

**F.G.P. Ltd. Vs. Collector of Central Excise**

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

**Decided On :** Aug-22-1983

**Reported in :** (1983)LC1854DTri(Delhi)

**Appellant :** F.G.P. Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. This is an appeal against the order dated 18-1-1983 of the Collector of Central Excise (Appeals) Bombay, in which he has held that the "glass lumps" produced in the appellants' factory were dutiable under Item 23A of the Central Excise Tariff and that they should take out a manufacturing licence accordingly.

2. According to the appellants, they manufacture fibre glass and fibre glass products, including glass wool and glass staple tissues. Raw materials like Silica Sand, Soda Ash, Borax/Rasorite, etc., are mixed in the required proportion and heated in a furnace to a temperature of around 1400C to form molten glass. The molten glass is drawn as stream through a revolving disc to manufacture glass wool. During the process, the appellants drain the glass tank of surplus molten glass which forms into lumps when drained and sprinkled with water. This is the substance referred to as "glass lumps", whose classification is at issue. These glass lumps are further crushed into pieces of powder and processed further in the staple tissue plant of the appellants to produce glass staple tissue, which is charged to excise duty under Item 22F. The controversy is on the question whether these glass lumps are assessable to duty as "other glass and glassware" under

sub-item (4) of Item 23A of the Central Excise Tariff Schedule as contended by the Department, or they are "unfinished, not marketed and unmarketable goods, not falling under any of the items of the Central Excise Tariff", as claimed by the appellants.

4. Appearing before us for the appellants, Dr. Nitin Kantawala took us through the Order-in-Appeal of the Collector of Central Excise (Appeals), Bombay. He referred to para 3 of that order, wherein the Collector observed that Borax/Rasorite is not normally used for the manufacture of ordinary glass, but went onto say that the scope of Item 23A did not exclude glass containing borax or rasorite from its purview. In this context the Appellate Collector had referred to the "Materials Handbook" edited by Brady and Clauser. Dr. Kantawala contended that merely because Borax or Rasorite is used in some varieties of glass, it does not mean that these varieties could be considered as glass as normally understood.

5. Dr. Kantawala then referred to para 4 of the Order-in-Appeal. In this para the Collector had held that the raw materials used by the appellants, such as Silica Sand, Soda Ash etc., were entirely different from the product described as "glass' lumps", and he had therefore held that the glass lumps were obtained as a result of manufacturing activity. Dr. Kantawala submitted that this conclusion was unjustified, for reasons stated in the succeeding paragraphs.

6. Dr. Kantawala then referred to para 5 of the Collector's order, in which he had observed that the mere fact that an article is not actually sold will not make any difference in determining its excisability. The Collector had cited two judgments in support of the proposition that the test of marketability or saleability has no relevance to the dutiability of the product, but to become goods, the product should be moveable. In the instant case the glass lumps were moveable and he had held that they were "goods". According to Dr.

Kantawala, these two judgments were not relevant as one of them referred to bus seats and the other to plant and machinery. In his turn he referred to the judgment of the Supreme Court in the case of South Bihar Sugar Mills, reported in A.I.R. 1968 SC 922, relating to Kiln Gas. In that judgment it had no doubt been held that it would not make any difference if the products were not actually sold, or if they

were sub-standard. He however relied on the observation that these remarks would be applicable only if what was produced was "carbon dioxide" (in the case before the Supreme Court) and "glass" (in the appellants' case). He also pointed out that every change in a substance did not amount to manufacture. Manufacture implied the emergence of an article with a distinctive name, character or use. He further stated that the appellants had an industrial licence to manufacture only fibre glass and fibre glass products.

7. Dr. Kantawala cited the judgment of the Supreme Court in the case of Dunlop India Ltd., reported in A.I.R. 1977 SC 597, wherein it was observed that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally understand them.

8. Dr. Kantawala then referred to the letters which the appellants had addressed to three glass manufacturers, to ask them whether they could make use of these glass lumps. The three manufacturers, namely M/s.

Borosil Glass Works Ltd., M/s Hindustan National Glass and Industries Ltd., and M/s. Vitrum Glass, had each stated that the glass lumps were not suitable for use by them and that they would not be interested to buy the same. According to Dr. Kantawala, this showed that the glass lumps had no commercial value and could not be sold. He stressed that it was for the Department to establish that the goods came within the scope of the taxing provision.

9. Dr. Kantawala also referred to a decision of the Tribunal in the case of Alkali and Chemicals Corporation reported in 1983 E.C.R. 699D. It had been held in the case of chlorine gas that it was possible to have different tariff values for gas in different forms. It had inter alia been held that when liquid chlorine changed to chlorine gas, no new product was formed. Dr. Kantawala submitted that on the same analogy, when molten glass was solidified, no new product came into existence.

10. Dr. Kantawala also referred to the judgment of the Gujarat High Court in the case of Vallabh Glass Works, reported in 1980 E.L.T. 437.

In para 15 of that judgment it had been held that grinding and boring of glass sheets formed a part of the manufacturing activity on those glass sheets to which they had been applied. He also referred to the judgment of the Supreme Court in sales tax case relating to Pio Food Packers, reported in 1980 E.L.T. 343, wherein it had been held that where there was no essential difference between the original commodity and the processed article, it could not be said that one commodity had been consumed in the manufacture of another.

11. Dr. Kantawala also referred to the judgment of the Bombay High Court in the case of Techni-Glass Ltd., reported in 1981 E.L.T. 147. In that case a question arose whether "Cell-O-Therm", a special type of glass used for thermal insulation, would fall under Item 23A. It had been held that though Cell-O-Therm might be required to be considered as a special type of glass in the scientific sense, such as "extreme, peculiar and scientific meaning" could not be given to the expression "glass and glassware" in Item 23A.12. Dr. Kantawala raised a question whether under Rules 9 and 49, duty could be collected at an intermediate stage. In this connection, the Collector had cited a judgment of the Madras High Court in the case of Binny & Co. reported in 1979 E.L.T. J 65. In this case it was held that the fact that the product, viz., sodium bichromate, was derived at an intermediate stage, was not put in the market for sale, or was of low purity, would not affect its excise liability. Dr. Kantawala argued that that judgment, relating to Sodium Bichromate liquor, was not applicable to his case. He also cited the judgment of the Delhi High Court in the case of J.K. Cotton Spinning and Weaving Mills Ltd., reported in 1983 E.L.T. page 239, and referred to paras 20 and 21 in that judgment.

13. Dr. Kantawala then took up the question of limitation. He pointed out that in the Assistant Collector's order the appellants had been held liable to pay duty under Item 68 from 1-3-75 upto 1-3-79 and under Item 23A(4) from 1-3-79 onwards. (In this connection he argued that the Order-in-Appeal did not contain any discussion regarding the applicability of Item 68). In reply to a question whether the point relating to limitation had been raised by the appellants before the lower authorities (as this was not mentioned in their orders), Dr.

Kantawala stated that he would submit copies of the show cause notice, the appellants' reply, and the memorandum of appeal to the Appellate Collector. He has subsequently done so, and has also filed photostat copies of what purports to be a classification list filed by the appellants in which there is a reference to glass lumps under part II, against Item 23A(4).

14. Replying to Dr. Kantawala, Shri Tayal referred to his argument that only excess production of glass was drained out. He argued that the record did not show that it was only excess production of glass which was drained out and used for making glass staple fibre, nor did the record show that the composition of the glass used for making glass staple fibre was the same as that used for making glass wool.

15. Shri Tayal then referred to para 3 of the Order-in-Appeal. He pointed out that the Collector had not said in this para that the product was not glass. He had only said that it might not be "ordinary glass". Shri Tayal pointed out that the tariff entry was quite wide in scope, as it referred to "other glass and glassware".

16. On the question of manufacture, Shri Tayal stated that he relied on the judgment of the Supreme Court in the case of South Bihar Sugar Mills which had been cited by the appellants, and also on the judgment of the Supreme Court in the case of Delhi Cloth and General Mills, reported in 1977 E.L.T. J 199. The ratio in these cases was whether a transformation took place resulting in the emergence of an article having a new name, character and use. He pointed out that in this case the input, consisting of Silica-Sand, Soda Ash etc., was converted to glass lumps, which were something quite different and new. Accordingly, there was no doubt that a process of manufacture was involved. Shri Tayal also submitted that in the above-mentioned judgments it had been clearly held that it made no difference to the marketability of the goods whether in a particular case they were actually sold. 17. As regards the appellants' correspondence with three other manufacturers, Shri Tayal argued that it was not shown whether they were manufacturing glass tissue. (Dr. Kantawala admitted that there were no manufacturers of glass tissue in India other than the appellants). Shri Tayal argued that if there were any other manufacturers of glass tissue, they would definitely

have a use for the glass lumps.

18. Shri Tayal then referred to the description given by the appellants themselves of the final products as "glass wool" and "glass tissue".

This clearly showed that the material was glass.

19. Shri Tayal further submitted that there was no justification for treating the glass lumps as "Bhangar" or waste glass, as it was not waste glass but raw material.

20. As regards the reference by the appellants to their industrial licence, which was for the manufacture of glass wool and glass tissue, and not for glass as such, Shri Tayal argued that this was not relevant for purposes of Central Excise Tariff classification.

21. Referring to the order of the Tribunal in the case of Alkali and Chemicals India Ltd., (vide para 9 above), Shri Tayal stated that that case could be distinguished from the present one. In that case the question was of the difference between liquid chlorine and chlorine gas. In the present case it was between the raw material such as Silica-Sand and the glass lumps. Similarly, the case of Pio Food Packers Ltd., could be distinguished (apart from the fact that it related to sales tax) since that case involved the difference between pine apples and pine apple slices, obtained by merely slicing the pineapples. In the present case the difference between the input and the output, as pointed above, was very substantial.

22. Referring to judgment of the Bombay High Court in the case of Techni-Glass (vide para 11 above), Shri Tayal submitted that that case related to the period when sub-item (4) of Item 23A referred only to "other glassware". The present case related to the period after amendment of that entry to read as "other glass and glassware".

Accordingly, the judgment would not be relevant to the present case.

23. Referring to the judgment in the case of J.K. Cotton Spinning and Weaving Mills (vide para 12 above), Shri Tayal stated that it concerned a limited issue as to whether goods produced or manufactured had been "removed". In the present

case there was no doubt that certain goods had been manufactured. Shri Tayal also cited the judgment of the Allahabad High Court, in the case of Oudh Sugar Mill Ltd. v. Union of India and Ors., reported in 1982 E.L.T. 937. In that case, which related to the excisability of molasses, it had been held that any by-product, intermediate product or residual product in the manufacture of particular goods would be covered by the word "production".

24. On the question of limitation, Shri Tayal pointed out that there was no reference to it in the Order-in-Original or in the Order-in-Appeal. Evidently it had not been raised at all in the earlier stages. There was also no reference to it in the memorandum of appeal to the Tribunal. Shri Tayal contended that this ground should not be allowed to be raised at this late stage.

25. Replying to Shri Tayal, Dr. Kantawala submitted that the issue of limitation could be raised any time. This could be seen from the judgment of the Delhi High Court in the case of J.K. Cotton Spinning and Weaving Mills Ltd., referred to in para 12 above.

26. We have carefully considered the issue, in the light of the arguments advanced by both sides. The question is whether the "glass lumps" could be considered as falling within sub-item (4) of Item 23A, which covers "other glass and glassware including tableware". It may be mentioned that prior to 1-3-79 this sub-item read as "other glassware including tableware".

27. It can be readily agreed that the term "glassware" would be inappropriate in relation to the glass lumps, in the light of the judgments on the subject. However, the term "glass" is of much wider scope, and what has to be considered is whether the glass lumps would be included within the scope of this term.

28. Dr. Kantawala had quoted para 3 of the Collector's order, which indicated that one of the raw materials used was Borax/Rasorite, and went on to say that normally Borax/Rasorite is not used for manufacture of ordinary glass. Dr. Kantawala appeared to suggest that the "glass lumps" could not therefore be regarded as glass. We do not find substance in this argument. As mentioned in the Collector's order, the number of formulae for glass is very large (over 50,000), and

different materials are used, depending on the type of glass required. Merely because Borax/Rasorite is used less frequently than some other ingredients, it would not follow that the product is not glass. The very fact that the appellants themselves have referred to the substance as "glass lumps" and to the product made from it as "glass staple fibre", shows that the material is clearly glass according to the understanding in the trade.

29. An important point raised is whether the glass in the form of lumps could be considered to be "goods". This involves two arguments, namely whether they were the result of a manufacturing process, and whether they were such as could come to the market to be bought and sold.<sup>30</sup> The first argument has been dealt with in para 4 of the Order-in-Appeal. The Collector has pointed out that the raw materials used are Silica-sand, Soda Ash, Borax/Rasorite etc., and that these are certainly different from the product described as glass lumps. He had observed that the raw materials on the one hand and the glass lumps on the other are two entirely different things having distinctive name, character or use. The difference between the raw materials which are mixed and heated in the furnace, and the glass lumps which emerge from the furnace is very substantial and obvious even to a layman. There is accordingly no force in the argument that the process involved in converting the one to the other is insignificant.

31. The second part of this question is whether the glass lumps themselves are goods, in the sense that they can come to the market to be bought and sold. In this connection the appellants have produced correspondence with three manufacturers of glass products, who have stated that they are not interested in purchasing the glass lumps. For a number of reasons, we do not think that this correspondence is conclusive. Firstly, there are a large number of manufacturers of glass and glass products in India. It is not clear on what basis the appellants have produced their correspondence with these three particular manufacturers. Secondly, they have themselves admitted that they are the only manufacturers in India of glass staple tissue, for the manufacture of which these glass lumps, having regard to their composition, are evidently suited. If that be so, it is logical that no other glass manufacturer in India would be interested in purchasing the glass lumps. This however does not mean that they are not goods. If there were in



India another manufacturer of glass staple tissue who was not in a position to make his own glass, he could well be interested in purchasing the glass lumps from the appellants. In this connection it would be relevant to refer to the judgment of the Allahabad High Court in the case of Union of India and Ors. v. Union Carbide India Ltd., reported in 1978 E.L.T. (J 1). The question in that case was whether aluminium cans or torch bodies manufactured by Union Carbide India Ltd., in the course of manufacturing torches, could be subjected to duty under Item 27(e) of the Central Excise Tariff as "extruded shapes and sections including extruded pipes and tubes". It was contended by the manufacturers that the cans were not goods liable to excise duty.

M/s. Union Carbide and M/s. Geep Flashlight Industries Ltd., who were both parties before the High Court, had emphasised that they were the only two manufacturers of torches in the country and that no one else produced aluminium cans or torch bodies, because this article was exclusively usable for manufacturing flashlights. Repelling the contention of the manufacturers, the High Court held that the product might not be known to the general public or to the traders in general but it was known and used by that trade which makes torches. It was held that the aluminium cans were known and dealt with as an entity by itself, and were marketable according to the needs of those who dealt in it. The fact that these cans had a very limited and specialised market would make no impact on the legal position. The above observations would apply with equal force to the present case. (It has already been noted that the Supreme Court had held in the cases referred to in para 6 that the fact that a product is not actually sold would not affect its liability to duty as "goods").

32. Dr. Kantawala had also relied on the judgment of the Supreme Court in the case of Dunlop India Ltd., where it was stressed that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally understand them. That judgment is not of assistance to the appellants in the present case, since it is contended by the appellants themselves they are the only manufacturers of glass staple tissue, and no one else could have a use for their glass lumps. But apart from this, the fact that they themselves have called the material "glass lumps" is the best evidence that they are regarded as

glass by those who may have occasion to deal in them.

33. Dr. Kantawala had also relied on the judgment of the Bombay High Court in the case of Techni-Glass Ltd. v. Union of India and Ors. (vide para 11 above). We have gone through that judgment very carefully, and find that the facts therein can be distinguished from those in the case before us. An important point is that the entry then before the High Court read as "4. Other glassware including tableware" and not as it stood after amendment with effect from 1-3-1979, viz. "4. Other glass and glassware including table ware". Although in certain parts of the judgment reference was made to "glass or glassware", it is clear from the discussion, particularly paras 5 to 8 and 12, that the question was primarily on the interpretation of the term "glassware". The term "glass" clearly has a wider scope than the term "glassware" and therefore that judgment, if carefully read, would not be of assistance to the appellants in regard to the period from 1-3-79, when Tariff Item 23A was amended so that sub-item (4) thereof included "glass".

34. Further, the material under consideration in that case, called "Cell-O-Therm", and made for use in thermal insulation, is described as "a block of light, rough, opaque, grey-black material". (In para 10 of the judgment, it is stated that "the evolution of gas forms voids in the material...the voids amount to more than 90 per cent of the total volume"). The High Court observed that in ordinary parlance "glass" represents and conjures picture of a transparent, lustrous, hard and brittle substance produced by fusing Sand (Silica) with Soda or Potash (or both), usually with the addition of lime, alumina or lead oxide.

The product under consideration in that case evidently did not conjure this picture, and was not even called glass. In contrast, the glass lumps in this case, on the basis of the process of manufacture as described by the appellants themselves, would not only appear to possess the basic characteristics of glass, but, as mentioned earlier, are called by the appellants themselves as "glass lumps".

35. We do not therefore think that the judgment in the case of Techni-Glass has any application to the present case, so far as the period after 1-3-79 is concerned. It could undoubtedly apply to the period prior to 1-3-79, as the "glass lumps" could clearly not be considered as "glassware". Such considerations have evidently

been taken into consideration by the Assistant Collector in coming to the conclusion that prior to 1-3-79 the classification should be under Item 36. One of the arguments of Dr. Kantawala was that the glass lumps were not specially manufactured by the appellants, but only resulted from excess glass being drawn out. As pointed out to Dr. Kantawala during the hearing, it is difficult to accept this contention. The appellants had installed machinery for the manufacture of glass staple tissue, for which the glass lumps constituted the essential raw material. It is difficult to accept that the appellants would depend purely on excess glass which had to be drawn from the furnace for functional purposes, in order to feed the machinery specifically installed by them for manufacturing glass staple tissue. In any event, in the light of the judgment of the Allahabad High Court in the case of Oudh Sugar Mill Ltd., cited by Shri Tayal (vide para 23 above) it would not be material whether the glass was produced as a by-product, an intermediate product or even a residual product.

37. Dr. Kantawala also pointed out what according to him would be an anomaly if glass lumps were held to be glass and liable to excise duty.

Since the major part of the molten glass from which the glass lumps came was directly used in the manufacture of glass fibre, and no duty was charged on the molten glass so used, Dr. Kantawala argued that it would be anomalous if duty were charged on that part of the molten glass which became glass lumps. We do not find any anomaly in this situation. In the course of manufacture of an article, certain intermediate products may be formed, whose life is short and almost instantaneous. In such a case it may not be considered appropriate or feasible to levy duty on these intermediate products. Where however the intermediate product is collected and made use of for some purpose, its liability to duty certainly has to be considered. The argument of Dr.

Kantawala in this regard would at the most raise the question whether the molten glass as such would be liable to duty. Since obviously molten glass does not and cannot come to the market as such, it could certainly be distinguished from the glass lumps obtained from the molten glass.

38. The various other judgments cited by Dr. Kantawala on the question whether the glass lumps are "goods" need not be specifically referred to, as the foregoing discussion covers the conclusions contained in them.

39. Dr. Kantawala has argued that the Order-in-Appeal did not contain any discussion regarding the applicability of Item 68. We observe that the whole controversy arose out of the Trade Notice dated 5-9-81 in which it was stated that glass lumps were correctly classifiable under Item 68 prior to 1-3-79, and under Item 23A(4) with effect from 1-3-79.

The Assistant Collector's Order-in-Original reproduces at some length the submissions of the appellants. In these submissions they had argued that the glass lumps were not 'goods' and therefore not excisable, and also that the glass lumps would not be classifiable under Item 23A(4).

They do not appear to have addressed any arguments to the Assistant Collector against classification under Item 68. Before the Collector (Appeals), as seen from the first paragraph of his order, the appellants had contended that the glass lumps were not excisable at all or at the most under Item 68. Having held the glass lumps to be excisable goods, the Collector (Appeals) apparently did not deem it necessary to justify their classification under Item 68 for the period prior to 1-3-1979. Before us also no arguments have been addressed on the specific point that even if the glass lumps are 'goods' they were not classifiable under Item 68 prior to 1-3-1979. Even if such an argument were advanced, it would have to be rejected straightway, in the absence of any other tariff item which could cover the glass lumps.

40. Dr. Kantawala also made a passing reference to the fact that the glass lumps were captively consumed. Whatever the force of this contention might have been earlier, it cannot survive after the amendments to Rules 9 and 49, which have been given retrospective effect.

41. The question of limitation remains to be considered. Shri Tayal had objected to this plea being taken at the present stage. Dr. Kantawala's reply was that it was a point of law which could be taken at any time.

In this connection he had relied on the Delhi High Court judgment in the case of J.K. Cotton Spinning and Weaving Mills Ltd. (1983 E.L.T. page 239). He had also undertaken to send copies of the show cause notice issued to the appellants, their reply, and their memorandum of appeal to the Collector to show that the plea of limitation was taken by them earlier. We have seen the documents since furnished by Dr.

Kantawala in this regard, including the appellants' letter dated 15-12-81 to the Superintendent of Central Excise and their memorandum of appeal to the Collector (Appeals). We are unable to find in them any objection that the demand or any part of it was time-barred. No such ground has been taken even in the memorandum of appeal before us. The photostat copy of classification list No. 1/82-83 sent by the appellants, referred to in para 15 above, does not convey anything in particular. It is not even clear whether it is a copy of a classification list which was actually filed, as it does not show the signature of the assessee or of the Central Excise Officer, or the date of filing, or any other endorsement. The fact that it refers to Notification No. 178/82 dated 11-3-82 shows that it must have been made out after that date. Apart from this, we are not able to draw any conclusions from this document, or to see how it supports the case of the appellants.

42. With reference to the question of limitation, we certainly would not wish to prevent an appellant taking up a point of law even at a late stage, if it is in the interests of justice, and particularly if there was some satisfactory reason for the ground not being taken up earlier. In the present case however the plea of limitation is one which could have been taken at the very earliest stage. Not only was it not taken before the Assistant Collector or the Collector (Appeals), but it was not taken even in the memorandum of appeal to the Tribunal.

It was only raised during the hearing before us. A plea of limitation is not a pure question of law, as it is materially related to the facts of the case. In fact, the period of limitation itself (whether the shorter one of one year or 6 months, or the longer one of five years) depends on the fact whether there has been fraud, collusion or wilful mis-statement or suppression of facts by the assessee. If it is not taken at any earlier stage (when it could well have been), and is brought up only during the

hearing, it can hardly be expected that the other side would be able to deal with it adequately. The interests of justice are not to be looked at from the side of only one of the two parties concerned. We do not therefore think that the appellants can claim as a matter of right to raise the question of limitation at this late stage.

43. Dr. Kantawala had cited the judgment of the Delhi High Court in the case of J.K. Cotton Spinning and Weaving Mills Ltd. and Anr. v. Union of India and Ors., reported in 1983 E.L.T. 239, in support of his contention that he could raise the point of limitation at any stage. We have read this judgment and (as a matter of abundant caution) the judgment of the Delhi High Court in the case of J.K. Synthetics Ltd. and Anr. v. Union of India & Others, reported in 1981 E.L.T. 328. We do not find anything in either of these judgments to the effect that the plea of limitation can be taken at any stage as a matter of right.

44. However, as we are anxious to avoid any obvious miscarriage of justice, we have taken note of Dr. Kantawala's argument, with a view to seeing if there is any error apparent on the face of the record. The recital of facts in the Assistant Collector's Order-in-Original shows that the facts relating to the manufacture of glass lumps were brought to the notice of the Central Excise authorities for the first time in the letter dated 16-10-81 addressed to them by the assesseees. The Range Superintendent of Central Excise, in his letter dated 22-10-81, informed them that the glass lumps were dutiable and that they should take out a licence in form L4, pay duty thereon, and also furnish data of the quantity of such goods manufactured, captively consumed or wasted. There followed the proceedings and orders which we have discussed above.

45. For the reasons given in para 42 above, we do not consider it appropriate to go in detail into the the question of limitation which was raised by the appellants at a very late stage, indeed the final stage, of the proceedings. We observe however that, even if it were held that there was wilful suppression of facts etc., by the appellants, and that the time limit was five years, a part of the duty demanded would be clearly hit by limitation. Since the Superintendent's letter informing the appellants that the product was dutiable, and calling upon them to furnish data regarding such goods manufactured, captively consumed or used, is dated 22-10-

81, and since this was apparently the first communication in the nature of a demand or a show cause notice issued by the Department, it could not in any event cover the period before 23-10-76. For the period 1-3-75 to 22-10-76 the demand as confirmed in the Assistant Collector's order must be taken as clearly time-barred.

46. In the result, we find that the orders of the lower authorities were correct, except that the demand of duty for the period from 1-3-75 to 22-10-1976 is held as time-barred. The duty payable shall be reworked on this basis. Except for the relief so due, we reject the appeal.

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