A MYSORE ROLLING MILLS (P) LTD.

v.

COLLECTOR OF CENTRAL EXCISE, BELGAUM

FEBRUARY 18, 1987

B [R.S. PATHAK, CJ AND RANGANATH MISRA, J.]

Central Excise and Salt Act 1944/Central Excise Rules, 1944—Sections 4, 11A & 35L/Rules 6, 9 & 10—Excise duty—Handling charges to be added for computation of duty—Manufacturer suppressing disclosure of handling charges—What is period of limitation C *applicable.*

Between September 1974 and May 1977 the appellant received more than 6 lakh rupees from its customers by issue of debit notes over and above the amounts received under regular invoices for manufacturing aluminium wire rods on job basis on their behalf.

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The Excise Authorities issued notice under Rule 10(i)(c) of the Central Excise Rules, 1944, to the appellant to show cause why the aforesaid amount called as "handling charges" should not be added to the invoice price and differential duty recovered. The Assistant Collector confirmed the demand after cause was shown which was upheld E **by the Appellate Collector and confirmed by the Tribunal.**

In the appeal to this Court, on behalf of the appellant it was contended; (1) that on the basis of Rule 6(b)(i) of the Valuation Rules the statutory levy price of aluminium should be adopted as being the price of comparable goods and with effect from 1.10.75 the assessable F **value should have been fixed under proviso (ii) to s.4(1)(a) or s.4(1)(b) at the same amount, (2) that Rs.60 which was collected as handling charges was not to be taken into account for computing duty and (3) that the notice was barred by limitation.**

Dismissing the appeal,

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HELD: (1) With effect from 1.10.1975 a new s.4 has been inserted into the Central Excise & Salt Act, 1944 providing for the mode of valuation. The period involved in this appeal is from 27.9.1974 upto 31.5.1977. Therefore, the period upto 30.9.1975 would be covered by the old s.4 and from 1.10.1975 till 31.5.1977 the provisions of new H **section would apply for determining the assessable value. [320E]**

(2) As per arrangement between the appellant and its customers, the appellant was permitted to lift the allotted ingots directly and after carrying out the manufacturing process it used to deliver the same to the customers. [321C-D]

(3) There has been no sale of the material between the appellant and the customers. The appellant was collecting Rs.600 per metric ton as conversion charges and Rs.60 per metric ton as handling charges. [320G]

(4) The handling charges were intended to cover the appellant's expenses in lifting the ingots. The Tribunal has come to the right conclusion in holding that the handling charges represented pre-manufacturing cost and became part of the value for computation of duty. [321D-E]

(5) Rule 9 which corresponds to s.11-A of the Act provided a period of one year for taking of proceedings while Rule 10 corresponding to the present s.11 of the Act prescribed a period of three months for such purpose. With effect from 6.8.1977, the period of six months was substituted for the period of three months and the period of five years substituted for the period of one year. [321B-C]

(6) The rule is intended to relate back and cover a period of five years from the date jurisdiction under the rule is invoked. The provision, is therefore, retrospective in operation. [321G]

(7) Once the rule comes into existence and jurisdiction under the rule is invoked, it has got to cover a period upto five years preceding the date of issue of notice. [321H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4542 (NM) of 1985.

From the Order dated 10.6.1985 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. ED(SB) (T) A. No. 88 of 1980-A.

M. Chandrasekharan, V.J. Francis, N.M. Popli for the Appellant.

B. Datta, Additional Solicitor General, Ms. S. Relan and Mrs. Indra Sawhney for the Respondent.

The Judgment of the Court was delivered by

A RANGANATH MISRA, J. This appeal under section 35-L of the Central Excises and Salt Act, 1944 is directed against the decision of the Customs, Excise and Gold (Control) Appellate Tribunal upholding the decision of the Appellate Collector of Central Excises, Madras. The short facts relevant for disposal of this appeal are that the appellant manufactures aluminium wire rods out of duty paid E.C. B grade aluminium ingots on job basis on behalf of various customers. Between September 1974 and May 1977 it received a sum of more than 6 lakh rupees from customers by issue of debit notes over and above the amounts received under regular invoices. The Excise Authorities came across 966 such debit notes and on the basis thereof called upon the appellant to show cause why that amount which was said to be C handling charges should not be added to the invoice price and differential duty thereupon be recovered. The Revenue took the stand that there was suppression of information on the part of the appellant with regard to collection of handling charges and, therefore, the notice was issued under Rule 10(i)(c) of the Rules framed under the Act. The Assistant Collector confirmed the demand after cause was shown. The D Appellate Collector upheld the demand by dismissing the appeal. The Tribunal has confirmed the Appellate order.

There is no dispute that with effect from 1.10.1975 a new Section 4 has been inserted into the Act providing for the mode of valuation. In view of the fact that the period involved in this appeal is from E 27.9.74 upto 31.5.77, the period upto 30th of September, 1975 would be covered by the old Section 4 and from 1.10.75 till 31.5.1977, the provisions of new Section would apply in the matter of determining the assessable value. It is not disputed that from 15.7.75 the levy price of aluminium had been statutorily fixed at Rs.7062 per metric ton. It is the contention of the appellant that on the basis of Rule 6(b)(i) of the F Valuation Rules the price of Rs.7062 should be adopted as being the price of comparable goods and with effect from 1.10.1975 the assessable value should have been fixed under proviso (ii) to Section 4(i)(a) or Section 4(1)(b) of the Act at the same amount. The admitted position is that there has been no sale between the appellant and the customers of the material. The appellant was collecting Rs.600 per G metric ton as conversion charges and Rs.60 per metric ton as handling charges. The dispute in the appeal is confined to the question as to whether Rs.60 per metric ton collected as handling charges could be added for computation of duty.

Two contentions are advanced in support of the appeal; firstly, H Rs.60 which was collected as handling charges was not to be taken into

account for computing duty and secondly, the notice dated 13th of October, 1978 had been issued more than a year after the last date of the period in question and was barred by limitation. Prior to 6.8.1977, Rule 9 which corresponds to Section 11-A of the Act provided a period of one year for taking of proceedings while Rule 10 corresponding to the present section 11 of the Act prescribed a period of 3 months for such purpose. With effect from 6.8.1977, when the rules were amended, the period of six months was substituted for the period of three months and the period of five years substituted for the period of one year. The Tribunal has held that the period of five years was applicable to the facts of the case on the basis that it is a case of suppression. It is the case of the appellant that for convenience the arrangement between the appellant and its customers was that instead of the customers collecting the ingots on the basis of allotment at their respective factories and then transporting the same to the appellant situated at Belgaum in the State of Karnataka, the appellant was being permitted to lift the allotted ingots directly and after carrying out the manufacturing process it used to deliver the same to the customers. The handling charges were intended to cover the appellant's expenses in lifting the ingots. The Tribunal has, therefore, come to the right conclusion in holding that the handling charges represented pre-manufacturing cost. We agree that the Tribunal came to the appropriate conclusion in holding that the handling charges became a part of the value for computation of duty.

The Tribunal has recorded a finding that the appellant had suppressed the disclosure of receipt of handling charges and, therefore, the longer period of limitation applied. The same view had been taken by the departmental authorities. We see no justification to take a different view on the facts.

The only other submission of the appellant which remains for consideration is the tenability of the contention that the period of limitation under the old provision having expired the five year rule which has been applied was not available to be applied. Undoubtedly, the rule is intended to relate back and cover a period of five years from the date jurisdiction under the rule is invoked. The provision is, therefore, retrospective in operation. It is not the stand of the learned counsel for the appellant that only when a period of five years has elapsed from the date of introduction of the rule, jurisdiction under the rule can be exercised in respect of that preceding period of five years. Once the rule comes into existence and jurisdiction under the rule is invoked it has got to cover a period upto five years preceding

A the date of issue of notice. The Tribunal has endorsed such action of the departmental authorities. The plea of limitation has no force.

Both the contentions in support of the appeal fail. We dismiss the appeal but without costs.

B A.P.J. Appeal dismissed.