

Collector of Central Excise Vs. Sudhakar Litho Printers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-1988

Reported in : (1988)(17)ECC115

Judge : S Jha, V.P., D Mandal

Appellant : Collector of Central Excise

Respondent : Sudhakar Litho Printers

Judgement :

1. As these appeals relate to a common issue the same were heard together and are being disposed of by this common order. Issue to be decided is whether cinema wall posters are classifiable under item 68 or item 17(2) of the Central Excise Tariff and the value of clearances thereof should be included in the aggregate value of clearances of all excisable goods for the purpose of benefit of the exemption under notifications No. 71/78-CE dated 1-3-1978 and No. 80/80-CE dated 19-6-1980 in respect of the clearances of playing cards falling under item 56 of the Central Excise Tariff.

2. The Assistant Collector of Central Excise held that cinema wall posters were not converted type of paper and were correctly classifiable under item 68 of the Central Excise Tariff instead of item 17(2) *ibid*. The value of clearances of cinema wall posters should, therefore, be included in the aggregate value of clearances of excisable goods for the purpose of exemption under notification No.71/78-CE dated 1-3-1978 and No. 80/80-CE dated 19-6-1980. As a result, the aggregate

value of clearances of all excisable goods exceeded Rs. 20 lakhs during the preceding financial year. He, therefore, denied the benefit of exemption under notifications No. 71/78-CE and 80/80-CE in respect of clearances of playing cards. The Collector of Central Excise (Appeals) has set aside the orders of the Assistant Collector and has held that the cinema wall posters are assessable under item 17(2) of Central Excise Tariff and not under item 68 ibid as the production of the same does not involve manufacture and consequently, the value of clearances of cinema wall posters should not be included in the value of clearances for the benefit of exemption notifications No. 71/78-CE dated 1-3-1978 and No. 80/80-CE dated 19-6-1980 in respect of clearances of playing cards falling under item 56.

3. Arguing for the appellant Shri Sunder Rajan, learned J.D.R. has stated that cinema wall posters being the product of printing industry fell under tariff item 68, and not under item 17(2) as claimed by the respondents. It is not a converted paper. It would not fall under item 17(2) ibid. Commercially, a product coming out of a printing press is the product of printing industry. All products of printing industry falling under item 68 of C.E.T. are exempted from duty under notification No. 55/75-CE dated 1-3-1975, but the value of clearances thereof should be included in the aggregate value of clearances of excisable goods to determine the eligibility of playing cards falling under Central Excise Tariff item 56 to the exemption under notifications No. 71/78-CE dated 1-3-1978 and 80/80-CE dated 19-6-1980.

As the aggregate value of clearances of all excisable goods, including the value of cinema wall posters falling under item 68 exceeded Rs. 20 lakhs during the preceding financial year, the benefit of exemption under notifications No. 71/78-CE and 80/80-CE was not available to the clearances of playing cards. Shri Sunder Rajan has also stated that the classification list was approved provisionally so far as exemption under notification No. 80/80-CE was concerned, subject to further investigations into classification of cinema wall posters.

Classification of playing cards under item 56 of C.E.T. was, however, final.

In support of his arguments, Shri Sunder Rajan has relied on the following decisions: (i) [1987] 14 ECC T-398--Indian Tobacco Co. Ltd. v. Collector of Central

Excise, Madras.

(iii) (Paras. 30 & 31) Empire Industries Ltd. and Ors. v. Union of India and Ors.

4. Arguing for the respondents Shri Dev has stated that tariff item 68 is a residuary item. It comes into operation after all other specific items are eliminated. The respondents printed cinema wall posters on duty-paid paper. Printing on paper is not a process of manufacture. The paper was printed on one side. It is a converted type of paper falling under item 17(2) of the Tariff. Prior to the amendment of Tariff item 17 with effect from 1-3-1982, tariff item 17(2) covered paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatment such as coating, impregnating, corrugating, creping and design printing) not elsewhere specified.

Cinema wall poster is a design printed paper falling under item 17(2) of the Tariff. It is printed out of duty paid paper falling under item 17(2). Hence, printing of the cinema wall posters will not attract fresh duty under item 17(2). There was no physical, mechanical or chemical change in cinema wall posters. There was only design printing, but no other activity or process like cutting, binding or stitching, etc., was involved. It was colour printing and not ink printing.

Products of printing industry are those which are not covered by tariff item 17(2). Cinema wall posters will not fall under tariff item 68.

Converted paper was exempted from the whole of central excise duty under notifications No. 68/76-CE dated 16-3-1976 and No. 63/82-CE dated 28-2-1982. As the paper falling under tariff item 17 was a "specified goods" in the notifications No. 71/78-CE dated 1-3-1978 and 80/80-CE dated 19-6-1980 and the converted paper falling under tariff item 17(2) is fully exempted from duty by notification issued under Rule 8(1) of the Central Excise Rules, 1944, the value of clearances of cinema wall posters, which are converted paper, should not be included in the value of clearances for the purpose of exemption under notifications No.71/78-CE and 80/80-CE in respect of clearances of playing cards. In support of his argument that printing does not amount to manufacture and that the design printed cinema wall posters do not fall under residuary tariff item 68, Shri Dev has relied on the

following decisions, extracts from which were submitted by him in the court: Aluminium Industries Ltd., Kerala v. Collector of Central Excise, Cochin.

(ii) 1979 ELT (J 380) (Guj)--Extrusion Process Pvt. Ltd. v. N.R. Jadhav, Superintendent of Central Excise.

(iii) 1980 ELT 164 (Guj)--Swastic Products, Baroda v. Superintendent of Central Excise.

(iv) February, 1978 CENCUS-16D-- Nav Gujarat Paper Industry. (v) 1980 ELT 249 (Bombay)--Garware Nylons Ltd. v. Union of India and Ors. D (Cegat)-- Golden Paper Udyog Pvt. Ltd., Faridabad v. Collector of Central Excise, Delhi. International Packaging Industry v. Central Board of Excise & Customs, New Delhi and Ors. and (viii) 1983 ECR 1349-D (Cegat)-- Golden Paper Udyog (P) Ltd., Faridabad v. Collector of Central Excise, Delhi.

He has also stated that the coverage of tariff item 17(2) is quite wide and on this point he has relied on the decisions reported in 1985 ELT (24) Page 46 (sic) and 1983 ECR Page 799-D.5. Shri Dev has argued that the "classification list was approved granting exemption under notification No. 80/80-CE. The approved classification could not be reopened by the Assistant Collector in view of the following decisions (extracts of the decisions were submitted by Shri Dev in the open court): (i) (Del)--Ajanta Iron and Steel Co. (Pvt.) Ltd. v. Union of India and Ors. D (CEGAT-- Nuchem Plastics Ltd., Faridabad v. The Collector of Central Excise, Delhi, (iv) [1987] 13 ECC-T264 (S.R.B.): 1987 (10) ETR 468 (Tribunal-S.R.B.)-- Collector of Central Excise, Bangalore v. A.V.R.A. and Co., Bangalore. Collector of Central Excise, Chandigarh, v. Gurmukh Singh & Sons, Ludhiana.

(vii) 1981 ELT 328 (Del).--/. K. Synthetics Ltd. and Anr. v. Union of India and Ors. (Tribunal) Atul Products Ltd., P. L.

Atul v. Collector of Central Excise, Baroda. Nuchem Plastics Ltd., Faridabad v. Collector of Central Excise, Delhi.

6. The learned advocate has stated that the demand for duty in one case was time-barred. The Collector (Appeals) has not dealt with the question of time-bar which was raised by the respondents before him and also before the Assistant Collector.

7. In paragraph 30 of the judgment of the Hon'ble Supreme Court in the case of Empire Industries Ltd. , it was the taxable event under excise law is 'manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes, 'manufacture' takes place and liability to duty attracted.

Whatever may be the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process which will be part of 'manufacture'. Any process or processes creating some thing else having distinctive name, character and use would be mauufacture.

In the case before us, cinema wall posters are manufactured out of duty paid paper. Samples of duty paid base paper and of cinema wall posters were shown to us during the hearing. The question that arises is whether after printing the printed product continues to be paper or it becomes a new commodity commercially known as a distinct and separate commodity having its own character, use and name. Cinema wall poster assumes a separate name as such after being printed. It is commercially known as "cinema wall poster" and not as "paper". Use also changes.

Cinema wall poster is not used as paper. It is used as wall poster for the purpose of publicity of the cinema. After printing of the cinema poster the paper loses its identity as paper. Paper transforms into a new commodity commercially known as cinema wall poster. According to the test laid down by the Hon'ble. Supreme Court in Empire Industries case (supra) process of manufacture has taken place and duty liability has attracted on cineme wall poster. As the new product is no longer a "paper" falling under Central Excise Tariff item 17, it will fall under item 68 of the Tariff as a product of printing industry. In the case of Indian Tobacco Co. Ltd. v.

Collector of Central Excise, Madras, this Tribunal held in paragraph 18 of its decision reported in [1987] 14 ECC 398 that printed cartons were products of the printing industry and, therefore, eligible for duty exemption under notification No. 55/75-CE. The respondents have contended that cinema wall poster is converted type of paper and is exempted from duty under notifications No. 68/76-CE dated 16-3-1976 and No. 63/82-CE dated 28-2-1982. At serial No. 3 of the table in the notification No. 68/76-CE, converted types of paper have been described as paper "commonly known as imitation flint paper or leatherette paper or plastic coated paper, or by any other name, obtained by one side of paper being subjected to printing of colour with or without design, irrespective of the fact whether or not such paper is subsequently varnished or glazed by chemicals or embossed, and falling under sub-item(2) of the aforesaid item No. 17." Cinema wall paper is not converted paper firstly because we have already held above that it ceases to be paper falling under item 17 of the Central Excise Tariff and secondly because it does not fall within the description given in the aforesaid notification. Consequently, cinema wall poster is not eligible for the exemption under the said notification. The learned consultant for the respondents has argued before us that after amendment of item 17 of the Central Excise Tariff w.e.f. 1-3-1982 paper subjected to "design printing" fell under sub-item (2) of that tariff item. According to him, cinema wall poster is design printed and hence covered by this sub-item of the tariff item. We have already held that cinema wall poster is not "paper", but it is a product of printing industry. Unless the product remains "paper" it can not fall under sub-item (2) of tariff item 17. The argument of the learned consultant is, therefore, not acceptable. Shri Dev has argued that printing does not amount to manufacture and he has relied upon a number of decisions, as cited in paragraph 4 (supra).

There is no dispute about the ratio of those decisions. So long as the printed paper remains paper there is no difficulty in applying that ratio. But here, in the present case, cinema wall poster is not "paper". It is a new product commercially known as "cinema wall poster" which has come into existence through process of manufacture. The argument of Shri Dev is not, therefore, tenable.

8. Shri Sunder Rajan has relied on the Larger Bench decision of this Tribunal in the case of Guardian Plasticote Ltd. . In that case, following the Supreme Court judgment in Empire Industries Case , the Tribunal held that kraft paper subjected to the process of lamination by laminating two layers of kraft paper with polythene resulted in the emergence of a new and distinct commodity and there was process of manufacture of the laminated paper. Majority decision of the Tribunal in that case was that the new product, laminated paper, was liable to imposition of duty even though it did not move away from tariff item 17 or even from one sub-item to another of the same tariff item. This part of the decision in that case is, however, not relevant to the present case before us as we have held that cinema wall poster falls under tariff item 68 and not under item 17.

9. The relevant portions of notification No. 71/78-CE dated 1-3-1978 as amended by notification No. 141/79-CE dated 30-3-1979 were as follows: In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts the excisable goods of the description specified in column (3) of the table hereto annexed (hereinafter referred to as the 'specified goods'), and falling under such item number of the first Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), as is specified in the corresponding entry in of column (2) of the said table, in respect of the first clearances of such excisable goods for home consumption up to an aggregate value not exceeding rupees five lakhs and cleared on or after the 1st 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 following conditions, namely: (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; (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 rupees fifteen lakhs; and (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 proceeding financial year, had exceeded rupees twenty lakhs;* * * Explanation I--For the purposes of this notification, the expression 'value' means the value as determined in accordance with the provisions of Section 4 of the Central Excises and Salt Act 1944 (1 of 1944).

Explanation IV--For the purposes 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.

No.	Item	No.	in	the	First	Description	Schedule	to
22	17	(i)	polyethylene coated paper,	polyethy-	lene coated board,	waxed-		
			paper,					

Relevant portions of the notification No. 80/80-CE dated 19-6-1980 reads as follows: In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in super session of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 71/78-Central Excises, dated the 1st March, 1978, the Central Government hereby exempts the excisable goods of the description specified in column (3) of the table hereto annexed (hereinafter referred to as the 'specified goods'), and falling under such item number of the First Schedule to the Central Excises and Salt Act. 1944 (1 of 1944), as is specified in the corresponding entry in column (2) of the said table, and cleared for home consumption on or after the 1st day of April in any financial year, by or on behalf of a manufacturer from one or more factories, (a) in the case of first clearances of the specified goods up to an aggregate value not exceeding rupees five lakhs, from the whole of the duty of excise leviable thereon; and (b) in the case of the clearances (being clearances of the Specified goods of an aggregate value not exceeding rupees ten lakhs) immediately following the said first clearances of the value specified in Clause(a), from so much of the duty of excise leviable thereon under the said item (read with any relevant notification issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in force

for the time being) as is in excess of seventy five per cent of such duty: 2. Nothing contained in this notification shall apply to a manufacturer-- (i) if the aggregate value of clearances of the specified goods, if any, by him or on his behalf; for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees fifteen lakhs; (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 II-- For the purposes of calculating the aggregate value of clearances under Clause(a) of paragraph 1 of this notification, during the financial year 1980-81 the value of clearances in respect of which a manufacturer has availed of the exemption under the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 71/78-Central Excises, dated the 1st March, 1978 shall be taken into account.

Explanation III--For the purposes of this notification the expression 'value' means either the value as determined in accordance with the provisions of Section 4 of the Central Excises and Salt Act, 1944 (1 of 1944) or, as the case may be, according to the tariff values fixed or altered under Section 3 of the said Act.* * *

Explanation V--For the purposes of computing the aggregate value of clearances 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.

No.	Item	No.	in	the
First				

* * * * * "Paper" falling under tariff item 17 is specified in the table of the notification No. 80/80-CE. Certain varieties of paper and board falling under tariff item 17 were specified in the table of the notification No. 71/78-CE. "Playing cards" are also specified therein.

It is laid down in both these notifications that for the purpose of computing the aggregate value of clearances under the notifications, 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 Central Excise Rules, 1944 shall not be taken into account. The goods falling under tariff item 68 are not specified in the aforesaid notifications. Therefore, the value of clearances of the goods falling under item 68 cannot be excluded from the aggregate value of clearances under these notifications. As held by us, cinema wall poster falls under tariff item 68.

Consequently, value of clearances thereof cannot be excluded from the aggregate value of clearances although cinema wall poster, being product of printing industry, is exempted from central excise duty by virtue of notification issued under Rule 8(1) of the Central Excise Rules. It is an admitted fact that if the value of clearances of cinema wall poster is included, then the aggregate value of clearances of excisable goods exceeded Rs. 20 lakhs during the respective preceding financial year. As a result, the benefit of exemption under notifications No. 71/78-CE and 80/80-CE was not available in respect of the clearances of playing cards falling under tariff item 56. We, therefore, hold that the decision of the Assistant Collector of Central Excise classifying cinema wall posters under tariff item 68 and denying the benefit of the above exemption notifications in respect of clearances of playing cards was in order, but the decision of the Collector (Appeals) was not correct.

10. Shri Dev for the respondents has argued that the Assistant Collector could not reopen the approved classification and has cited a number of decisions including the judgments of Delhi High Court and 1981 ELT-328 (Delhi). Shri Sunder Rajan has argued that the classification list was approved provisionally, so far as the exemption under notification No. 80/80-CE was concerned, subject to further investigation to classification of cinema wall poster. From the photo copies of the classification lists No. 1/79-80 dated 11-4-1979, No. 43/79-80 dated 15-3-1979, No. 1/79-80 dated 26-7-1979, No. 22/79-80 dated 14-12-1979, No. 49/79-80 dated 29-4-1980, No. 32/79-80 dated 29-4-1980, No. 32/79-80 dated 9-1-1980, No. 6/80-81 dated 10-7-1980, No. 49/80-81 dated 18-9-1980, No. 54/80-81 dated 3-11-

1980 and No. 1/81-82 dated 1-4-1981 (effective from 1-4-1981) we find that the officer approving the classification lists did not qualify the approval indicating that the same were approved provisionally. We also find from the records of appeal No.ED/SB/287/83-C, as filed before us, that in the order-in-original No.V/56/3/133/80/80-MD-4 dated 19/23-4-1982 passed by the Assistant Collector of Central Excise, Vijayawada he has confirmed the demand for duty of Rs. 51,259.72 (basic excise duty) plus Rs. 2563.14 (special excise duty) for a period within the limitation of six months under Rule 10 of the Central Excise Rules although in the show cause notice longer period of limitation of 5 years was invoked and duty of the following amounts was demanded for the period indicated against each amount: We, however, find from the photo copy of classification lists No.2/82-83 dated 8-4-1982 effective from 1-4-1982 and classification list No. 11/82-83 dated 2-6-1982 effective from 1-6-1982 (as placed in the duplicate folder of appeal No. ED/SB/17/84-C) that the aforesaid 2 classification lists were approved provisionally on 30-6-1982 by the Assistant Collector of Central Excise, Vijaywada. Final order on these 2 classification lists was passed by the Assistant Collector in his speaking order No. 1/83 dated 2-4-1983 classifying cinema wall poster under tariff item 68 (but exempted under notification No. 104/82 dated 28-2-1982) and denying the benefit of exemption notification No.80/80-CE in respect of playing cards falling under T.I. 56. These two classification lists became the subject matter of appeal No.ED/SB/17/84-C. We also find from paragraph 3 of the order-in-original No. 2/83 (C. No. V/56/15/13/82 M.P. 4) dated 27-1-1983 that the classification list No. 31/81-82 dated 5-3-1982 was approved finally in respect of playing cards at serial No. 1 to 17 and as regards the other goods produced, manufactured and intended to be removed by the assessee, they were approved provisionally, i.e., items 1 to 3 under column 7, under Rule 9-B of the Central Excise Rules, 1944 on 19-3-1982. Final approval to this classification, which is the subject matter of appeal No. ED/SB/1893/83-C, was accorded by the Assistant Collector of Central Excise, Vijaywada, after modification, in the speaking order-in-original No. 2/83 dated 27-1-1983. The question whether the classification approved by the Assistant Collector could be reopened by him, was considered by Karnataka High Court in the case of Shyam Sunder U. Nichani v. Assistant Collector of Central Excise, Bangalore and Anr., decided on 20-9-1985 and . It

was held by the Hon'ble High Court that withdrawal of approval of the classification list was not a review by the same officer and, therefore, a classification list approved by the Assistant Collector could be reopened and reassessed under Section 11A of the Central Excises and Salt Act, 1944. Section 11-A of the Central Excises and Salt Act is not only a recovery provision, but it enables the original authority to reopen the classification and reassess the goods. The Hon'ble High Court considered the judgment of Supreme Court in the case of D.R. Kohli and Ors. v. Atul Products Ltd. (decided on 12-2-1985) and in paragraph 24 of the judgment observed that In D.R. Kohli's case, the Supreme Court was considering the scope of Rules 10 and 10A and observed, that any error committed at the time of granting approval to the classification list can be corrected by invoking powers under Rule 10.

We find that in paragraph 16 of the Supreme Court judgment in D.R. Kohli's case, their Lordships observed inter alia, as follows: We think that Rule 10 should be confined to cases where the demand is being made for a short-levy caused wholly by one of the reasons given in that rule so that an assessment has to be reopened.

The judgment of Karnataka High Court is later in point of time than Delhi High Court judgments relied on by Shri Dev. In the case of Atma Steel Pvt. Ltd. and Ors. v. Collector of Central Excise, Chandigarh and Ors. 1984(17) ELT 331 (Tribunal), this Tribunal held that the Appellate Tribunal having an all India jurisdiction and peculiar features could not be held bound to the view of any particular High Court irrespective of the fact that the appellant was within the jurisdiction of that particular Court or the original authority was located there. We agree with the above view and prefer to follow the judgment of Karnataka High Court in the present case. We have recently followed the judgment of Karnataka High Court (Supra) in Appeal No. ED/SB/1155/84-C: Malwa Vanaspati and Chemical Co. Ltd. v. Collector of Central Excise, Indore and have held that approved classification could be reopened and demand for duty could be raised under Section 11A of the Central Excises and Salt Act. We do not find any strong reason to take a different view in this case. We, therefore, hold that there was nothing illegal in reopening the classification and demand of duty for 6 months

prior to the issue of show cause notice to the respondents.

11. Another point argued by Shri Dev is that the demand for duty in one case was time-barred. He has stated that the Collector (Appeals) has not dealt with the question of time-bar although it was raised before him and also before the Assistant Collector. As already stated earlier, the Assistant Collector, in his order-in-original No.V/56/3/133/80-M.D. 4 dated 19/23-4-1982 (covered by appeal No.ED/SB/287/83-C), confirmed the demand for duty for a period of 6 months. In appeal No. ED/SB/635/84-C show cause notice for recovery of erroneous refund of Rs. 62, 681.96 paid by cheque No. A 094732 dated 23-12-1981 was issued on 1-6-1982, i.e., within the time-limit of 6 months. In appeal No. ED/SB/1893/ 83-C a show cause notice dated 1-10-1982 was issued proposing reclassification of cinema wall posters under tariff item 68 instead of item 17(2) and consequential recovery of duty of Rs. 6,462.64 on playing cards cleared in March, 1982. On adjudication of the case, the Assistant Collector confirmed the demand and directed the respondents to pay the amount. In this case, the classification list No. 31/81-82 dated 5-3-1982 was approved provisionally on 19-3-1982. Final order on the classification list was passed on 27-1-1983. Hence, the demand for duty was not barred by limitation of time. Appeals No. ED/SB/16/84-C and ED/SB/17/84-C relate to dispute in classification of cinema wall posters and no demand for duty is involved. In the case covered by appeal No. ED/SB/18/ 84-C demand for duty of Rs. 1,51,451.12 relating to the period from 1-8-1981 to 28-2-1982 was issued on 1-6-1982. As there was no allegation of suppression of facts etc., warranting application of longer time-limit of 5 years for demanding duty, the demand for duty should be limited to 6 months only prior to the issue of show cause notice. A portion of duty demand, which is beyond the period of six months prior to show cause notice, is, therefore, barred by limitation under Section 11A of the Central Excises and Salt Act, 1944. We, therefore, direct that the demand for duty should be recalculated for a period of 6 months only and excess recovery, if any, should be refunded to the respondents.

12. In view of the above discussions, we set aside the impugned orders of the Collector of Central Excise (Appeals) and allow all the six appeals filed by the revenue. The orders-in-original passed by the Assistant Collector of Central

Excise, Vijaywada are upheld, subject to our direction regarding demand for duty in appeal No. ED/SB/18/84-C.1. While the input in cinema wall poster may be paper, cinema wall poster is in itself not paper. It has lost its commercial identity as paper. *Atma Steel Pvt Ltd. and Ors. v. Collector of Central Excise, Chandigarh and Ors.* 1984 (17) ELT 331 (Tribunal) decision of the Tribunal was in the context of decisions none of which related to Delhi High Court. As between *J.K. Synthetics Ltd and Anr. v. Union of India and Ors.* 1981 ELT 328 (Delhi) and Karnataka High Court decision in *Shyam Sunder U. Nichani v. Assistant Collector of Central Excise, Bangalore and Anr.* , (referred to by Brother Mandal in para. 10 of his order), while the Delhi High Court decision related to a period when Section 11-A of Central Excises & Salt Act, 1944 was not there, the Karnataka High Court decision is directly on Section 11-A of the Act. This decision has been followed by the Tribunal in a number a decisions. As for the Hon'ble Delhi High Court decision in *Ajanta Iron & Steel Co. Pvt Ltd. v. Union of India and Ors.* , it relates to disapproval of a classification list approved under Rule 173-B of Central Excise Rules, 1944. The decision does not deal with Section 11-A of Central Excises & Salt Act, 1944 at all. The decision also says that in such an event for getting over classification list, recourse should be had to some other provisions of the Act (para. 8 of the decision). According to Karnataka High Court this was permissible under Section 11-A of the Act and the decision, as already said, has been followed in the Tribunal in a number of cases.

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