attention of the Tribunal was not drawn to the Supreme Court decision in East India Commercial Co.

Ltd., nor was the question or submission formulated in the manner it has now been done. Our earlier decision in Chibramau Cold Storage would not lead us into ignoring the Allahabad High Court decision in E.Septon & Co. and Nagarath Paints case as also the Supreme Court decision in East India Commercial Co. Ltd. case. Following the Allahabad High Court decision in Nagarath Paints and Supreme Court decision in East India Commercial Co. Ltd. case (paras already extracted above) we find that the show cause notice issued against the appellants being in direct violation of the law laid down by the Hon'ble Allahabad High Court deserves to be set aside. We hold the show cause notice to be invalid and as a consequence the adjudicating order confirming the same is also found to be invalid. We therefore set aside the same.

12. In view of the above finding, findings on other points urged by the parties appear unnecessary. However, as the matter might go to the appellate court, we consider it prudent to briefly record our findings against other arguments urged by the parties.

13. As to the next ground that the Collector of Central Excise had no jurisdiction to adjudicate in the proceedings and jurisdiction under Section 11A(2) of the Act was only with the Assistant Collector of Central Excise and reliance for the argument on the Tribunal decision in Kwaliti Containers case 1987(29) ELT 304, on going through the decision that the observation as to Collector not having jurisdiction under Section 11A was that of V.T. Raghavachari, Learned Member with which the other two Learned Members had not associated themselves (para 19 of Shri Sankaran's order). Shri Raghavachari's observation in para 14 of the order cannot be said to be the decision of the Bench. On going through T.P. Mukherjee's Law Lexicon for the meaning of the word "Collector" it is seen that there are several decisions as to this expression but given in different context and they would not help in the present case. It is significant that Central Excises & Salt Act, 1944 itself has no definition of "Collector" though it has definition of 'adjudicating authority' and 'Central Excise officers' [Sections 2(a) and (b)]. Again the definition of Collector in General Clauses Act, 1897, Section 3(11) would also not be applicable in the present case. The definition of 'Collector' is to be had in Rule 2(ii) of Central Excise Rules, 1944 and with reference to State of U.P., the material clauses would be Q and QQ. Rule 6 of the Rules empowers the Collector to perform all or any of the duties or exercise all or any of the powers assigned to an officer under the rules. Such a provision, however, is understandably not there in the Act because it does not have even a definition of 'Collector'. The word 'assistant' according to the Concise Oxford Dictionary New Seventh Edition means, inter alia, helping ; subordinate. The Assistant Collector who is not defined in the Act is thus only a subordinate of the Collector. There is no prohibition in the Section from Collector himself exercising the powers of the Assistant Collector. Even otherwise it is unimaginable that a superior cannot exercise the power exercisable by his subordinates.

Except the Tribunal decision (supra) which is not found applicable in the case no other authority has been cited before us which may persuade us into holding that Collector cannot exercise the powers of the Assistant Collector under Section 11A(2) of the Act. We reject the second ground urged by Shri Shridharan that Collector had no power to confirm the demand raised against the appellants.

14. Taking up the next ground - goods wholly and unconditionally exempted under a notification issued under Rule 8(1) of the Rules become non-excisable there is divergence of judicial opinion on the point. While the Madras, Patna, Delhi and Karnataka High Courts in Tamil Nadu (Madras State) Handloom Weavers Cooperative Society Ltd. 1978 ELT 157, Shri Madhav Mills Pvt. Ltd. 1984 (17) ELT 310, Vishal Andhra Industries 1983 ELT 2265 and Karnataka Cement Pipe Factory, Industrial Estate 1986 (23) ELT 313 respectively held that goods even after such exemption continue to remain excisable, the High Courts of Allahabad and Madhya Pradesh in Nagarath Paints Private Ltd. v. Union of India and Ors. 1988 (33) ELT 58 (All.) decided on 5-12-1977 followed in E. Septon & Co. 1985 (19) ELT 57 (All.) and Tata Export Ltd. v. Union of India and Ors. 1985 (22) ELT 732(M.P.) have held that excisable goods cease to be excisable goods after total exemption from tax. The Tribunal, however, in a series of decisions has preferred the views of Delhi, Karnataka, Patna and Madras High Courts and has held that after such exemption goods continue to remain excisable.

Considering the foregoing we have no hesitation in holding that goods even though wholly and unconditionally exempted under a notification issued under Rule 8(1) of Central Excise Rules, 1944 remain excisable and as a consequence, in absence of anything to the contrary in the notification 71/78 and 80/80 the value of clearances of such goods would have to be clubbed for determining the appellants eligibility to benefit of exemption under the notification. As for Shri Shridharan's reliance on Patna High Court decision in Madhav Mill case (supra) for meaning of the expression 'clearance', Smt. Chander has relied on the Tribunal decision in Shree Shankar Industries case 1984 (17) ELT 402.

It is seen that the Tribunal took note of the decision and in spite of the same held the value of clearances of exempted goods to be includible. We therefore do not

accept this argument.

15. As for the next argument that there was no misstatement or suppression on the part of the appellants and longer time limit would not apply it is sufficient to say that though in the declaration with respect to laminated paper the appellants should have referred to manufacture of laminated man made fabrics and laminated cotton fabrics, they did not do so. The benefit of exemption under the notification 71/78 and 80/80 was dependent on the value of preceding years clearances. We have already said how the Tribunal in a series of decisions has held such value to be includible and exempted goods not being non-excisable continue to remain excisable. The appellants have filed photostat copies of classification list said to be effective from 1-4-1980 bearing No. 1/81. In the column assessee's signature bears dated 20-5-1981 and the date of approval bears date 28-5-1981. In the last column particulars of other goods produced or manufactured and intended to be removed by the assessee lamination or HDP fabrics and cotton cloth was shown on the top but at the same time there is a diagonal line crossing the column from which it would appear that the whole thing had been crossed. As against this the Collector in his order observes "the party filed classification list No. 1A/81 effective from 1-4-1981 in which there was no mention in column 8 that they are doing lamination of cotton fabrics and man made fabrics. As for the argument that central excise officers had visited the appellants factory, a mere visit to the factory by excise officers would not give them knowledge as to value of clearances of exempted goods i.e.

laminated man made fabrics and laminated cotton fabrics. Mere visit would not, in absence of proof of specific knowledge by Central Excise officers, absolve the appellants of their liability to duty. We would prefer to place reliance on the observation of the Collector rather than on the photostat copy with the shortcomings and discrepancies pointed out above. In the above state of things we would hold that the Revenue would be justified in invoking 5-year time limit against the appellants in raising demand of duty.

16. As for penalty, imposition of penalty against the appellants would not have been justified if the appellants had disclosed full facts and claimed that in view of

the Hon'ble Allahabad High Court decision, value of clearances of laminated cotton fabrics and laminated man made fabrics were not includible in the value of clearances. The appellants, however, did not disclose full facts at the proper stage. Considering all this imposition of penalty against the appellants would be justified but the amount of rupees one lakh appears excessive. It should, in our view, be reduced to Rs. 50,000/- (fifty thousand). As, however, we have found in favour of the appellants on Point No.I - show cause notice and the order confirming the same were in violation of the law laid down by the Hon'ble Allahabad High Court, we set aside the impugned order in toto and allow the appeal.

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