A WESTINGHOUSE SAXBY FARMER LTD.

v.

COMMR. OF CENTRAL EXCISE CALCUTTA

(Civil Appeal No. 37 of 2009)

B MARCH 08, 2021

[S. A. BOBDE, CJI, A. S. BOPANNA AND V. RAMASUBRAMANIAN, JJ.]

Central Excise Tariff Act, 1985: Chapter 86, Tariff Item No. 8608 and Chapter 85 Tariff Item No.8536.90 – "Relays" manufactured by the assessee, used as Railway signaling equipment – Taxability of – Classification of, under Tariff Item No. 8608 or 8536.90 – Held: Relays manufactured by the assessee are used solely as part of the railway signaling/traffic control equipment – On the basis of the 'predominant use' or 'sole/principal use' test acknowledged by the General Rules for the Interpretation of the Schedule, 'relays' are classifiable as parts of 'railway signalling equipment', under Heading 8608 – Thus, the invocation of Note 2(f) in Section XVII, overlooking the "sole or principal user test" indicated in Note 3, not justified –These goods were previously classified (before 1993) under Sub--heading 8536.90, but a revised classification list, classifying them under sub-heading 8608, submitted by the assessee, was approved by the competent Authority on 27.08.1993 – After such specific approval of the classification list, it was not proper on the part of the Authorities to invoke Note 2(f) of Section XVII – Furthermore, the show cause-cum-demand notices issued by the Department during 1995-1998 were partly time barred u/s. 11-A – Despite the fact that some of the individual notices were issued within the period of limitation, the very invocation of s. 11-A, cannot be said to be within time – Central Excise Act, 1944 – s. 11-A.

Allowing the appeal, the Court

HELD: 1.1 Section 2 of the Central Excise Tariff Act, 1985 provides that the rates at which duties of excise shall be levied under the Central Excise Act, 1944 are specified in the First Schedule and the Second Schedule. The First Schedule contains a set of Rules known as *"General Rules for the Interpretation of*

***this Schedule"*. These Rules begin with a mandate that the *"classification of goods in this Schedule shall be governed by the principles laid thereunder."*Rule 1 of these Rules makes it clear that *"the titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only and that for legal purposes, classification shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and provided such headings or Notes do not otherwise require, according to the provisions of the rules that follow"*. Rule 2 deals with (i) incomplete or unfinished articles; and (ii) mixtures or combinations of material or substance. While Rule 2(a) deals with incomplete or unfinished Articles, Rule 2(b) deals with mixtures or combinations of a material or substance. Rule 3 deals with cases where goods are classifiable under two or more sub-headings. But Rule 3 begins with a reference to Rule 2(b). Therefore, it is necessary to extract Rule 2(b) and Rule 3 together.Rule 2(a) speaks about *"Article"*, Rule 2(b) speaks about *"material or substance"* as well as *"goods of a given material or substance" and Rule 3 speaks about "goods"*. [Para 25-29][631-G-H; 632-A-D; 633-D]**

1.2 In the instant case, the claim of the assessee was that the relays manufactured by them were part of the railway signaling equipment. But all the Authorities were of the unanimous view that this product is referable to goods of a specific description in Chapter sub-Heading 8536.90 and that, therefore, General Rule 3(a) will apply. But in invoking General Rule 3(a), the Authorities omitted to take note of 2 things. They are that the General Rules of Interpretation would come into play, as mandated in Rule 1 itself, only when no clear picture emerges from the terms of the Headings and the relevant section or chapter notes; and that in any case, Rule 3 of the General Rules can be invoked only when a particular good is classifiable under two or more Headings, either by application of Rule 2(b) or for any other reason. Once the authorities have concluded that by virtue of Note 2(f) of Section XVII, 'relays' manufactured by the appellant are not even classifiable under Chapter Heading 8608, it is not known how the Authorities could fall back upon Rule 3(a) of the General Rules. There is a fundamental fallacy in the reasoning of the Authorities, that Rule 3(a) of the General Rules would apply, especially after they had found that 'relays' are not classifiable under Chapter

Heading 8608, on account of Note 2(f) of Section XVII. [Paras 30, 31][633-E-H; 634-A]

Central Excise vs. *Simplex Mills Co. Ltd.* **(2005) 3 SCC 51 : [2005] 2 SCR 441 – relied on.**

1.3 Section XVII, which precedes Chapter 86, the same contains a few notes, one of which is Note 2, which lists out certain articles to which the expressions *"parts"* and *"parts and accessories"* mentioned in Chapter 86 do not apply. Note 2(f) is relied upon by the Revenue, in view of the fact that Chapter Heading 8608 uses the words *"parts of the foregoing"* after the words "Railway or tramway track fixtures and fittings" etc. Chapter Heading 8608 does not specifically mention *"electrical relays"*. The assessee's contention is that *"it is part of the railway signaling safety or traffic control equipment"* and that, therefore, Relays manufactured by them would fall under Chapter Heading 8608 due to the usage of the word *"parts"*. It is this contention that is sought to be repelled by the Authorities by relying upon Note 2(f) of Section XVII. [Para 32, 33][634-B, E-F]

1.4 What is recognized in Note 3 can be called the "suitability for use test" or 'the user test'. While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signaling equipment, those parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3. [Para 36][635-B]

1.5 It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signaling/ traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the "sole or principal user test" indicated in Note 3, is not justified. The respondents ought not to have overlooked the *'predominant use'* or *'sole/principal use'* test acknowledged by the General Rules for the Interpretation of the Schedule. [Para 37, 38][635-C, G]

1.6 The Commissioner (Appeals), pointed out that the goods were previously classified (before 1993) under Sub-heading

8536.90, but a revised classification list, classifying them under sub-heading 8608, submitted by the appellant, was approved by the competent Authority on 27.08.1993. After such specific approval of the classification list, it is not proper on the part of the Authorities to invoke Note 2(f) of Section XVII. [Para 39] [635-G-H; 636-A-B]

2.1 This is not a case where the extended period of limitation would apply, especially in the light of the admitted position that the assessee who had his product classified under sub-heading 8536.90 till the year 1993, specifically filed a classification list on 27.08.1993, reclassifying them under sub-heading 8608 and the same was also approved by the competent authority. Therefore, there is no question of any fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. It is not even the case of the Department that the appellant was guilty of any of these things, warranting the invocation of the extended period of limitation. Therefore, the conclusion is inescapable that the Revenue had only the normal period of limitation available to them to invoke the power under Section 11-A. [Para 41][636-D-F]

2.2 The Appellate Authority held without any discussion, that the show cause notices were issued within the time limit envisaged in Section 11-A and that *"any discussion on the jurisdiction of invocation of extended period is not at all required"*. Therefore, it is obvious that none of the Authorities chose to invoke the extended period of limitation, but proceeded on the footing that all show cause notices were issued within the normal period of limitation. If only any of the Authorities had taken care to look at the dates of the show cause notices, the period covered by those notices and the normal period of limitation that prevailed at that time, they could have easily found that the show cause notices were at least partly time barred. [Para 43][637-A-C]

2.3 The normal period of limitation for invoking Section 11-A was six months until 11.05.2000 and the same was modified as one year by Act 10 of 2000 with effect from 12.05.2000. This period of one year was modified as two years by Act 28 of 2016 with effect from 14.05.2016. All show cause notices were of a

A **date prior to 12.05.2000 and hence the normal period of limitation was only six months and at least a couple of show cause notices were issued in respect of a period partly or fully beyond the period of limitation. Unfortunately neither the Appellate Authority nor CESTAT took care to analyze the show cause notices individually with reference to the period covered by them. [Paras 44, 45] [637-C-D; 638-A-B]**

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2.4 In any case all the show cause notices were issued only on and after 30.08.1995, raising a classification dispute, after having approved the classification list submitted on 27.08.1993. The dispute in the case on hand was one of classification alone, C **applicable to the product manufactured during the entire period after 27.08.1993. The dispute was not invoice-centric. Therefore, what was sought to be done by the Original Authority was actually to review the approval of the classification list submitted on 27.08.1993 by cleverly issuing separate notices covering certain** D **specific periods. The attempt to undo the effect of the approval of the classification done on 27.08.1993, was actually time barred. Therefore, despite the fact that some of the individual notices were issued within the period of limitation either in respect of the part of the period or in respect of the whole of the period covered by them, the very invocation of Section 11-A, in the facts** E **and circumstances of the case, cannot be said to be within time. [Para 46][638-B-E]**

3. The Orders-in-Original, the Order of the Appellate Authority and the Order of the CESTAT are set aside. Consequently, the show cause-*cum*-demand notices are also set F **aside. [Para 47][638-E]**

A. Nagaraju Bros Vs. *State of A.P.* **1994 Supp (3) SCC 122 : [1994] 1 Suppl. SCR 784 – referred to.**

Case Law Reference

[2005] 2 SCR 441	**relied on**	**Para 31**
G **[1994] 1 Suppl. SCR 784**	**referred to**	**Para 38**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 37 of 2009.

From the Judgment and Order dated 26.03.2008 of the Customs, Excise and Service Tax Appellate Tribunal at Eastern Zonal Bench in H M.A. No.64 of 2008 in Excise Appeal No.EDM-566/2004.

Kunal Chatterji, Ms. Maitrayee Banerjee, Pravar Veer Misra, Advs. for the Appellant.

Ms. Nisha Bagchi, Ms. Aakansha Kaul, B. V. Balaram Das, B. Krishna Prasad, Advs. for the Respondent.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

1. Aggrieved by the dismissal of their appeal by the Customs Excise and Service Tax Appellate Tribunal (for short "CESTAT"), the assessee has come up with the present appeal under Section 35 L(b) of the Central Excise Act, 1944.

2. We have heard Shri Kunal Chatterji, learned counsel for the appellant/assessee and Ms. Nisha Bagchi, learned standing counsel for the respondent.

3. The appellant is a company wholly owned by the State Government of West Bengal. It is engaged in the manufacture of "Relays" which is used as part of the Railway signaling system.

4. A 'Relay' is generally an electrically operated switch, used to control a circuit. They may also be used where several circuits must be controlled by one signal.

5. Though essentially relays are electrical equipment, they may also form part of Railway signaling equipment.

6. While the normal electrical relays fall under Tariff Item No. 8536.90, 'Railways and Railways signaling equipment' fall under No. 8608.

7. It appears that from 01.03.1986 till February-1993, the effective rate of excise duty charged under both sub-headings was 15% and hence the appellant had no problem with the classification of their goods under sub-heading No.8536.90. But with effect from 28.02.1993, the effective rate of excise duty for the goods under sub-heading No.8536.90 became much higher than the effective rate of duty for the goods under sub-heading 8608.

8. On 27.08.1993, the appellant submitted a classification list for the approval of the Assistant Collector, Central Excise. This list provided

details of the products manufactured by the appellant as Railway signaling equipment, including relays and claimed that they should be classified under sub-heading 8608 and not under 8536 in the First Schedule to the Central Excise Tariff Act. Admittedly this classification list was approved by the competent authority.

9. On 23.04.1996 the Central Board of Excise and Customs issued a circular indicating that 'plug-in type relays' merited classification under the Chapter Heading 85.36. Thereafter, the Assistant Commissioner of Central Excise issued nine different show cause-cum-demand notices calling upon the appellant to show cause as to why the goods should not be classified under the Sub-Heading 8536.90 and why the differential duty should not be collected together with the interest and penalty.

10. The appellant gave reply to the show cause notices, contending that what was manufactured by them was supplied only to Railways as part of the signaling equipment and that, therefore, the show cause notices required to be dropped.

11. However, the Assistant Commissioner passed 9 separate Orders-in-original on 20/21.12.2001 confirming the demand. The dates of the show cause notices, the period to which each one of them related to, the differential excise duty arrived at by the Adjudicating Authority and the penalty imposed by the Adjudicating Authority are provided in a tabular column for easy appreciation as follows:-

Show Cause Notice Date	Period Involved	DifferentialDuty	Penalty
30.08.1995	01.02.1995 to 31.07.1995	Rs. 3,04,662	Rs. 5000
05.02.1997	27.10.1995 to 09.01.1996	Rs. 66,311 1.	Rs. 2000
09.02.1996	01.08.1995 to 31.01.1996	Rs. 95,978 2.	Rs. 2000
06.08.1996	01.02.1996 to 31.07.1996	Rs. 1,63,843.25 1.	Rs. 5000
06.02.1998	01.08.1996 to 31.01.1997	Rs. 2,69,842 2.	Rs. 5000
07.08.1997	01.02.1997 to 31.07.1997	Rs. 1,53,441.583.	Rs. 5000
04.09.1998	February 1998	Rs. 41,509.204.	Rs. 2000
05.09.1998	01.03.1998 to 31.08.1998	Rs. 3,71,922.575.	Rs. 5000
05.03.1999	01.09.1998 to 28.02.1999	Rs. 1,99,180 6.	Rs. 5000
Total Duty Imposed/ Total PenaltyImposed		Rs.16,67,109/- 7.	Rs.36,000/-

12. Aggrieved by the Orders-in-original, the appellant filed statutory appeals. All the nine appeals were partly allowed by the Commissioner (Appeals) by an Order dated 29.08.2003. By this Order, the Appellate Authority confirmed the classification made by the Adjudicating Authority and the consequential differential duty demanded by the Adjudicating Authority. However, the penalty imposed by the Original Authority was set aside by the Commissioner (Appeals).

13. Challenging that portion of the order of the Commissioner (Appeals) upholding the proposed classification and demanding differential duty, the appellant filed an appeal before CESTAT. The CESTAT dismissed the appeal by a final order dated 26.03.2008. It is against the said order that the appellant has come up with the present appeal under Section 35L(b) of the Central Excise Act, 1944.

14. The questions that arise for our consideration in this appeal are:

(i) Whether the "Relays" manufactured by the appellant used only as Railway signaling equipment would fall under Chapter 86, Tariff Item 8608 as claimed by the appellant or under Chapter 85 Tariff Item No.8536.90 as claimed by the Department ?

(ii) Whether the show cause-cum-demand notices issued by the Department on various dates during the period 1995-1998 were not barred by time under Section 11-A of the Central Excise Act,1944, in the absence of any fraud, collusion, willful misstatement or suppression of facts, especially since the classification list submitted by the appellant have been approved on 27.08.1993?

Question No.1

15. For finding an answer to question No.1, it is necessary first to see the description of the goods that fall under Chapter 85 and Chapter 86 with particular reference to the relevant Tariff Items thereunder. Chapter 85 covers goods, described as *"Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles."*

16. Chapter Heading 8536 covers *"Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables."*

17. Sub-heading 8536.90 covers *"other apparatus*". This includes
(i) Motor starters for AC motors under sub-heading 8536.90.10;

(ii) Motor starters for DC motors under sub-heading 8536.90.20;

(iii) Junction boxes under sub-heading 8536.90.30; and

(iv) others under sub-heading 8536.90.90.

18. Chapter 86 covers "*Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds."*

19. Chapter Heading 8608 covers *"Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signaling safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air-fields; parts of the foregoing"*.

20. There are five sub-headings under Chapter Heading 8608 which are as follows:

8608 00 10	-Railway and tramway track fixtures and
	fittings……..
8608 00 20	-Mechanical equipment, not electrically powered forsignaling to, or controlling, road rail or other vehicles, ships or aircraft
8608 00 30	-Other traffic control equipment for
	railways……
8608 00 40	-Other traffic control equipment for roads or inland
	waterways including automatic traffic control
	equipment for use at ports and airports
8608 00 90	-Other ……

21. The Assistant Commissioner who passed the Orders-in-Original felt that the 'Relays' manufactured by the appellant fell only under the category of 'Electrical machinery' covered by Chapter 85 and that in view of Note 2(f) of Section XVII, the expressions *"parts"* and *"parts and accessories*" appearing in Chapter 86 do not apply to electrical machinery or equipment, covered by Chapter 85. The Assistant Commissioner also relied upon Rule 3(a) of the "General Rules for Interpretation of the First Schedule" to the Central Excise Tariff Act, 1985 to hold that the Heading which provides the most specific description shall be preferred to the Heading providing a more general description. Therefore, the Original Authority held that since "Relays" do not find a mention in Chapter 86, but finds a specific mention in Chapter Heading 8536, the same has to be classified only under sub-Heading 8536.90.

22. The Appellate Authority agreed with the assessee that the Relays manufactured by them are used solely as part of the Railway signaling equipment, but held that in view of Note 2(f) of Section XVII, the Orders of the Original Authority did not call for any interference. However, the Appellate Authority set aside that portion of the Orders of the Original Authority by which penalty was imposed. This was on the ground that the classification list submitted by the appellant on 27.08.1993 was approved by the competent Authority and that, therefore, the appellant could not be taken to have violated the provisions of the law.

23. CESTAT, by the Order impugned in the present appeal, merely concurred with the reasoning given by the Appellate Authority and dismissed the appeal.

24. As could be seen from the Orders of the Original Authority and the first Appellate Authority, the answer to question No.1 revolves around the description of goods found in Chapters 85 and 86, as well as the Notes in Section XVII and the General Rules for Interpretation of the First Schedule. We have already extracted the description of goods in Chapters 85 and 86. Therefore, let us now take note of the relevant Notes in Section XVII and the relevant Rule of the General Rules for interpretation of the First Schedule.

25. Section 2 of the Central Excise Tariff Act, 1985 provides that the rates at which duties of excise shall be levied under the Central Excise Act, 1944 are specified in the First Schedule and the Second Schedule. The First Schedule contains a set of Rules known as "*General*

A *Rules for the Interpretation of this Schedule*". These Rules begin with a mandate that the *"classification of goods in this Schedule shall be governed by the principles laid thereunder."*

26. Rule 1 of these Rules makes it clear that "*the titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only*
B *and that for legal purposes, classification shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and provided such headings or Notes do not otherwise require, according to the provisions of the rules that follow"*.

C 27. Rule 2 deals with (i) incomplete or unfinished articles; and (ii) mixtures or combinations of material or substance. While Rule 2(a) deals with incomplete or unfinished Articles, Rule 2(b) deals with mixtures or combinations of a material or substance.

28. Rule 3 deals with cases where goods are classifiable under
D two or more sub-headings. But Rule 3 begins with a reference to Rule 2(b). Therefore, it is necessary to extract Rule 2(b) and Rule 3 together. They read as follows:

"2. (a) xxxx

(b) Any reference in a heading to a material or substance
E *shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or*
F *substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more
G *headings, classification shall be effected as follows:*

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only

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of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

29. Interestingly Rule 2(a) speaks about *"Article",* Rule 2(b) speaks about *"material or substance*" as well as *"goods of a given material or substance*" and Rule 3 speaks about *"goods".*

30. In the case on hand, the claim of the assessee was that the relays manufactured by them were part of the railway signaling equipment. But all the Authorities were of the unanimous view that this product is referable to goods of a specific description in Chapter sub-Heading 8536.90 and that, therefore, General Rule 3(a) will apply.

31. But in invoking General Rule 3(a), the Authorities have omitted to take note of 2 things. They are : **(i)** that as laid down by this Court in Commissioner of ***Central Excise*** Vs. ***Simplex Mills Co. Ltd***[1] the General Rules of Interpretation will come into play, as mandated in Rule 1 itself, only when no clear picture emerges from the terms of the Headings and the relevant section or chapter notes; and (ii) that in any case, Rule 3 of the General Rules can be invoked only when a particular good is classifiable under two or more Headings, either by application of Rule 2(b) or for any other reason. Once the authorities have concluded that by virtue of Note 2(f) of Section XVII, 'relays' manufactured by the appellant are not even classifiable under Chapter Heading 8608, we do not know how the Authorities could fall back upon Rule 3(a) of the

[1] **(2005) 3 SCC 51**

A General Rules. There is a fundamental fallacy in the reasoning of the Authorities, that Rule 3(a) of the General Rules will apply, especially after they had found that 'relays' are not classifiable under Chapter Heading 8608, on account of Note 2(f) of Section XVII.

32. Coming to Section XVII, which precedes Chapter 86, the
B same contains a few notes, one of which is Note 2, which lists out certain articles to which the expressions *"parts"* and "*parts and accessories"* mentioned in Chapter 86 do not apply. Note 2 (f) reads as follows:-

"1. xxxx

2. xxx

C

(a) xxxx

(b) xxxx

(c) xxxx

(d) xxxx

D

(e xxxx

(f) electrical machinery or equipment (Chapter 85)"

33. Note 2(f) is relied upon by the Revenue, in view of the fact that Chapter Heading 8608 uses the words *"parts of the foregoing"*
E after the words "Railway or tramway track fixtures and fittings" etc. Chapter Heading 8608 does not specifically mention *"electrical relays"*. The assessee's contention is that *"it is part of the railway signaling safety or traffic control equipment"* and that, therefore, Relays manufactured by them would fall under Chapter Heading 8608 due to
F the usage of the word *"parts"*. It is this contention that is sought to be repelled by the Authorities by relying upon Note 2(f) of Section XVII.

34. Though at first blush, Note 2(f) seems to apply to the case on hand, it may not, upon a deeper scrutiny.

35. Note 3 of Section XVII reads as follows:

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"References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified

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under that heading which corresponds to the principal use of that part or accessory."

36. What is recognized in Note 3 can be called the *"suitability for use test"* or '*the user test*'. While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signaling equipment, **those parts which are suitable for use solely or principally with an article in Chapter 86** cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3.

37. It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signaling/ traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the ***"sole or principal user test"*** indicated in Note 3, is not justified.

38. On the question as to what test would be appropriate in a given case, this court pointed out in ***A. Nagaraju Bros*** Vs. ***State of A.P.***[2]**,** as follows:

".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application

Therefore, the respondents ought not to have overlooked the *'predominant use'* or '*sole/principal use*' test acknowledged by the General Rules for the Interpretation of the Schedule.

39. As pointed out by the Commissioner (Appeals), the goods were previously classified (before 1993) under Sub-heading 8536.90, but a revised classification list, classifying them under sub-heading 8608,

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[2] **1994 Supp(3) SCC 122**

A submitted by the appellant, was approved by the competent Authority on 27.08.1993. After such specific approval of the classification list, it is not proper on the part of the Authorities to invoke Note 2(f) of Section XVII. Hence question No.1 is answered in favour of the appellant and against the Revenue.

B **Question No.2**

40. The second question that arises for consideration is as to whether the show cause-cum-demand notices issued by the Department on various dates during the period 1995-1998 were not barred by time under Section 11-A of the Central Excise Act, 1944, in the absence of C any fraud, collusion, willful misstatement or suppression of facts, especially since the classification list submitted by the appellant have been approved on 27.08.1993.

41. At the outset we should point out that this is not a case where the extended period of limitation would apply, especially in the light of D the admitted position that the assessee who had his product classified under sub-heading 8536.90 till the year 1993, specifically filed a classification list on 27.08.1993, reclassifying them under sub-heading 8608 and the same was also approved by the competent authority. Therefore, there is no question of any fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the E provisions of this Act or of the rules made there under with intent to evade payment of duty. It is not even the case of the Department that the appellant was guilty of any of these things, warranting the invocation of the extended period of limitation. Therefore, the conclusion is inescapable that the Revenue had only the normal period of limitation F available to them to invoke the power under Section 11-A.

42. As a matter of fact the first Appellate Authority held in the penultimate paragraph of its Order as follows:

> *"I find that the subject goods were previously classified under sub-heading No.8536.90 and then the appellant asked for* G *reclassification of the goods under sub-heading No.8608.00. The new classification was approved by the proper authority and the appellant paid duty according to the approved classification. Hence there is no violation of any provisions of law on the part of the appellant and therefore penalty is* H *not imposable under rule 173Q.*

43. The Appellate Authority also held without any discussion, that the show cause notices were issued within the time limit envisaged in Section 11-A and that *"any discussion on the jurisdiction of invocation of extended period is not at all required*". Therefore, it is obvious that none of the Authorities chose to invoke the extended period of limitation, but proceeded on the footing that all show cause notices were issued within the normal period of limitation. If only any of the Authorities had taken care to look at the dates of the show cause notices, the period covered by those notices and the normal period of limitation that prevailed at that time, they could have easily found that the show cause notices were at least partly time barred.

44. The normal period of limitation for invoking Section 11-A was six months until 11.05.2000 and the same was modified as one year by Act 10 of 2000 with effect from 12.05.2000. This period of one year was modified as two years by Act 28 of 2016 with effect from 14.05.2016. Keeping this in mind let us now have a look at the dates of issue of show cause notices and the period covered by the show cause notices. They are as follows:

S.No.	Date of Show Cause Notice	Period covered by the ShowCause Notice
1	30.08.1995	01.02.1995 to 31.07.1995
2	09.02.1996	01.08.1995 to 31.01.1996
3	05.02.1997	01.08.1996 to 31.01.1997
4	07.08.1997	01.02.1997 to 31.07.1997
5	06.08.1996	01.02.1996 to 31.07.1996
6	06.02.1998	01.08.1996 to 31.01.1997
7	04.09.1998	February 1998
8	05.09.1998	01.03.1998 to 31.08.1998
9	05.03.1999	01.09.1998 to 28.02.1999

45. It could be seen from the above table **(i)** that all show cause notices were of a date prior to 12.05.2000 and hence the normal period of limitation was only six months; and **(ii)** that at least a couple of show cause notices were issued in respect of a period partly or fully beyond the period of limitation. Unfortunately neither the Appellate Authority nor CESTAT took care to analyze the show cause notices individually with reference to the period covered by them.

46. In any case all the show cause notices were issued only on and after 30.08.1995, raising a classification dispute, after having approved the classification list submitted on 27.08.1993. The dispute in the case on hand was one of classification alone, applicable to the product manufactured during the entire period after 27.08.1993. The dispute was not invoice-centric. Therefore, what was sought to be done by the Original Authority was actually to review the approval of the classification list submitted on 27.08.1993 by cleverly issuing separate notices covering certain specific periods. What is to be seen here is that the attempt to undo the effect of the approval of the classification done on 27.08.1993, was actually time barred. Therefore, despite the fact that some of the individual notices were issued within the period of limitation either in respect of the part of the period or in respect of the whole of the period covered by them, the very invocation of Section 11-A, in the facts and circumstances of the case, cannot be said to be within time.

47. Therefore, both questions of law are answered in favour of the appellant and the appeal is allowed. The Orders-in-Original, the Order of the Appellate Authority and the Order of the CESTAT are set aside. Consequently, the show cause-cum-demand notices are also set aside. There will be no order as to costs.

Nidhi Jain Appeal allowed.