CASE NO.:
Appeal (civil) 2693 of 2000

PETITIONER:
EASLAND COMBINES COIMBATORE

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE COIMBATORE

DATE OF JUDGMENT: 13/01/2003

BENCH:
M.B. SHAH & D.M. DHARMADHIKARI

JUDGMENT:
JUDGMENT

2003(1) SCR 98

The Judgment of the Court was delivered by

SHAH, J. The questions which were considered by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'CEGAT) in Final Order No. 1467/99-B dated 5.1.2000 arising out of Appeal No. E./3646/1990(B), were-whether, as the clearances in issue were effected against approved classification lists, the demand was sustainable in view of the law laid down by the Constitution Bench of this Court in Collector of Central Excise, Baroda v. Cotspun Limited [1999] 113 ELT 353 and whether there was any ground for invoking first proviso to sub-section (1) of Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act')?

In these appeals, first question which requires decision is - what is the effect of following amendments in Section 11A of the Central Excise Act, 1994 which came into force w.e.f. 17.11.1980 by the Finance Act, 2000 (10 of 2000).

The relevant part of unamended Section 11A was as under:-

"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."

Clause 97 of the Finance Act provided that in sub-section (1) of Section 11A of the Act following shall be added:-

(a) in the opening portion, for the words "erroneously refunded", the words "erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder", shall be substituted and shall be deemed

to have been substituted on and from the 17th day of November, 1980;

(b) for the words "six months", wherever they occur, the words "one year" shall be substituted;

(c) after the proviso and before the Explanation the following provisos shall be inserted namely:-

"Provided further that where the amount of duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded is one crore rupees or less a notice under this sub-section shall be served by the Commissioner of Central Excise or with his prior approval by any officer subordinate to him:

Provided also that where the amount of duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served without the prior approval of the Chief Commissioner of Central Excise".

After amendment, relevant part of Section 11A reads thus

"Section 11 A.-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, whether or not such non-levy or non-payment, short levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a Central Excise Officer may, within one year from the elevant 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 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 one year, the words "five years" were substituted."

For our purpose, relevant part of the amended Section 11A would be "when any duty of excise has been short levied or short paid, whether or not such short levy or short payment was on the basis of any approval, acceptance or assesment relating to the rate of duty on valuation of excisable goods under any other provision of the Act or the Rules, a Central Excise Officer may within one year from the relevant date, serve notice on the person chargeable with the duty which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice."

In the first proviso to the said Section, there is no change.

At this stage, we would refer to the statement of objects and reasons for amending Section 11A:-

"Clause 106 seeks to validate certain action taken under section I1A of the Central Excise Act with retrospective effect from 17th November, 1980, so as to prescribe that the notices issued under the said section for non-recovery or short-recovery or erroneous refund of duties for a period of six months or five years in certain situations will prevail notwithstanding any approval, acceptance or assessment of duty under the provisions of the Central Excise Rules. The Clause also seeks to validate actions taken in the past on this basis in conformity with the legislative intention. This

amendment has become necessary to overcome certain judicial pronouncements."

Further, the clause 110 of the Finance Act validating actions taken under Section 11A provides as under:-

"110.(1) Any notice issued or served on any person under the provisions of section 11A of the Central Excise Act during the period commencing on and from the 17th day of November, 1980 and ending on the date on which the Finance Act, 2000 receives the assent of the President (hereinafter referred to as the said period) demanding duty on account of non-payment, short payment, non-levy, short-levy or erroneous refund within a period of six months or five years, as the case may be, from the relevant date as defined in clause (ii) of sub-section (3) of that section shall be deemed to be and to always have been, for all purposes, validly and effectively issued or served under that section, notwithstanding any approval, acceptance or assessment relating to the rate of duty on or value of, the excisable goods by any Central Excise Officer under any other provisions of the Central Excise Act or the rules made thereunder.

(2) Any action taken or anything done or purporting to have been taken or done under section 11A of the Central Excise Act at any time during the said period shall be deemed to be and to have always been, for all purposes as validly and effectively taken or done as if sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority :-

(a) all duties of excise levied, assessed or collected during the period specified in sub-section (I) on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed to always have been, as validly levied, assessed or collected as if sub-section (1) had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of any such duties of excise which have been collected and which would have been validly collected if sub-section (1) had been in force at all material times;

(c) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, if sub-section (1) had been in force at all material times.

Explanation-For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section has not come into force."

The aforesaid amendment is given retrospective effect from 17.11.1980 i.e. the date on which Section 11 (A) of the Act was introduced.

In the light of the aforesaid statutory provisions, let us now consider the relevant portion of the judgment rendered in Cotspun ’s case (supra). The said case was referred to the Constitution Bench as there were two conflicting three-Judge Bench decisions of this Court on the point in issue. In paragraph 8, the Court approved the finding in Rainbow Industries (P) Ltd. v. Collector of Central Excise, Vadodara [1994] 6 SCC 563 by holding thus:-

8. In Rainbow Industries (P) Ltd. v. Collector of Central Excise, Vadodara [1994] 6 SCC 563 the appellant was a manufacturer of dyestuff. He had filed a price list as required by Rule 173C of the Central Excise Rules which was approved by the Excise authorities with effect from 1st October, 1975.

About a year thereafter, the Assistant Collector issued a notice requiring the appellant to show cause why the net assessable value should not be revised and differential duty recovered. The appellant replied to the show cause notice but his contentions were not accepted up to the stage of the Tribunal. In the challenge before this Court to the order of the Tribunal it was contended that the price list submitted by the appellant having been accepted and acted upon, the Excise authorities were precluded from challenging the same and, therefore, from claiming that the appellant was liable to pay the differential duty. A Bench of two learned Judges of this Court said:

"Once the Department accepted the price list, acted upon it and the goods were cleared with the knowledge of the Department, then, in absence of any amendment in law or judicial pronouncement, the reclassification should be effective from the date the Department issued the show cause notice. The reason for it is clearance with the knowledge of the Department and no intention to evade payment of duty."

The Court thereafter observed-

"In the case of Ballarpur Industries Ltd. v. Asstt. Collector of Customs and Central Excise and Ors., [1995] Suppl. 3 SCC 429 decided by a Bench of three learned Judges, the observations in the judgment in Rainbow Industries were "confined to the facts of that case". The Bench placed reliance upon Rule 10 and held that, on a plain reading of that provisions as also of Section 11 A, the show cause notice "which could be issued within the time limit prescribed under the relevant provision could only be in relation to the duty of excise for a period prior to the issuance of show cause notice. There could be no reason for the issuance of a show cause notice for the period subsequent to the notice as in that case the necessary corrective action could always be taken. But Rule 10 with which we are concerned as well as Section 11A to which a reference is made in the case of Rainbow Industries, the show cause notice which must be issued within the time-frame prescribed in the said provisions must relate to a period prior thereto as the purpose of the show cause notice is recovery of duties or charges short-levied etc. We. therefore, find it difficult to accept the contention that the ratio of the decision in Rainbow Industries is that under Section 11A past dues cannot be demanded. We must, therefore, reject that contention. "

Thereafter, the Court held that the decision rendered in Ballarpur Industries (supra) does not lay down the law correctly and the decision rendered in Rainbow Industries (supra) on the other hand correctly lays down the law as it was delivered in context of Rule 173 dealing with approved price lists and the provisions of Rules 173C and 173B. The Court also referred to the earlier decision in Collector of Central Excise, New Delhi v. Bhiwani Textiles Mills, (1966) 88 ELT 639 wherein it was held that until the proposal for modification of the classification was mooted, the earlier classification would operate. Relevant discussion (in paragraphs 12 to 15) is as under:-

"12. Rule 173B deals with classification lists. It entitles the proper officer of Excise to make such inquiry thereon as he deems fit and requires him to approve the list only thereafter, and that with such modifications as are considered necessary. The assessee must determine the excise duty that is payable by him on the goods he intends to remove in accordance with the approved classification list. Sub-rule (5) provides for modification of an approved classification list.

13. Rule 10 is a provision for recovery of duties that have not been levied or paid in full or part. So far as is relevant for our purposes, it provides that where any duty has been short-levied, the Excise Officer may, within six months from the relevant date, serve notice on the assesse requiring him to show cause why he should not pay the amount that had been short-levied. Rule 10 does not deal with classification lists or relate to

the re-opening of approved classification lists. That is exclusively provided for by Rule 173B.

14. The levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. It is only when the correctness of the approval is challenge that an approved classification list ceases to be such.

15. The levy of excise duty on the basis of an approved classification list is not a short levy. Differential duty cannot be recovered on the ground that it is a short levy. Rule 10 has then no application."

Learned counsel appearing on behalf of the assessee submitted that the aforequoted amendment in the Act does not change the basis or the foundation of the judgment rendered by this Court in Cotspun's case (supra). It is his contention that once the excise duty is collected on the basis of the approved classification, price list or on the basis of the assessment order it cannot be held that there was short levy of excise duty. In such cases levying of excise duty on the basis of approved classification or final assessment order is the correct levy and therefore the amended Section 11A would not be applicable.

In our view, there is no substance in this submission. As stated earlier, the relevant amended portion of Section 11A inter alia makes it abundantly clear that when any duty of excise has been short levied or short paid, whether or not such short levy or short payment was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of the Act or the rules, the Central Excise Officer, can without one year from the relevant date, serve notice on the person chargeable with the duty, which has been short levied or short paid, requiring him to show cause why he should not pay the amount specified in the notice. This amendment changes the entire basis or foundation of the judgment rendered in Cotspun 's case (supra). The entire discussion in the said case is based upon Rule 173B which dealt with classification list and that assessee must determine the excise duty which is payable by him on the goods which he intends to remove in accordance with approved classification list. The Court based its reasoning by holding "Rule 10 does not deal with classification list or relate to reopening of approved classification lists. That is exclusively provided by Rule 173B." The Court further held that the levy of excise duty on the basis of approved classification list is not short levy and the differential duty cannot be recovered on the ground that it is a short levy and Rule 10 then has no application. After the amendment of law, this reasoning of the judgment would no longer survive. It is true that the levy of excise duty on the basis of approved classification list or price-list or the assessment order is correct levy till such time as the correctness of the approved classification list or price list or till the assessment order is set aside. However, with retrospective effect, the legislature has empowered the Central Excise Officer to set at naught the erroneous approval of classification list or acceptance of price list or assessment order. What was provided by Rule 173B is now specifically provided by Section 11 A. Rule 173B (5) also provided thus:-

"When the dispute about the rate of duty has been finalised or for any other reasons affecting rate or rates of duty, a modification of the rate or rates of duty is necessitated, the proper officer shall make such modification and inform the assessee accordingly."

Now, after amendment, this can be done by the Central Excise Officer within a period of one year from the relevant date. As amendment is given retrospective effect, it would be applicable to all the pending proceedings. By this amendment, the basis for arriving at the conclusion that Rule 10 (now Section 11A) does not deal with the classification list or relate to re-opening of classification list is altered by specifically

providing that in such cases also, show-cause notice could be issued. Hence, the conditions on which the judgment was based are fundamentally altered and the decision in Cotspun 's case would not have been rendered if amended Section 11A was in existence. This is done by re-enacting retrospectively a valid and legal provision. It fs settled principle that legislature can change the basis on which a decision is given by the Court and thus change the law in general. It is also well settled law that the legislature can always a render a judicial decision ineffective by enacting a valid law on the topic within its legislative field by fundamentally altering or changing its character retrospectively. Re: Indian Aluminium Co. v. State of Kerala, [1996] 7 SCC 637.

Further, learned Attorney General rightly referred to the statement of objects and reasons in support of the contention that the law is altered so as to change the entire basis of the judgment rendered in Cotspun's case (supra). From the statement of objects and reasons, it is abundantly clear that the main purpose of the amendment was to fill-in the lacuna pointed out by this Court by interpreting Rule 10 as it existed. As quoted above, the objects and reasons clearly provide that it was to validate certain actions taken under Section 11A of the Central Excise Act with retrospective effect from 17th November, 1980, by providing that notwithstanding any approval, acceptance or assessment of duty under the provisions of Central Excise Rules, such show-cause notice could be issued. It specifically states that the amendment was necessary to overcome certain judicial pronouncements. Further, validating provision which is clause 110 of the Finance Act also provides to the same effect. Hence, it would be difficult to accept the contention raised by the learned counsel for the assessee that amended Section 11A would not be applicable because levy of excise duty on the basis of approved classification list was the correct levy. Even in Cotspun's case, the Court has specifically stated that such levy would be correct levy, at least until such times as the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. The entire provision is amended by providing that- whether or not non-levy or non-payment, short-levy or short-payment or erroneous refund of excise duty even on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods made under the Act or the Rules, a Central Excise Officer can within one year from the relevant date serve show-cause 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.

Learned counsel for the assessee pointed out that the assessee would be placed in a precarious situation because in a genunie case once the assessee's classification list is approved he would recover the duty from purchasers on that basis. Thereafter, within one year of the relevant date a show cause notice is issued stating that such approval of classification list was erroneous, he would not be in a position to recover the difference of excise duty from the purchaser of the excisable goods. It is contended that presuming that the approved price list was erroneous or order was erroneous because of the mistake of the concerned officer of the department, assessee cannot be put to loss otherwise it would cause hardship to the assessee. It is also contended that this power can be misused by invoking the proviso to sub-section (1) of Section 11, merely stating that duty of excise has been short levied because of willful statement or suppression of facts.

In our view, it would be difficult to accept the aforesaid contention. It is well settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result, whether injurious or otherwise, by giving effect to the language used nor it is the function of the Court where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature

and in doing so, it should presume that the provision was designed to effectuate a particular object or to meet a particular requirement. Re: Firm Amar Nath Basheshar Dass v. Tek Chand, [1972] 1 SCC 893.

This power under Section 11A could be exercised within a period of one year from the relevant date. Therefore, this power to correct the errors or mistakes in approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods cannot be said to be unreasonable. In case where first proviso is applicable, by invoking larger period of five years such show-cause notice could be issued. The relevant date is defined under sub-section (3) of Section 11A, which is as under-

"11A(3) For the purpose of this section,-

(i) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods are exported out of India;

(ii) "relevant date" means,-

(a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short paid-

(A) where under the rules made under this Act a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(B) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) in any other case, the date on which the duty is to be paid under this Act or the rules made thereunder.

(b) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund."

Considering this meaning of the 'relevant date', it is abundantly clear that in case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, the relevant date is the date on which periodical return is filed or where no periodical return is filed, the last date on which such return is to be filed or in any other case the date on which the duty is to be paid under the Act or the Rules. Similarly, sub-clauses (b) or (c) also provide the date of final assessment or date of erroneous refund as a relevant date, which cannot be stated to be in any way unreasonable for correcting the errors or mistakes.

These contentions are exhaustively dealt with in M/s. Ujagar Prints and Ors. (II) v. Union of India and Ors., [1989] 3 SCC 488 wherein after considering various decisions, this Court held thus:-

"A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating factors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature-granting legislative competence-the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant.

Such legislative expedience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. It is necessary that the legislature should be able to cure defects in statutes. No individual can acquire a vested right from a defect in a statute and seek a windfall from the legislature's mistakes. Validity of legislations retroactively curing defects in taxing statutes is well recognised and courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and wisdom of the retrospective legislation. In Empire Ind Ltd., this Court observed-

"...not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government amongst those who benefit from it."

In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental rights under Article 19(l)(g), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of taxing statute struck down by courts for certain defects; the period of such retroactivity, and the degree and extent of any unforeseen or unforeseable financial burden imposed for the past period etc. Having regard to all the circumstances of the present case, this Court in Empire Ind. Case [1985] 3 SCC 314 held that the retroactivity of the amending provisions was not such as to incur any infirmity under Article 19(1)(g)."

Further, it is contended that such power is likely to be misused and the assessee would suffer. In our view, it is erroneous to assume that such power would be misused or show-cause notice would be issued without any justifiable basis. In any case, if there is any misuse of power, the Act provides ample remedy for challenging the same in various forums.

Hence, it is held that in view of the amendment of Section 11-A (1), the decision rendered by this Court in Cotspun 's case (supra) would not be a good law. Show cause notice for correcting errors or mistakes in approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under the provisions of the Act or the Rules made thereunder could be issued within the prescribed period.

Next question is-whether there was any ground for invoking first proviso to sub-section (1) of Section 11A of the Act? It is submitted that M/ s. Easland Combines (hereinafter referred to as 'the Company') is a small scale industrial undertaking established in the year 1973 with the factory at Trivandrum and engaged in the manufacture of various types of Water Taps out of Iron, Aluminium and Brass classised under sub-heading 8481.80 of the Schedule of the Central Excise Tariff Act. The said factory at Trivandrum was registered with the Department of Industries at Kerala State as a Small Scale Industry vide Registration No. T/SI/235/75 dated 23.5.1973. The Company set up another factory at Coimbatore holding Central Excise licence B.4 No.I/T.I.68/82. as a branch of the main undertaking at Trivandrum.

For the year 1986-87, the Company filed a classification list-S. No.A/ 51/86-87 dated 26.5.86 in respect of excisable goods produced by them and claimed exemption applicable to small scale manufacturers in terms of Notification No. 175/86 dated 1.3.1986 (as amended). The said classification list was verified by the Central Excise authorities and duly approved by the Asstt. Collector of Central Excise, Coimbatore-I Division.

During the year 1986-87 and 1987-88, the Company cleared their goods availing the exemption in terms of Notification No. 175/86 dated 1.3.1986 (as amended) and submitted their monthly RT 12 returns which were duly assessed by the Range Superintendent, Coimbatore-I Division and returned to the Company.

In October, 1986 and October, 1987, the factory at Coimbatore was visited by the Central Excise Revenue Audit authorities. On 5.2.1988, the factory was visited by Central Excise Internal Audit Authorities, Coimbatore.

Thereafter, on 7.12.1989, a show-cause Notice C. No. V/Ch. 8481.80/15/92/89, CxAdj. (CERA) dated 7.12.1989 was issued to the Company by the Collector, Central Excise, as to why differential duty amounting to Rs. 7,59,501.28 be not demanded from the Company under Rule 9(2) of the Central Excise Rules, 1944 read with Section 1IA of the Central Excise & Salt Act, 1944 and penalty be not imposed on them under Rules 9(2) and 173Q of the Central Excise Rules, 1944.

On 10.8.1990, the Collector, Central Excise, Coimbatore, by Order-in-Original C. No.V/Ch.8481.80/15/92/89 dated 10.8.1990 confirmed the demand of duty of Rs. 7,59,501.28 raised in the show-cause notice, under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise and Salt Act, 1944 and imposed a penalty of Rs. 10,000 upon the Company under Rule 9(2) and 173Q of the said Rules.

In appeal, the Tribunal considered whether the extended period of limitation is invokable for demanding Central Excise Duty under Section 11A of the Act. The Tribunal considered that as per the Notification No. 175/ 86 exemption is available only to a factory which is an undertaking registered with the Director of Industries and that the factory where the goods are manufactured and removed should be an undertaking registered with the Director of Industries before the exemption provided by the notification could be extended. Therefore, merely because factory of the Company at Trivandrum was registered as SSI unit, the benefit of notification was not available in respect of a branch factory at Coimbatore. The factory at Coimbatore was an independent unit which is required to be registered as SSI unit with the Director of Industries. The Tribunal, therefore, held that as there was misstatement by the appellant, the duty is demandable from the appellants-Company for the extended period and hence dismissed the appeal.

It is settled laws that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful mis-statement, suppression of fact or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.

The present case is not a case where the Company was not entitled to have registration as SSI unit at Coimbatore. It was a mistake of the concerned clerk on the assumption that as the Company was registered as SSI unit at Trivandrum, the Company was not required to obtain such certificate at Coimbatore. From such mistake it would be difficult to arrive at a conclusion that it was wilful misstatement of suppression of fact for getting the benefit of exemption notification. Classification list was also approved on the said assumption without noticing that separate SSI certificate for factory at Coimbatore was required to be obtained.

In this view of the matter, in our view, the finding recorded by the Tribunal that there was willful suppression on the part of the Company in availing the benefit of Notification and therefore extended period of limitation could be invoked, requires to be set aside and is hereby set aside.

The appeal is allowed to the aforesaid extent.

C.A. Nos. 3688, 4263, 4767 and 4832-34 of 2000.

In these appeals, the Tribunal arrived at the conclusion that in two of the cases, demands were within six months and in one case extended period was invoked and set aside the order by holding that there was no suppression and only normal period of six months would be available. However, relying upon the decision in Cotspun's case. Appeals were allowed. Hence, these appeals.

Considering the reasons recorded in the aforesaid judgment, the impugned order passed by the Tribunal holding that the demand in these cases is not enforceable in view of Cotspun 's case, requires to be set aside and is hereby set aside.

In the result, the appeals are allowed.

C.A.Nos. 3437-3438 of 2000

We have heard the learned counsel for the parties. It is agreed by the learned counsel for the parties that the question-whether extended period of limitation could be invoked in the present case by the Revenue or not-requires to be re-determined by the Tribunal.

In the result, the appeals are allowed and the matters are remitted to the Tribunal for deciding the matters in accordance with law.

C.A. Nos. 3553 and 6272 of 2000. CA Nos. 335, 8113-14 and 4249-4250 of 2001.

The appeals were allowed by the Tribunal relying on the decision rendered by this Court in Cotspun 's case. However, on facts, it is agreed that the matter requires to be remitted to the Tribunal for deciding the question of classification and other issues.

In the result, the appeals are partly allowed. The impugned order passed by the Tribunal is set aside. The Tribunal to decide the contention raised by the respondents with regard to classification of the goods in question and other issues, if any.

CA. No. 7090 of 2000

In view of amended Section 11 A, it is agreed by the learned counsel for the parties that for determining other questions, matter is required to be remitted. Hence, the appeal is allowed. The impugned order is set aside and the matter is remitted to the Tribunal for deciding it afresh in accordance with law.

C.A. Nos. 3805-3807 of 2000

These three appeals arise out of the common order passed by the Tribunal. In two cases, demands were within six months from the date of the show-cause notice. In one case, extended period was invoked. The Tribunal arrived at the conclusion that considering the facts of the case, the extended period could not be invoked and, therefore, charge of misclassification, suppression etc. requires to be set aside. The Tribunal held that normal period of limitation of six months would be available. The Tribunal however held that in view of the decision in Cotspun's case, the demand was not enforceable and the appeals were allowed.

In view of the amended statutory provisions and for the reasons recorded above, the demands which are within period of limitation could be enforced.

In the result, the appeals are partly allowed accordingly. CA Nos. 302-303 of 2002

In these appeals, final order No. 83/2000-A dated 18.2.2000 and Misc. Order

No. 147/2000-A dated 22.12.2000 are challenged.

By order dated 18.2.2000, the Tribunal held that the clearances of the goods were effected pursuant to the approved classification list and price list and that being the position, the entire exercise undertaken by the department in pursuance of the show-cause notice dated 31.3.1986 was illegal. The Tribunal, therefore, set aside the order passed by the adjudicating authority and the department was directed to refund the amount expeditiously. That order was challenged by filing applications to rectify the mistakes on the ground of subsequent amendment of the statute. The Tribunal dismissed those applications relying upon the Cotspun's case and held that the subsequent amendment of statute cannot be a reason for entertaining a petition for rectification of a mistake.

In view of the interpretation rendered by us with regard to statutory provisions, these appeals are required to be allowed and the matters are required to be remitted to the Tribunal for deciding it on merits with regard to the other contention which are sought to be raised on facts.

In the result, appeals are allowed accordingly and the orders of CEGAT are set aside. The matters are remitted to the Tribunal for deciding the same on merits in accordance with law.

There shall be no order as to costs in all these appeals.