

(1991) 02 CAL CK 0047**Calcutta High Court****Case No:** C.O. 2952 (W) of 1988

Ganges Manufacturing Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Feb. 11, 1991**Citation:** (1992) 40 ECC 325 : (1991) 54 ELT 65**Hon'ble Judges:** Ruma Pal, J**Bench:** Single Bench**Advocate:** Dipak Kr. Ray, for the Appellant; S.N. Banerjee, for the Respondent**Final Decision:** Allowed**Judgement**

Ruma Pal, J.

The petitioner No. 1 carries on the business of manufacturing jute goods under licence granted by the Central Excise Authority under the Central Excises & Salt Act, 1944 (hereinafter referred to as the said Act). The petitioner manufactured Pack Sheets for export for the period ranging between 1-11-1974 to March, 1981.

2. Three separate show cause notices were issued to the petitioner. The dates of the show cause notices and period for which the excise duty was sought to be claimed are set out below :-

(i) SCN dated 26-5-1981	...	1-11-1974 to 31-3-1979.
(ii) SCN dated 12-5-1981	...	November to Dec. 1980.
(iii) SCN dated 2-7-1981	...	February to March, 1981.

All the said three show cause notices were issued u/s 11A of the Act.

3. On 28-10-1980 Notification No. 168/80 was published by which pack sheets used for the purpose of packing jute consignments for export were wholly exempted from excise duty.

4. By a letter dated 22-6-1981 the petitioner replied to the first show cause notice pointing out inter alia that the time fixed for recovery u/s 11A of the Act was six months.

5. On 21-11-1981 two corrigenda bearing numbers 563 and 565 were issued by the Superintendent of Central Excise in respect of the second and third show cause notices. By the said corrigenda, the respondent No. 4 sought to introduce an allegation of suppression of facts by the petitioner No. 1.

6. By a Memorandum No. C. No. 22A(4) 73-SEMP/81-1750 dated 2-4-1983 the respondent No. 3 issued a notice of hearing in respect of the said three notices.

7. The petitioners have challenged the show cause notices and the Memo dated 2-4-1983 on various grounds. However, the matter can be decided on two short points. Section 11A of the Act at the material time in so far as it is relevant provided as follows :-

"Section 11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. - (1) When any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short paid or to whom the refund has erroneously been made requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words six months, the words "five years" were substituted".

The show cause notice could be issued and demand raised u/s 11A only in respect of a period six months prior to the date of the show cause notice unless the case came within the proviso.

8. In Tata Iron and Steel Co. Ltd. Vs. Union of India (UOI) and Others, the Supreme Court held -

"The said Section has been amended in 1978, but we are not concerned with that amendment. A perusal of Sub-section (i) of that section shows that where any duty of excise has not been levied or short levied or short paid or erroneously refunded, the Central Excise Officer concerned, may within six months from the relevant date, serve notice on the person chargeable with that duty. This provision would clearly show that the period for which the demand could be made was only six months prior to the service of the notice".

It has not been contended by the respondents that the petitioner had not filed their returns within the time specified therefore under the Act and the Rules framed thereunder. The period of six months from the respective relevant dates of the transactions referred to in the first show cause notice had, therefore, long expired before the first show cause notice was issued in respect thereof.

9. Therefore, I hold that the first show cause notice having been issued after the period of limitation prescribed u/s 11A and must be struck down.

10. As far as the second and third show cause notices are concerned the transactions referred to therein relate to a period after the exemption notification came into force. There could not be any question of recovery of duties in respect of the goods mentioned in the second and third show cause notices for the period subsequent to 28-10-1980.

11. Therefore, the corrigenda to the show cause notices assuming they were validly issued, were of no consequences.

12. I, therefore, hold that the second and third show cause notices must also be struck down.

13. The Memorandum dated 2-4-1983 having been issued in furtherance of the said show cause notices cannot also stand.

14. In the result, the writ application is allowed. The impugned show cause notices and memorandum are quashed. There will be no order as to costs.