

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 137 of 2007

[Arising out of Order-in-Original No. 33/CEX/2006 dated 24.10.2006 passed by the Commissioner of Central Excise & Customs, Nashik and remand directions in judgement dated 02.01.2025 and 29.01.2025 of the Hon'ble High Court of Judicature at Bombay.]

Jain Irrigation Systems Limited

.... Appellant

Plastic Park, N.H. No.6
Bambhori, Jalgaon – 425 002.

VERSUS

Commissioner of Central Excise & Customs

.... Respondent

Plot No.155, Sector-34, NH
Jaishtha & Vaishakh, CIDCO
Nashik – 422 008.

- (i) **Excise Appeal No. 138 of 2007 / SHRI. T.S. RAMCHANDRAN;**
(ii) **Excise Appeal No. 139 of 2007 / SHRI. N.M. SONAR;**
(iii) **Excise Appeal No. 140 of 2007 / SHRI. J.M. ZAWAR;**
(iv) **Excise Appeal No. 141 of 2007 / SHRI. AJIT B. JAIN;**
(v) **Excise Appeal No. 142 of 2007 / SHRI. D.I. DESARDA;**
(vi) **Excise Appeal No. 143 of 2007 / SHRI. C.A. PONNAPPA;**
(vii) **Excise Appeal No. 144 of 2007 / SHRI. R.D. YALKAR; and**
(viii) **Excise Appeal No. 145 of 2007 / SHRI. S.V. PATIL.**

APPEARANCE:

Shri M.H. Patil a/w Ms. Padmavati Patel, Ms. Mansi Patil, Shri Viraj Reshamwala, Advocates & Shri Abhijit Malankar, Consultant, for the Appellants

Shri Manish Mohan, Commissioner (AR), for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86097-86105/2025

Date of Hearing: 19.03.2025

Date of Decision: 17.07.2025

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Jain Irrigation Systems Limited, Nashik along with its employees viz., S/Shri Ajit B Jain, Managing Director; S.V. Patil, Executive Director, D.I. Desarda, Marketing Co-ordinator; J(Jawaharlal). M(Motilal). Zavar, Authorized Central Excise Signatory & Despatch Stores in-charge; N.M. Sonar, Authorized Central Excise Signatory; R.D. Yalkar, Authorized Central Excise Signatory; C.A.

Ponnappa, Manager (Marketing) and T.S. Ramachandran, Senior Manager, Marketing (herein after, referred together as "the appellants", for short) assailing the Order-in-Original No. 33/CEX/2006 dated 24.10.2006 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Excise & Customs, Nashik.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2. The appellants herein is engaged *inter alia*, in the manufacture of 'drip and sprinkler system' and 'parts thereof' in their factory at Jalgaon, by classifying the aforesaid products under Chapter Heading 84.24 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants are the registered taxpayers holding Central Excise Registration No. JD/JR-II/5/JISL/Ch-84/94 for manufacture of various products such as polytubes, micro tubes, HDPE pipes of various types falling under the Central Excise Tariff.

2.3 Directorate of Central Excise Intelligence, Mumbai Zonal Unit (DGCEI) had developed an intelligence that the appellants are indulging in evasion of Central Excise duty on polytubes, micro tubes, HDPE pipes manufactured by them, through wilful suppression of production and removal of such goods clandestinely without accounting for the same in statutory records and without payment of Central Excise duty from the factory premises under the cover of shop invoices and Depot invoices. On the above basis, the officers of DGCEI had visited the factory premises of the appellants on 21.11.1997 and recovered various documents, records by seizing the same under Panchnama proceedings. Further statements were also recorded by DGCEI from various persons concerned with such clearances.

2.4 Upon completion of the investigation, Show Cause Notice (SCN) dated 26.02.1999 was issued proposing for demand of Central Excise duty on polytubes, micro tubes, HDPE pipes alleged to have been clandestinely cleared by the appellants during the period November, 1995 to 21.11.1997 and for recovery of the same by invoking extended period under Section 11A(1) of the Central Excise Act, 1944 read with Rule 9(2) of Central Excise Rules, 1994 along with interest, confiscation of land, building, plant and the machinery, materials, conveyance, animal or any other thing used in connection with the manufacture, production, storage, removal or disposal

of the aforesaid excisable goods under sub-rule (2)(a) of Rule 173Q *ibid* and for imposition of penalty under Section 11AC *ibid*, Rules 9(2), 52A, 226 *ibid* on the appellants. In adjudication of the above SCN, learned Commissioner of Central Excise had confirmed the entire differential duty of Rs.8,91,58,843/- by invoking extended period under Section 11A(2) *ibid* read with Rule 9(2) *ibid*, along with interest and imposed equal amount of penalty on the appellant-manufacturer M/s Jain Irrigation Systems Limited, Nashik under Section 11AC *ibid* and further penalty of Rs. 1 crore under Rules 9(2), 52A, 226 *ibid* on the appellant-manufacturer. Besides the above, he had also imposed personal penalty of Rs. 20,00,000/- each on five appellant-employees viz., Ajit B Jain, Managing Director; S.V. Patil, Executive Director, D.I. Desarda, Marketing Co-ordinator; C.A. Ponnappa, Manager (Marketing) and T.S. Ramachandran, Senior Manager, Marketing; and personal penalty of Rs.1,00,000/- each on other three appellant-employees viz., J.M. Zawar, Authorized Central Excise Signatory & Despatch Stores in-charge; N.M. Sonar, Authorized Central Excise Signatory; R.D. Yalkar, Authorized Central Excise Signatory, under Rule 209A *ibid* vide Order-in-Original dated 24.10.2006. However, he dropped the proceedings for confiscation of plant and machinery, land, building etc., under Rule 173(Q) *ibid*. Feeling aggrieved with the aforesaid order dated 24.10.2006, the appellants have filed appeals before the Tribunal and the same was decided vide Final Order No. A/790 to 803/2007/C-I/EB dated 16.10.2007 by setting aside the adjudged demands including the penalties.

The relevant paragraphs of the said order of the Tribunal is as follows:

"2. We have heard both sides. We find that there is no dispute that the products on which duty has been confirmed fall for classification under chapter heading 84.24 of the Schedule to the Central Excise Tariff Act and are eligible to benefit of exemption from payment of duty in terms of Notification No.46/94-CE, dated 1.3.1994 and Notification No.56/95-CE, dated 16.3.1995. The classification and the eligibility to benefit of exemption has been accepted by the Commissioner in the impugned order in para 84. However, it is the finding of the Commissioner that the question of classification and exemption are extraneous to the issue before him viz. of clandestine removal. Once the products in dispute were not required to discharge duty liability for the reason that they were eligible to exemption under the above notifications, the demand confirmed in the impugned order, cannot be sustained. The contention of the Representative for the Revenue that the appellants had availed modvat credit of duty paid on the products in dispute and hence the duty demand requires to be confirmed, is not tenable, for the reason that the credit has been taken by the appellants of the duty paid by them, and it is the settled position that the payment of duty on the products which are not required to discharge duty liability, amounts to reversal of credit. Further the issue before the Tribunal is whether the duty confirmed by the Commissioner is required to be upheld or not and the issue of recovery of credit is not the issue in the

appeal before us. In this view of the matter, further submission of the appellants that the duty paid by them on the products in dispute under protest is in excess of credit taken, is not required to be examined.

3. Since the demand is being set aside, the penalties also cannot be sustained and we accordingly set aside the same.

4. In the result, the impugned order is set aside and the appeals are allowed."

2.5 Against the aforesaid order passed by the Tribunal, the Revenue had filed an application for Rectification Of Mistake (ROM) on the ground that the Tribunal had not appreciated the factual position that on the declared quantity/value of finished products, the appellant company had admittedly paid duty by way of debits in PLA and also by way of debits into modvat credit account; however, for the clandestinely cleared goods, the duty was evaded as shown in the statutory records and RT12 returns, and debits to modvat credit account could not have been made on such payment, and the same could only be made to by way of debits to PLA account.

2.6 In disposing the application filed for rectification of mistake, the Tribunal passed Order No. M/496/08/C-I/EB dated 22.02.2008, in rejecting the same having found that there is no merit in the ROM application. The extract of the relevant paragraphs of the said order is given below:

"6. ROM application further contends that the benefit of Notification 46/94 has been wrongly allowed as what was exempted under Notification was mechanical appliances used in agriculture and horticulture only and this exemption was not available in respect of parts of appliances. The goods in question i.e. Poly Tubes etc. were parts of appliances and therefore not entitled to exemption.

7. We have considered the submissions. submissions, We are unable to accept the plea of the applicant that exemption under Notification No.46/94 dated 1.3.94 was dependent on the fact that whether the assessee have taken modvat credit on the inputs or not as there is no such condition was inbuilt in the provisions of Notification 46/94. We also hold that the Apex Court decision in the case of Amrit Paper is not relevant in the matter before us as para 13 and 14 of the order referred to by applicant only refers to provisions of Rule 57C and states that the credit of input duty shall not be admissible when the final product is exempted from whole of excise duty leviable thereon. We are not for a moment suggesting that the applicant could have taken the credit inspite of final goods being exempted. All that we have said is that payment of duty on the final product, which was not otherwise payable, the assessee shall be deemed to have reversed the credit taken by them which in other words would amount to not taking the credit at all. Thus there is no mistake in our order on this account.

8. As regards the eligibility to exemption under Notification 46/94, the Commissioner himself in para 81 of his order has not questioned the admissibility of the exemption but has taken the stand, that once the appellant has himself paid duty on these very products, it cannot taken a different stand in respect of same goods which were found to have been clandestinely removed by them. As we have held that eligibility to exemption to Notification is not dependent on the fact that whether the goods were cleared clandestinely or otherwise and once the admissibility of exemption to parts of irrigation system has not been questioned by the Commissioner and once no appeal has been filed by the Revenue against Commissioner's order, the order passed by the Tribunal accepting this position cannot be disputed by applicant and accordingly no error can be said to have occurred in our order on this account also.

9. As regards the third plea that the assessee has not reversed the credit to relating to the finished goods which were removed clandestinely, we first find that the Ld. Advocate for the assessee has denied of making any such clandestine removal. Besides that it was submitted even if Revenue's contention is accepted. the total credit taken on such alleged clandestine clearance comes to Rs.8,05,632/--against which duty paid from P.L.A. comes to Rs. 2,06,14,476/- which is much more than the entire credit taken by them. Once the duty paid from P.L.A is more than the credit relatable to so called clandestine removal clearances, it has to be assumed that the entire modvat credit has been reversed.

10. In view of above we find no merit in the ROM application and accordingly reject the same."

2.7 Feeling aggrieved with the aforesaid ROM order of the Tribunal dated 22.02.2008, the Revenue had filed Central Excise Appeal (Lodg.) No. 218 of 2008, before the Hon'ble High Court of Bombay. In its judgement dated 12.10.2011, the Hon'ble High Court have held that the remedy against such ROM order does not lie in the form of an appeal, but in a writ proceeding under Article 226 of the Constitution. Accordingly, the Hon'ble High Court had dismissed the aforesaid appeal, being not maintainable on that ground, and left it open to the Revenue to pursue an appropriate proceeding in accordance with law.

2.8 Subsequently, the Revenue had filed a Writ Petition No.185 of 2012 before the Hon'ble High Court of Bombay. This was finally disposed of by the Hon'ble High Court in pronouncement of its judgement on 02.01.2025, by remanding the matter to the Tribunal for considering all the issues that arise in appeal afresh, including the three issues involving substantial question of law, stated therein. Therefore, the issue was remanded back to the Tribunal, for passing a reasoned order dealing with all the issues, duly following the principles laid down by the Hon'ble Supreme Court in the case

of *Santosh Hazare Vs. Purushottam Tiwari*¹ for due discharge of the duties and obligations cast on the first appellate Court. Further, the Hon'ble High Court also issued an order dated 29.01.2025 for correcting an error, to be read along its earlier order.

2.9 On the basis of the aforesaid order dated 02.01.2025 issued by the Hon'ble High Court of Bombay, we had taken up this case for hearing and disposal of these appeals filed before this Tribunal.

3.1 Learned Advocate appearing for the appellants had submitted that the appellants have classified the Parts of Drip or Sprinkler Irrigation System like Poly tubes, Micro tubes & HDPE pipes for the disputed period under Central Excise Tariff Heading (CETH) 8424.91 correctly, as it is the appropriate classification. He further stated that under such classification, the impugned goods are chargeable to 'Nil' rate of duty under Notifications No.111/88-C.E. dated 01.03.1988; No.46/94-C.E. dated 01.03.1994 (Sr. No. 20) and No.56/95-C.E. dated 16.03.1995 (Sr. No. 17), which fact was accepted by the learned Commissioner in the impugned Order at paras 81 and 84. Furthermore, he stated that the issue of classification and eligibility to exemption in respect of the disputed goods has been held in favour of the appellants in their own case by various orders (not challenged by the Department) as held by the Tribunal and upheld by Hon'ble Supreme Court. This issue has also been later clarified by CBEC; and such instructions have also been communicated to the filed formations for further action by the jurisdictional Collector/Commissioner.

3.2 He further submitted that there is no clandestine removal of the impugned goods as held in the impugned order, as the appellants have submitted reconciliation statements to substantiate that all goods produced have been accounted for and only such of those goods which having undergone mandatory tests, was accounted for in RG-I (Daily Stock Register). The disputed goods were cleared at 'Nil' rate of duty, availing exemption, during the period prior to and subsequent to the period in dispute (i.e. up to 31.10.1995) and thereafter.

3.3 Learned Advocate also submitted that the appellants had their classification lists of the impugned products duly approved by the proper officer/Assistant Collector of Central Excise, from time to time; further, on

¹ 1 AIR 2001 SC 965

the issue of doubts raised on classification of plastic pipes, pipe fittings and other plastic components of sprinkler irrigation equipment, they had approached the CBEC for issue of clarification in the matter. Accordingly, the CBEC also issued Circular No.380/13/98 dated 16.03.1998 clarifying that in case the lateral (Polytubes) with or without attached emitters, gauges, fittings, etc., if found that the same were modified so as to fit only Drip Irrigation equipment/ system, having no other use, then such Plastic Parts are to be classified under sub-heading No. 8424.91. Therefore, he claimed that the appellants are eligible for exemption from payment of excise duty under Notification No.46/94-C.E. dated 01.03.1994 (Sr. No.20) and succeeding Notification No.56/95-C.E. dated 16.03.1995 (Sr. No. 17). However, due to coercive action by officers of the Central Excise Preventive Team of Nashik Division, the appellants were forced to pay the central excise duty on the impugned goods 'under protest'. Further, DGCEI also conducted investigation and issued SCN dated 26.02.1999, with utmost disregard to the facts of the case and the issues having been clarified by the Board.

3.4 He further submitted that when the appellants had accounted for the entire sale proceeds of the disputed goods, including those attributable to allegedly cleared without payment of duty, in the books of accounts, there exist no ground for the department to claim of clandestine removal and the same is factually incorrect and not sustainable. He further submitted that the demand of duty for the period November, 1995 to November, 1997, is barred by limitation, when Classification Lists (CLs), price lists were filed/ accepted/approved; RT-12 Returns were also duly assessed by the department to finally; Orders-in-Original & Order-in-Appeal allowed classification and exemption in appellants' own cases, which were not challenged by the Department; exemption for the period prior to and succeeding to disputed period was not objected to by the Dept; audits of records, correspondences, etc. Therefore, learned Advocate prayed that the appeals filed by the appellants for setting aside the impugned order in confirmation the adjudged demands, including the imposition of penalty on individual appellants, be allowed.

4. On the other hand, learned Commissioner appearing for Revenue as Authorized Representative reiterated the findings of the Commissioner in the impugned order and submitted that the issues in the present dispute have been examined by the Tribunal earlier, and in this regard the Hon'ble

High Court of Bombay had given certain directions in their judgement dated 02.01.2025. In this regard, he submitted that all the issues as referred by the department may be addressed by the Tribunal and necessary orders may be passed. Accordingly, he submitted that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

5. Heard both sides and carefully examined the case records. The additional submissions made in the form written paper books in this case by both sides were also perused carefully.

6. The various issues for determination before the Tribunal are as follows:

(i) whether the appellants have wilfully contravened the provisions of Rule 9(1) read with Rule 173F, sub-rules (1) (2) (3) & (4) of Rule 173G of the Central Excise Rules, 1944, by their failure to determine the proper central excise duty levy in respect of the goods cleared by them as indicated in Annexure B to the show cause notice dated 26.02.1999; failure to pay the excise duty by making proper debit entry in the Personal Ledger Account and under the cover of central excise duty paying documents such as invoice; failure to file proper returns mentioning production and clearances; and failure to properly account for the manufacture and clearance of the excisable goods in the prescribed Central Excise statutory records; or, not?

(ii) whether the impugned goods under dispute viz., polytubes, micro tubes and H.D.P.E. pipes manufactured by the appellants during the disputed period November, 1995 to 21.11.1997 are classifiable under heading 3917 or under heading 8424 of the First Schedule to the Central Excise Tariff Act, 1985; and whether such goods are eligible for exemption from payment of Central Excise duty vide Serial No. 20 of the Notification No.46/94-C.E. dated 01.3.1994 read with Notification No.56/95-C.E. dated 16.3.1995 (Serial No.17), or Otherwise?

(iii) whether the appellants have manufactured and cleared clandestinely, the disputed goods from their factory premises at Jalgaon to their own depots and various other customers, and if so, whether central excise duty demand of Rs.8,91,58,843/- attributable to such clearances, confirmed under Section 11A(2) of the Central Excise Act, 1944, in the impugned

order along with imposition of penalties on the appellants are sustainable or not?

7.1 In order to appreciate the issues under dispute, the specific legal provisions of the Central Excise Act, 1944, Central Excise Rules, 1994 governing the issues under dispute at the relevant time, are extracted and herein given below for ease of reference:

Central Excise & Salt Act, 1944

"Section 3. Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied.

(1) *There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985:*

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured, -

- (i) in a free trade zone and brought to any other place in India; or*
- (ii) by a hundred per cent. export-oriented undertaking and allowed to be sold in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962) on like goods produced or manufactured outside India, if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. (51 of 1975).*

Central Excise Rules, 1944 – (w.e.f. 16.03.1995)

Rule - 9. Time and manner of payment of duty :-

(1) *No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Commissioner in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon is determined and indicated on each application in the proper form or on each gate pass, as the case may be, presented to the proper officer at such place and in such manner as is prescribed in these rules or as the Commissioner may require:*

Provided that such goods may be deposited without payment of duty in a store-room or other place of storage approved by the Commissioner under rule 27 or rule 47 or in a warehouse appointed or registered under rule 140 or may be exported under bond as provided in rule 13:

Rule - 173B. Assessee to file declaration of goods produced or manufactured in the factory.—

(1) *Every assessee, shall file with the Superintendent of Central Excise, having jurisdiction over the factory, a declaration (in quadruplicate) showing,-*

(a) **the full description of-**

- (i) *all excisable goods produced or manufactured by him,*
- (ii) *all other goods produced or manufactured by him and intended to be removed from his factory, and*
- (iii) **all the excisable goods** *already deposited or likely to be **deposited** from time to time **without payment of duty in his warehouse**;*
- (b) **the Chapter, heading No. and sub-heading No.,** *if any, of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) under which each goods fall;*
- (c) **the rate of duty leviable** *on each such goods;*
- (d) **the exemption notification** *availed or proposed to be availed, if any; and*
- (e) *such other particulars as the Commissioner may direct, and obtain a dated acknowledgement of the said declaration:*

Provided that such declaration shall be filed on or before the 15th May, 1995 or such extended period as the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise may permit:

Provided further that an assessee producing or manufacturing excisable goods for the first time shall be required to submit the said declaration within thirty days of commencing the production of such excisable goods.

(2) If in the declaration so filed under sub-rule (1), any alteration becomes necessary in respect of any goods because of-

- (a) *the assessee commencing production, manufacture or warehousing of goods not mentioned in that declaration, or*
- (b) *the assessee intending to remove from his factory any non-excisable goods not mentioned in that declaration, or*
- (c) *change in the rate or rates of duty in respect of the goods mentioned in that declaration or, by reason of any amendment to the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), a change in the Chapter, heading No. or sub-heading No. the assessee shall likewise file a fresh declaration or an amendment of the declaration already filed within thirty days of any alteration mentioned above, in the same manner as is provided in sub-rule (1).*

(3) The **proper officer, duly empowered by the Central Government under section 14 of the Act,** *may, where he considers it necessary during the course of any enquiry in connection with the declaration filed under sub-rule (1) by an assessee,-*

- (a) *require any person to produce or deliver any document or thing relevant to the enquiry; and*
- (b) *examine any person acquainted with the facts and circumstances of the particulars given in the declaration or other records, in the manner provided in section 14 of the Act.*
- (4) *The proper officer may after such further enquiry as he may consider necessary, **reassess the correct amount of duty payable following the provisions of section 11A of the Act** and the assessee shall pay the deficiency, if any.*

Rule – 173C. Procedure regarding valuation of goods assessable ad valorem

(1) Every assessee who produces, manufactures or warehouses goods which are chargeable with duty at a rate dependent on the value of the goods and removes or clears such goods as provided in rules 9, 49, 144, 152 and 157, shall declare the value under section 4 of the Act of such goods in the documents such as sales invoice, invoice-cum-challan or like documents used by him for sale or removal of goods

Provided that-

(i) such documents shall indicate separately the value of goods under section 4 of the Act and the duty paid as provided under section 12A of the Act;

(ii) that such documents also contain a declaration of the price;

(iii) that such documents also indicate, wherever applicable, individually the central excise duty, other taxes, all discounts and other consideration if any, for the difference between the price and the value of the goods under section 4 of the Act;

(iv) that such documents also indicate the date and time of removal of the goods:

Provided further that where an assessee,-

(i) sells goods to or through related persons as defined in section 4 of the Act; or

(ii) uses such goods for manufacture or production of other goods in his factory; or

(iii) removes such goods for free distribution; or

(iv) removes such goods in any other manner which does not involve sale; or

(v) removes goods of the same kind and quality from his factories located in the jurisdiction of different Commissioners of Central Excise or Assistant Commissioners of Central Excise or Deputy Commissioner of Central Excise he shall file,

with the proper officer a declaration, in such form and in such manner and at such interval as the Central Board of Excise and Customs or Commissioner of Central Excise may require, declaring the value of the goods under section 4 of the Act, the duty and other elements constituting the price of such goods along with such other particulars as the Central Board of Excise and Customs or the Commissioner of Central Excise may specify.

(2) The assessee shall certify in each such document that the amount indicated in such document represents the price actually charged by him and that there is no additional consideration flowing directly or indirectly from such sales over and above what has been declared.

(3) The proper officer, duly empowered by the Central Government under section 14 of the Act, may, where he considers it necessary during the course of any enquiry in connection with the declaration made in the documents referred to in sub-rule (1) or sub-rule (2A) by an assessee,-

- (a) require any person to produce or deliver any document or thing relevant to the enquiry ; and
 - (b) examine any person acquainted with the facts and circumstances of the particulars declared in such documents or other records, in the manner provided in section 14 of the Act.
- (4) The proper officer may after such further enquiry as he may consider, **reassess following the provisions of section 11A of the Act** and the assessee shall pay the deficiency, if any.

Rule - 173F. Assessee to determine the duty due on the goods and to remove them on payment thereof

Where the assessee has complied with the provisions of rules 173B, 173D, and, where applicable, 173C, **he shall himself assess the duty due** on the excisable goods intended to be removed and shall not, except as otherwise expressly provided in these rules, **remove such goods unless he has paid the duty so determined.**

Rule - 173G. Procedure to be followed by the assessee

(1) Every assessee shall keep an account-current with the Commissioner separately for each excisable goods falling under different Chapters of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), in such form and manner as the Commissioner may require, of the duties payable on the excisable goods and in particular such account and also the account in Form R.G.23, if the assessee is availing of the procedure prescribed in rule 173K shall be maintained in triplicate by using indelible pencil and double-sided carbon, and the assessee shall periodically make credit in such account-current, by cash payment into the treasury so as to keep the balance, in such account-current, sufficient to cover the duty due on the goods intended to be removed at anytime; and every such assessee shall pay the duty determined by each consignment by debit to such account-current before removal of the goods:

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(3) Within five days after the close of each month every assessee shall, in lieu of the returns prescribed under rule 54, file with the proper officer in quintuplicate a monthly return in the proper form showing the quantity of excisable goods manufactured or received under bond during the month, the quantity (if any) used within the factory for the manufacture of another commodity, the quantity removed on payment of duty from the place or premises specified under rule 9 or from the store-room or other place of storage approved by the Commissioner under rule 47, duty paid on such quantity, particulars of invoices or like documents under which such quantity was removed; the quantity removed without payment of duty for export or otherwise under such other particulars as may be elsewhere prescribed or as the Commissioner may, by general or special order, require, and where so required by the Commissioner, by written notice, shall submit a similar return in the proper form showing all the other products manufactured in and issued from the factory during the same month. Every such return respect of excisable goods shall be accompanied by—

(a) [deleted]

(b) receipted treasury challans on which deposits in the account-current were made by payment into the Government treasury; and

(c) original and duplicate copies of the account-current and also of the account in Form R.G.23 and RG23C, as the case may be, maintained by the assessee during the period covered by the return;.....

(5) Every assessee shall furnish to the proper officer a list in duplicate of all accounts maintained in the returns prepared by him (whether the same maintained or prepared in pursuance of these rules are not) in regard to the production, manufacture, storage, delivery or disposal of the goods, including the raw materials.

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Rule - 173I. Assessment by proper officer.--

(1) The proper officer shall on the basis of the information contained in the return filed by the assessee under sub-rule (3) of rule 173G and after such further enquiry as he may consider necessary, assess the duty due on the goods removed and complete the assessment memorandum on the return. A copy of the return so completed shall be sent to the assessee.

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Rule - 209A. Penalty for certain offences.

Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.

Rule - 52. Clearance on payment of duty.-

When the manufacturer desires to remove goods on payment of duty, either from the place or premises specified under rule 9 or from a store-room or other place of storage approved by the Commissioner under rule 47, he shall make application in triplicate (unless otherwise by rule or order required) to the proper officer in the proper Form and shall deliver it to the officer at least twelve hours (or such other period as may be elsewhere prescribed or as the Commissioner may in any particular case require or allow) before it is intended to remove the goods. The officer shall, thereupon, assess the amount of duty due on the goods and on production of evidence that this sum has been paid into the treasury, or, paid to the account of the Commissioner in the Reserve Bank of India or the State Bank of India, (or has been despatched to the Chief Accounts Officer by the money-order) shall allow the goods to be cleared:

Provided that where removals from a factory are frequent and the manufacturer maintains a sufficient credit balance in his account-current maintained under rule 9 for payment of duty, the Assistant Commissioner may, on a request by the manufacturer, permit, by an order in writing, removal of goods on presentation of a gate-pass as prescribed under rule 52A, subject to the observance of such procedure as may be prescribed in this regard by the Commissioner.

Rule - 52A. Goods to be delivered on an invoice :-

(1) No excisable goods shall be delivered from a factory or a warehouse except under an invoice signed by the owner of the factory, or his authorised agent:

Provided that when the excisable goods, other than those to which the provisions of Chapter VII-A apply, are removed on payment of duty such invoice shall be required to be countersigned by the proper officer.

Explanation.-In this rule, and in any other rule, where the term invoice or gatepass, as the case may be, is used it shall mean-

(i) assessee's own document such as invoice, challans, advice or other document of similar nature generally used for sale or removal of excisable goods and which shall contain all the particulars as required under the said Act or in these rules; or

(ii) such other form as the Central Board of Excise and Customs may notify.

(2) The invoice shall be made out in triplicate. The original copy shall be for the buyer, the duplicate for the transporter, and the triplicate shall be retained by the manufacturer. The manufacturer may make extra copies of the invoice for his own use and each such extra copy shall be clearly marked with its sequential number. The duplicate copy shall be produced by the transporter on demand by any Officer while the goods are enroute to such destination from the factory:

Provided that in respect of removal of excisable goods consumed within the factory for manufacture of other goods in a continuous process, the manufacturer may make out a single invoice, at the end of the day:

Provided further that for any excisable goods, other than those to which the provisions of Chapter VII-A apply, the invoice shall be presented to the proper officer for counter-signature at least one hour before the actual removal of goods from the factory. After counter-signature the proper officer shall return all the copies of the invoice to the manufacturer except the triplicate required for his record.

(3) The copies of the invoices shall be marked at the top in bold capital letters in the following manner, namely:-

(i) the original copy shall be marked as ORIGINAL FOR BUYER;

(ii) the duplicate copy shall be marked as DUPLICATE FOR TRANSPORTER (to be used for taking credit under rule 57G and rule 57T);

(iii) the triplicate copy shall be marked as TRIPLICATE FOR CENTRAL EXCISE;

(iv) the quadruplicate copy shall be marked as QUADRUPLICATE FOR ASSESSEE.

(4) If all the packages comprising a consignment are despatched in one lot at any one time, only one invoice shall be made out in respect of the consignment. If, however, a consignment is split up into two or more lots each of which is despatched separately either on the same day or on different days, a separate invoice shall be made out in respect of each such lot. In case a consignment is loaded on more than one vehicle, vessel, pack animal or other means of conveyance which do not travel together but separately or at intervals, a separate invoice shall be made out in respect of each vehicle, vessel, pack animal or other conveyance.

(5) Invoice shall be maintained in two sets-

(i) one for clearance for home consumption; and

(ii) the other for clearances for export.

(6) Each invoice shall bear a printed serial running for the whole financial year beginning on the 1st April of each year. Only one invoice book of each type shall be used by a factory for removal of excisable goods at any one time unless otherwise specially permitted by the Commissioner in writing.

(7) Each foil of the invoice book shall be authenticated by the owner or working partner or Managing Director/Company Secretary, as the case may be, before being brought into use by the manufacturer. The serial number of the invoice, before being brought into use, shall be intimated to the Assistant Commissioner of Central Excise or Deputy Collector of Central Excise and dated acknowledgment of receipt of such intimation shall be retained by the manufacturer:

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Rule - 53. Daily stock account :-

(1) Every manufacturer shall maintain a stock account in such Form as the Commissioner may in particular case or class of cases allow, and shall enter in such account daily-

(a) description of goods,

(b) opening balance,

(c) quantity manufactured,

(d) quantity deposited in the store-room, or other place of storage approved by the Commissioner under rule 47,

(e) quantity and value, of goods removed on which duty is required to be paid from such store-room or other place of storage or from the place or premises specified under rule 9,

(f) quantity and value of goods delivered from the factory without payment of duty for export or other purposes, and

(g) the rate of duty and the amount of such duty:

Provided that a manufacturer who furnishes a declaration in the Form annexed hereto may be exempted by the Commissioner from making 'nil' entries in the above account on days on which there is no production, receipt in store-room, or clearance of excisable goods:

Declaration

The Commissioner of Central Excise-----having permitted me/us, in relaxation of the provisions of rule 53 of the Central Excise Rules, 1944, to make entries in the different openings of the stock account only on those dates when there is any transaction of the nature mentioned in the said rule in respect of the particular description/variety/size of packing of the excisable goods, I/we hereby solemnly declare that no such transaction has taken place on any date for which no entries are made in the stock account for the particular description/variety/size of packing of the goods. I/We hereby undertake to make regular daily entries in the said account in respect of each description/variety/size of packing of the goods in respect of each transaction mentioned in rule 53 of the said rules on the particular day.

Signature of Registered person

(2) The stock account maintained under sub-rule (1) shall, after being filled up, be preserved for a period of not less than five years and kept available for inspection by any officer.

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Rule - 54. Monthly returns :-

Within five days after the close of each month every manufacturer shall submit to the proper officer a monthly return in the proper Form showing the quantity of excisable goods manufactured during the month, the quantity (if any) used within the factory for the manufacture of another commodity, the quantity removed on payment of duty from the place or premises specified under rule 9 or from the store-room or other place of storage approved by the Commissioner under rule 47, the quantity removed for export without payment of duty and such other particulars as may be elsewhere prescribed or as the Commissioner may, by general or special order, require, and, where so required by the Commissioner, by a written notice, shall submit a similar return in the proper Form showing all the other products manufactured in and issued from the factory during the same month.

AA. Credit of duty paid on excisable goods used as inputs.

RULE 57A. Applicability. - (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products"), as the Central Government may, by notification in the Official Gazette, specify in this behalf, **for the purpose of allowing credit of any duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975** (51 of 1975), as may be specified in the said notification (hereinafter referred to as the "specified duty") paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the "inputs") and for **utilising the credit so allowed towards payment of duty of excise leviable on the final products**, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification :

Extract of Notification No.5/94-C.E. (N.T.) dated 01.03.1994 as amended by Notification No.8/95-C.E. (N.T.) dated 16.03.1995

*In exercise of the powers conferred by rule 57A of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 177/86-Central Excises, dated the 1st March, 1986, the Central Government hereby **specifies the final products** described in column (3) of the Table hereto annexed and in respect of which, -*

*(i) the **duty of excise** under the Central Excises and Salt Act, 1944 (1 of 1944);*

*(ii) the **additional duty of excise** under section 3 of the Additional Duties of Excise (**Textiles and Textile Articles**) Act, 1978 (40 of 1978); and*

*(iii) the **additional duty of excise** under section 3 of the Additional Duties of Excise (**Goods of Special Importance**) Act, 1957 (58 of 1957); and*

*(iv) the **additional duty** under section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to :-*

(a) the duty of excise specified under (i) above;

(b) the duty of excise specified under (ii) above; and

(c) the duty of excise specified under (iii) above

(hereinafter referred to as "specified duty") paid on inputs, described in the corresponding entry in column (2) of the said Table, shall be allowed as credit when used in or in relation to the manufacture of the said final products and the credit of duty so allowed shall be utilised for payment of duty leviable on the said final products, or as the case may be, on such inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules:

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TABLE		
S. No.	Description of inputs	Description of final products
(1)	(2)	(3)
	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, -	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, -
	(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;	(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;
	(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;	(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;
	(iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act;	(iii) woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.
	(iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.	

Rule - 57C. Credit of duty not to be allowed if final products are exempt :-

(1) No credit of the specified duty paid on the inputs used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not (other than those cleared either to a unit in a Free Trade Zone or to a hundred per cent. Export oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excises, dated 28th August, 1995 shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to 'nil' rate of duty.

(2) Where a manufacturer avails of the credit of specified duty on any inputs and he is engaged in the manufacture of any final product which is chargeable to duty as well as in the manufacture of any other final product which is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty in the same factory, the provisions of subrule (1) shall be deemed to be satisfied only when the manufacturer follows the procedure prescribed in sub-rule (1) rule 57CC or the provisions of sub-rule (2) of that rule are complied with:

Rule - 57CC. Adjustment of credit if the final products are exempt:-

(1) Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other final product which is exempt from the whole of the duty of excise leviable there on or is chargeable to nil rate of duty other than those cleared either to a unit in a Free Trade Zone or to a hundred per cent. Export oriented undertaking or to a unit in an Electronic Hardware Technology Park or to a unit in Software Technology Parks or supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excises, dated 28th August, 1995 and the manufacturer takes credit of the specified duty on any input (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule (2) of this rule are complied with, pay an amount equal to eight per cent. of the price (excluding sales tax and other taxes, if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory by adjustment in the credit account maintained under subrule (3) of rule 57G or in the accounts maintained under rule 9 or sub-rule (1) of rule 173G or if such adjustment is not possible for any reason, by cash recovery from the manufacturer availing of the credit under rule 57A."

7.2 On perusal of the above provisions of the Central Excise Act, 1944 and Central Excise Rules, 1944, it would transpire that the following are the requirements of law and procedure involved in payment Central Excise duty on clearance of goods manufactured:

(i) a manufacturer of excisable goods shall determine the appropriate duties of central excise payable on any goods manufactured by them, by making a declaration in the form of 'Classification List' indicating the details of goods manufactured by them, classification under chapter heading/sub-heading of the central excise tariff under which it has been classified by them, along with exemption notification benefit claimed, if any, and get the same approved by the proper officer of Central Excise department. In determining the correct classification under the First Schedule to Central Excise Tariff Act, 1985, he shall be guided by the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Central Excise Tariff Act, 1985 specifies the various categories of goods in a systematic and well-considered manner, mostly in accordance with an international scheme of classification

of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Central Excise Tariff Act, 1985. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 5 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 5 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Central Excise Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

(ii) The rate of Central Excise duty at which the manufacturer is required to pay the duty is prescribed under the Schedule of the Central Excise Tariff Act, 1985. The taxable event under the Central Excise law is 'manufacture' and the liability of Central Excise duty arises as soon as the goods are manufactured and are required to be entered into 'RG-1' Registrar. Upon introduction of Self-Removal procedure, the assesseees were allowed to quantify the duty on the basis of approved classification list and the price list and clear the goods on payment of appropriate duty. Further, after doing away with the gate pass system of control in 1994 with the invoice-based system, all clearances are to be effected on manufacturer's own invoice. It is also important to note that the system of Self-Assessment in central excise was introduced in 1996, where the assessee himself is required to assess his duty liability by declaring the classification and value of the goods, instead of obtaining approval of the same from the Department. The correctness of the duty payment was ascertained by the department through periodical scrutiny of returns, audit etc.

7.3 In the case before us, the contending classification of disputed goods discussed in the impugned order are polytubes, microtubes and H.D.P.E. pipes, which as per the impugned order is classified under sub-heading

"CHAPTER 39
Plastics and articles thereof

1. Throughout this Schedule, the expression "plastics" means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

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And

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS; AND PARTS AND ACCESSORIES OF SUCH ARTICLES

1. This Section does not cover :

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2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading No.84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :

- (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than heading Nos. 84.85 and 85.48) are in all cases to be classified in their respective headings;
- (b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading No.84.79 or heading No. 85.43) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17;
- (c) all other parts are to be classified in heading No.84.85 or heading No.85.48.

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CHAPTER 84
Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

Notes :

1. This Chapter does not cover :
(a) Millstones, grindstones or other articles of Chapter 68;

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2. Subject to the operation of Note 3 to Section XVI, a machine or appliance which answers to a description in one or more of the heading Nos. 84.01 to 84.24 and at the same time to a description in one or other of the heading Nos. 84.25 to 84.80 is to be classified under the appropriate heading of the former group and not the later.

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Chapter Heading	Description of goods
(1)	(2)
8424	MECHANICAL APPLIANCES (WHETHER OR NOT HAND-OPERATED) FOR PROJECTING, DISPERSING OR SPRAYING LIQUIDS OR POWDERS; FIRE EXTINGUISHERS, WHETHER OR NOT CHARGED; SPRAY GUNS AND SIMILAR APPLIANCES; STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES
8424.10	- Mechanical appliances of a kind used in agriculture or horticulture
8424 80	- Other
	- <i>Parts:</i>
8424 91	-- Of goods covered sub-heading No. 8424.10
8424 99	-- Other"

7.4 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 39.17 covers within its scope and ambit, mainly of tubes, pipes and houses, and fittings therefor made of plastics. These goods are of plain plastic tubes, pipes and hoses which are used for general purposes. If these tubes, pipes and hoses, fittings are further worked as if these are suitable for use solely or principally with a particular kind of machine/appliance, or with a number of machines of the chapter heading

8424, then such goods would merit classification under sub-heading 8424.81, if these are for agricultural or horticultural purposes; or under sub-heading 8424.10 or 8424.20 or 8424.30, depending the appliances with which they are suitable to be used.

7.5 The appellants have also explained in their written submissions about the impugned products viz., polytubes, micro tubes and H.D.P.E. pipes as follows:

'Polytubes:

Unlike the other plastic pipes/tubes, "poly-tubes" are exclusively used in agriculture for micro (Drip Irrigation System), as 'Laterals' by farmers. Apart from their use in agriculture, poly-tubes do not have any other application. These poly-tubes are laid on the ground and are open to atmosphere (hot and cold conditions); the raw-material used for these poly-tubes is not ordinary pipe grade material but special grade material namely "Industrial LLDPE" (Linear Low Density Poly-ethylene) because of its better environmental stress, cracking resistance quality as well as master batch to give required strength. LLDPE used to manufacture poly-tubes is of special grades developed specifically for agricultural use. The technology to manufacture poly-tubes is very specific and special; Unlike the other plastic tubes/pipes/hoses, which are round, the poly-tubes are manufactured in oval shape to suit their laying in agriculture farms and to make the drip and dripper placement convenient. Even to install poly-tubes in the Drip Irrigation Systems, special type of fittings are needed, which are not at all used with ordinary pipes/ tubes/ hoses.

The poly-tubes manufactured by us are meant for low pressure application in agriculture to which drippers of different sizes are attached which give water to the plant at a very low rate varying from 2 Litre per hour to 100 Litre per hour. The Drip Irrigation System is an Energy Conserving System, since it works on a very low hydraulic pressure i.e., 1 to 1.5 Kg/Cm² . In the ordinary plastic pipes / tubes / hoses, minimum normal pressure is 2-4 Kg/Cm² thereby consuming more energy. Hence, even if someone tries to use poly-tubes for some other work than the drip irrigation system, it will not work. At higher pressure, the poly-tube will either crack or rupture or burst since it cannot withstand the higher pressure.

Micro tubes and H.D.P.E. pipes/Laterals

Unlike the ordinary plastic tubes/pipes, the poly-tubes are used by farmers in the Drip Irrigation System as laterals in their agriculture / farms. They are exposed to ultra-violet rays in the sun-light and other adverse conditions and gives the desired life. To ensure that poly-tubes have this capability, as satisfied by the Bureau of Indian Standards, New Delhi's specification, the appellants regularly

conduct a very special test called as "Environmental Stress Crack Resistance (ESCR) Test". This test is neither specified nor conducted for ordinary plastic pipes / tubes (ISI specification for Polytube / Laterals are provided in BIS standard IS-12786/89.

As could be observed from our product literature, polytubes are meant for agricultural use only in Drip Irrigation Systems as 'Laterals'. As explained hereinabove, because of size, shape and capacity, poly-tubes requires special fittings, as well. The poly-tubes cannot be used for very hot and/or very cold water applications also. It is also pertinent and extremely material that the Bureau of Indian Standards, New Delhi in its Indian Standard IS-12786/89 has defined poly- tubes as "Irrigation Equipment" - Polyethylene Pipe for irrigation laterals. It is also important to know that Bureau of Indian Standards has separate standards for pipes/hoses of different kinds like plastic/rubber and for different uses like gardening hoses, domestic hoses as follows:

<i>PVC Pipes for Potable water</i>	<i>:IS:4985</i>
<i>General purpose Rubber Hoses</i>	<i>: IS:444</i>
<i>Casing Pipes</i>	<i>: IS:12818'</i>

Further, the appellants have also submitted that as per Chapter Note (2)(k) of Chapter 39, CETA excludes specifically articles of Section (XVI) i.e., Machine and machineries and mechanical or electrical appliances. Further, they also quoted HSN to state that in general the goods of Section XVI may be of any material; in the great majority of cases they are of base metal, but the Section also covers certain machinery of other materials (e.g. pumps wholly of plastics) and parts of plastic, of wood, precious metal etc. They also submitted an extract of explanatory notes of the Harmonized System of Nomenclature (HSN) which very clearly explain about the impugned products, forming part of the Drip Irrigation System as follows:

"(E)Irrigation Systems:

These irrigation systems consisting of various components linked together shall include:

(i) a control (mesh, filters, fertilizers, injectors, metering valves, non-return valves, pressure regulators, pressure gauge, air vent etc;

(ii) a underground net-work (dispersion lines and drainage lines which carry water from the control station to the irrigation zones; and

(iii) a service net-work (dripper lines incorporating the drippers). Such systems are classifiable in this heading (8424) as functional units within the meaning of Note 4 to Section XVI."

7.6 On careful reading of the classification under the First Schedule to the Central Excise Tariff vis-à-vis the general explanatory notes to HSN, impugned goods viz., polytubes, microtubes, HDPE pipes as well as other goods such as valves, emitters, drippers, micro sprinklers, poly fittings, sand filters etc., forming part of the surface network dripper lines or the underground network distribution lines and branch lines, for carrying water from the control station to the irrigation zone, and spraying/sprinkling such water to the area of irrigation, is appropriately classifiable as part of the appliances used in agriculture, horticulture. Therefore, we are of the considered view, that the impugned goods or appropriately classifiable under heading 84.24 and more specifically under sub-heading 8424.91 of the First Schedule to the Central Excise Tariff Act and not under sub-heading 3917.00 as they do not remain as simple P.V.C. pipes and fittings.

7.7 We further find that the Bureau of Indian Standards (BIS) have provided the Indian standards for "irrigation equipment-polyethylene pipes for irrigation laterals-specification" under IS-12786 : 1989. This BIS standard lays down the requirements for polyethylene pipes which are used for irrigation laterals, that is branch supply lines on which sprayers or drippers or emitters are mounted directly or by means of a fitting or formed in the pipe during production. The standards specified and the performance requirements include hydraulic characteristics, acceptance tests for internal pressure, reversion interest, tensile test and test for susceptibility to environmental stress cracking etc., The extract of IS-12786 : 1989 is given below:

IS 12786 : 1989

*Indian Standard***IRRIGATION EQUIPMENT — POLYETHYLENE
PIPES FOR IRRIGATION LATERALS —
SPECIFICATION****1 SCOPE**

1.1 This standard lays down requirements for polyethylene pipes of outside diameter from 12 mm up to 32 mm to be used for irrigation laterals that is branch supply lines on which sprayers or drippers or emitters are mounted directly or by means of a fitting or formed in the pipe during production.

2 REFERENCES

2.1 The following Indian Standards are necessary adjuncts to this standard:

<i>IS No.</i>	<i>Title</i>
2530 : 1963	Methods of test for polyethylene moulding materials and polyethylene compounds
4905 : 1968	Methods for random sampling

3 CLASSIFICATION OF PIPES

3.1 The pipe shall be classified by pressure ratings (working pressure) as follows:

<i>Class of Pipe</i>	<i>Working Pressure</i>
Class 1	0.25 MPa
Class 2	0.40 MPa
Class 3	0.60 MPa

NOTE — Normal working conditions of pipes shall be operation of maximum 800 working hours per year at the pressure rating of the pipe and at a water temperature up to 35°C. If these working conditions are exceeded the next higher class of pipe that is pipe with greater wall thickness shall be chosen. With these working conditions the life expectancy of the pipe is 10 years.

4 MATERIAL

4.1 Extrusion compounds shall be manufactured from a mixture of the following:

- Polyethylene, which may include copolymers of ethylene and higher olefins, in which the higher olefin constituent does not exceed 10 percent (m/m);
- Antioxidant in an amount not exceeding 0.5 percent (m/m);

c) Carbon black equivalent to a content of 2.5 ± 0.5 percent (m/m) and complying with the following requirements:

- Density, 1.5 to 2.0 g/ml
- Toluene extract, not more than 0.1 percent (m/m) (see Annex A)
- Maximum volatile matter, 9.0 percent (m/m) (see Annex B)
- Average particle size, 0.010 to 0.25 μ m

d) Grade of Polyethylene — PE 25, a raw material mentioned in 4.1 (a) having a minimum design creep rupture stress of 2.5 MPa for 10 years life at a maximum of 800 working hours per year at 35°C.

4.2 When tested in accordance with IS 2530 : 1963:

- The percentage of carbon black in the material shall be 2.5 ± 0.5 percent by mass.
- The dispersion of carbon black shall be satisfactory.

4.3 Addition of not more than 10 percent of the manufacturer's own rework material produced during the manufacture and works testing of pipe complying with this standard is permitted. No other rework material shall be used.

5 DIMENSIONS OF PIPES

5.1 The outside diameters and wall thicknesses of the pipes shall be as given in Table 1.

5.1.1 The outside diameter of a pipe shall be average of four measurements taken at 45° round the pipe.

5.1.2 The wall thickness shall be measured with a dial vernier/ball ended micrometer.

5.1.3 The resulting dimensions shall be expressed to the nearest 0.05 mm.

6 VISUAL APPEARANCE

6.1 The internal and external surface of the pipes shall be smooth, clean and free from groovings and other defects. The ends shall be cleanly cut and shall be square with axis of the pipe. Slight

From the above, it is clearly brought out that those pipes and tubes, which qualify the prescribed BIS standards are capable of use as parts of irrigation equipment, and such pipes and tubes alone are classifiable under sub-heading 8424.91 as parts of irrigation systems or appliances.

7.8 We further find that the Central Board of Excise & Customs have examined the issue of classification of plastic pipes, pipe fittings and other plastic components of sprinkler irrigation equipment, whether such goods would be classifiable as articles of plastics under chapter heading no.39.17 or under sub-heading 8424.91, for the purpose of uniformity in assessment

and eligibility to exemption benefit. The circular No. 380/13/98-CX dated 16.03.1998 issued in this regard is extracted and given below:

Circular No. 380/13/98-CX
dated 16/3/98

F.No. 93/13/97-CX.3

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs, New Delhi

Subject: Classification and dutiability of plastic pipes and other plastic items used in the manufacture of Sprinkler Irrigation equipment- regarding.

I am directed to say that a doubt has been raised regarding classification of plastic pipes, pipe fittings and other plastic components of sprinkler irrigation equipment; whether they would be classifiable under sub-heading 8424.91, as parts of Sprinkler Irrigation Equipments and be charged at the applicable rate of duty or they will be classifiable as articles of plastics and assessed to duty, where no exemption is available.

2. The matter has been examined by the Board. Plastic pipes and tubes are found to be used as parts of the sprinkler irrigation equipment. However, these plastic pipes and tubes are not specific to the irrigation equipments alone and can be used for general purposes as well, thereby making them not suitable for use, solely or principally with the irrigation equipments. Rule-3 of the Interpretative Rules states that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description will be preferred to a more general description. Since plastic pipes are very specifically described in heading No. 39.17, they may be classified accordingly under heading No. 39.17. This view is also in consonance with the classification guidelines, as laid down in Board's earlier Order No. 42/4/95-CX dated 18th December, 1995.
3. With regard to pipe fittings, they will be covered by the description "parts of general use" and consequently will be classifiable under Chapter-73 (or other metal chapters depending on the composition), as tube or pipe fittings.
4. In respect of other plastic part (including modified pipes with attached couplings, fittings etc.) if it is found that the parts have been modified so as to fit only sprinkler equipments, and have no other use, then use, then such plastic part will be classifiable under heading No. 8424.91, if they are such shape that these can be used only in sprinkler equipments.
5. Receipts of this circular may kindly be acknowledged.

Sd/-
(Renu K. Jagdev)
Under Secretary to the Government of India

Since, it is a fact on record that the impugned goods viz., polytubes, microtubes, HDPE pipes were used for Drip irrigation systems, the appropriate classification in terms of the CBEC circular dated 16.03.1998 would be under sub-heading no. 8424.91, and not under chapter heading no. 39.17, as concluded in the impugned order subjecting the clearance of goods to be made on payment of excise duty, by confirming the adjudged demands.

7.9 We further find that the issue of classification of Drip Irrigation System and its component parts, in identical set of circumstances was examined by the Co-ordinate bench of the Tribunal in the case of *M/s Elgi Ultra Appliances Limited Vs. Commissioner of Central Excise, Coimbatore*², wherein it was held that the HDPE/LDPE tubes/pipes are classifiable under

² 2001 (134) E.L.T. 245 (Tri.-Chennai)

sub-heading no. 8424.91, and the appellants claim for the benefit of exemption under notification No.56/95 dated 16.03.1995 is justified. The relevant paragraphs of the said order is extracted below:

"6. *The department in the show cause notice has alleged that LDPE/ HDPE pipes manufactured by the appellants do not appear to be classifiable under sub-heading 84.24 since they are not for use solely or principally with DIS. Note 2 of Section XVI lays down as follows :*

2. *Subject to Note 1 of this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of Heading Nos. 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :*

(a) *Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than Heading Nos. 84.09, 84.31, 84.48, 84.86, 84.73, 84.85, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in the respective headings.*

(b) *Other parts if suitable for use solely or principally with a particular kind of machine, or with number of machines of the same heading (including a machine of heading No. 84.79 or heading No. 85.43) are to be classified with machines of that kind or in Heading Nos. 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of heading Nos. 85.17 and 85.25 to 85.28 are to be classified in heading No. 85.17.*

(c) *All other parts to be classified in heading Nos. 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or falling that, in heading Nos. 84.85 or 85.48.*

The department contends that under note 1(g) of Section XVI parts had been used as defined in note to Section XVI of base metal (Section XV) and similar goods of plastic of chapter 39 are excluded from Section XVI which has chapter 84 within it. The appellants contention has been that the goods are not parts of general use but they are specifically manufactured for DIS and cleared as such for the purpose of distribution of water to the lands where crops are growing. They contend that the item in question is manufactured as per the requirements, they are laid out for distribution to the irrigation system. In this connection the appellants have produced the evidence of ISI specifications meant for pipes in irrigation system/laterals. The appellants have also produced letter dated 16-7-1996 from the Agricultural Engineering Department issued by the Chief Engineer who has recognised the manufacture of DIS scheme and has issued the licence to the appellants under the agricultural engineering centrally sponsored scheme for use of plastics in Agriculture-Drip Installation for Horticulture crops. It is contended that the goods are manufactured specifically for agricultural laterals and are not for general purpose. They point out that registration certificate has been given by the ISI for such manufacture. They also relied upon the invoice which clearly show that these goods were removed earlier against specific order and invoice deals with the entire system including pipes which are fitted to this system. The Collector has basically proceeded on the note 1(g) of Section XV which excludes parts of general use as defined under note 2 of Section XV. Note 2 of Section XV defines parts of general use as follows :

(a) *Articles of heading Nos. 73.07, 73.12, 73.15, 73.17 or 73.18 and similar articles of other base metal;*

(b) *Springs and leaves for springs, of base metal, other than clock or watch springs (heading No. 91.14); and*

(c) *Articles of heading Nos. 83.01, 83.02, 83.08, 83.10 and frames and mirrors, of base metal, of heading No. 83.06.*

It is contended that only these parts which are specified therein are to be treated as parts of general use and not others. It was also pointed out by the learned Consultant that the parts of DIS falling under 84.24 are not mentioned in the above note No. 2. On consideration of the submissions and on perusal of the above Note 2 of Section XV it is clear that the article and parts of heading 84.24 are not mentioned therein. Further the evidence on record clearly discloses that the items in question are specifically removed for the purpose of DIS and DIS would not come into existence without these manufactured pipes along with its fixtures. The appellants have been manufacturing and clearing the DIS in terms of the specific orders received from the parties. The invoices are supportive of their pleas. They have also produced their marketing literature which shows that these pipes are designed and the system is also designed for lay out for supply of water to the agriculture. On perusal of the evidence it is clear that the pipes are laid out as per the drawings and various strips are fixed to this pipes at the spot laid out. Therefore, the contention of the department that the parts are of general use as defined under Note 2 of Section XV & Note 1(g) of Section XV is not acceptable as the said Note 2 of Section XV does not refer to these parts under Chapter 84.24.

7. *It is also seen that in terms of note 2(b) of Section XVI parts if suitable for use solely or principally with a particular kind of machines are required to be classified along with the main item. These parts have become part of DIS and manufactured as per ISI specifications for use only as DIS is required to be considered for classification along with the entire system by applying Note 2(b) of Section XVI. Further even Note 4 of Section XVI reads as follows :*

"Where a machine (including a combination of machines) consists of individual components (whether separate or inter-connected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function".

On a reading of this, it is clear that if the machines consist of individual components (whether separate or inter-connected by piping, by transmission devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84, then the whole parts should be classified in the headings appropriate to that function. If this note is taken into consideration also, the pipes which are specifically manufactured for DIS parts is required to be classified as a system itself. It has clearly defined function and the item i.e. DIS clearly fall under Heading 84.24 which refers to mechanical appliances or for projecting, dispersing or spraying liquids etc.

8. *The supportive arguments for the appellants is also a reading of explanatory note to HSN under Chapter 84.24 which deals with irrigation system. The said note deals with irrigation system which reads as follows:*

"(E) IRRIGATION SYSTEMS

These irrigation systems, consisting of various components linked together usually include :

- (i) a control station (mesh filters, fertiliser injectors, metering valves, non-return valves, pressure regulators, pressure gauges, air vents, etc.);*
- (ii) an underground network (distribution lines and branch lines which carry the water from the control station to the irrigation zone); and*

(iii) a surface network (dripper lines incorporating the drippers). Such systems are classified in this heading as functional units within the meaning of Note 4 to Section XVI (see the General Explanatory Note to that Section).

This heading also covers:

- (1) Machines for coating various objects (for example, cups, cartons, boxes) by spraying with paraffin wax or molten wax.
- (2) Electrostatic painting apparatus consisting of a spray gun connected to a paint container by a flexible tube carrying paint, and also connected to a high-tension generator by an electric cable. The electrostatic field created between the object to be painted and the gun attracts the paint particles sprayed by compressed air to that object and prevents dispersion.
- (3) Industrial robots specially designed for projecting, dispersing or spraying liquids or powders.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts for the appliances and machines of this heading. Parts falling in this heading thus include, *inter alia*, reservoirs for sprayers, spray nozzles lances and turbulent sprayer heads not of a kind described in heading 84.81."

On a careful reading of the above note, it is seen that an underground net work (distribution lines and branch lines which carry the water from the control station to the irrigation zone) and also surface net work (dripper lines incorporating the drippers) constitute irrigation system and the above note also emphasises that such system are classifiable under heading 84.24 as functional units within the meaning of Note 4 to Section XVI. The parts thereof are also brought under this Section and the parts as are referred to above include reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads, to form the irrigation system as they carry out functions of the ground net work for distribution of water and surface net work. The irrigation system basically is of these pipes and the other items referred to above, which carry out the functions of distribution and dispersing or spraying in terms of the description under Chapter 84.24 and the said sub-heading 8414.10 dealing with removable appliances of the kind used in agriculture or horticulture. Therefore, parts thereof are covered by sub-heading 8424.91. As a result, the appellants' claim for the benefit of exemption Notification for the items falling under Heading 84.24 claiming nil rate of duty under Notification No. 56/95 dated 16-3-1995 is justified."

We further find that in the Civil Appeal No. 7578 of 1999 filed by the Department against the order of the Tribunal in the case of *Elgi Ultra Appliances Limited* (supra), the Hon'ble Supreme Court vide judgement dated 07.01.2000³, had dismissed the Civil Appeal and upheld the order of the Tribunal. Therefore, we are of the considered opinion that the issue of classification of impugned goods and its eligibility to exemption is no more open for any debate.

8.1 It is a fact on record that the appellants have filed with the jurisdictional Central Excise authorities i.e., Jalgaon Range-II of Jalgaon Division under Aurangabad Commissionerate, the Classification List (CL) of

³ 2000 (89) ECR 593 (Tribunal)

all the excisable goods produced, manufactured or warehoused & other goods produced or manufactured which are intended to be removed by the appellants from their factory in compliance with Rule 173B of the Central Excise Rules, 1994. Further, the appellants had obtained necessary approval from the proper officer of the Central Excise department for classification of all goods manufactured by them w.e.f. 01.04.1991, including approval for classification of the goods viz., (i) 'Mechanical appliances for projecting, dispersing or spraying liquid water various parts of Drip Irrigation Systems viz., polytubes, biwalls, valves, emitters, drippers, micro sprinklers, poly fittings, sand filters etc., under sub-heading 8424.00; (ii) P.V.C. pipes and fittings under sub-heading 3917.00 and (iii) cellular P.V.C. foam sheets of other plastics, rigid sheets of various sizes and thickness under sub-heading 3921.19. Further, the appellants claim for exemption benefit for the goods under relevant Notifications No.111/88-C.E. dated 01.03.1988, No.46/94-C.E. dated 1.3.1994 (Sr.No.20) and No.56/95-C.E. dated 16.03.1995 (Sr.No.17) for Drip Irrigation System and its parts were also approved by the Central Excise authorities. We have perused the various CLs approved by the Divisional Central Excise authorities, which have been submitted by the appellants as part of the appeal papers, and note the approval given by the department for classification of the impugned goods extending the notification benefits as follows:

- (i) Classification List effective from 1.4.1991, approved on 17.8.1992;
- (ii) Classification List effective from 25.7.1991, approved on August 1992;
- (iii) Classification List effective from 1.3.1992, approved on 29.3.1993;
- (iv) Classification List effective from 28.2.1993, approved on 6.3.1993;
- (v) Classification List effective from 1.3.1994, approved on 24.3.1994.

The extract of the CL approved on 24.03.1994 by the department is captured and given below:

FORM-I
(Part I)

Classification List of Excisable Goods Produced, Manufactured or warehoused and other Goods Produced or Manufactured and Intended to be removed by the Assessee.
(Rule 173 B)

01/03/94

SUPPLEMENTARY CLASSIFICATION LIST EFFECTIVE FROM

10/93 97

Serial Number of the Classification list
(to be allotted by the receiving range)

Serial Number of the earlier Classification List if this not a fresh list

(to be indicated by the receiving range)

Whether Amending/superseding Classification List (strike out whichever is not applicable)

JALGAON II

JALGAON

AURANGABAD

MAHARASHTRA

Manufacturer's No.

of Manufacturer (Code No.)

JAIN IRRIGATION SYSTEMS LTD. 100% E.O.U.
JAIN FIELDS, N.H. NO.6, BAMBHORI, TALUKA ERANDOL, DISTRICT JALGAON.
AT BAMBHORI, TALUKA ERANDOL, DISTRICT JALGAON

Not applicable

Power operated

JR II/41/JD/JISL/100% E.O.U. - 1ST AND 2ND PLANT/CHB4 & 39/93 DATED 13.5.93

Stationary Man. Pwr. Bamber-12 Phone 413333

ANNEXURE-4(b)5

Annexure 4(b)5

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FORM-I

(Part II)

Manufacturer's
Code No.Serial No. of
Classification List

6. Particulars of all excisable goods (including wholly exempted) produced, manufactured or warehoused.

Sl. No.	Full description of each item of the goods produced, manufactured or warehoused including specification (e.g. size, number of counts, Horse power, Part No. etc. as the case may be) together with the description as would appear on the invoice.	Tariff Item No. & sub-item No. of the first schedule to the Central Excise and Salt Act, 1944 under which the goods fall.	Unit of Assessment		Classification Code No.	Effective rate of duty on which goods are assessable			Remarks
			Unit	Unit Code No.		Type of duty	Rate of duty	No. & date of the relevant Notification (a) if any, issued having bearing on the rate of duty.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Mechanical Appliances for projecting, dispersing or spraying liquid water various parts of Drip Irrigation Systems viz. (a) Polytubes (b) Biwalls (c) Valves (d) Emitters Key emitters, Key clips emitters, Drippers Turbo keys, Turbo SC (f) Micro Sprinklers (g) Pop up Tee fittings Joiner, Tee Elbow, Goof Plug, Coupler Gromate takeoff Tee Reducer, Joint Shield Short, Joint Shield long, Drive Shaft Shield (1) Sand Filters & Filter Screens (j) Ventury (k) Gas-kets, Drive Motor Cover, Tower Boxes.	Chapter 84 Chapter Head- ing 8424	Nos	-	8424.00	Basic	NIL	C.E. Notification 46/94 dtd 1.3.94	

FORM-I

(Part II)

: 2 :

Manufacturer's Code No.	Serial No. of Classification List
6. Particulars of all excisable goods (including wholly exempted) produced, manufactured or warehoused.	

(1) Sr. No.	(2) Full description of each item of the goods produced, manufactured or warehoused including specifications (e.g. size, number of joints, name, power, etc.) as the case may be together with the description as would appear in the invoice.	(3) Tariff Item No. & sub-item No. of the first schedule to the Central Excise and Salt Act, 1944 under which the goods fall.	Unit of Assessment		(4) Classification Code No.	Effective rate of duty on which goods are assessable			(5) Remarks
			Unit	Unit Code No.		Type of duty	Rate of duty	No. & date of the relevant Notification (a) if any, issued having bearing on the rate of duty.	
2.	P.V.C. HDPE Pipes & Fittings there of viz. Joiners, Tee, Elbows, Couplers, Reducers, FTA, MTA end caps of various sizes.	Chapter 39 Chapter Head 3917	Nos	-	3917.00	Basic	Nil	C.E. Notification No. 125/84 Dtd. 26.5.84	
3.	Cellular sheets of other Plastics-plain. Sheets of various sizes and thickness	3921	kgs		3921.19	Basic	Nil	For Export C.E. Notification	
4.	Non Cellular sheets of vinyl chloride Rigid plain sheets of various sizes and thickness.	3920.11	kgs		3920.11	Basic	Nil	For E. port C.E. Notification No. 125/84 dtd 26.5.84	
					For Domestic Sale	Customs	32.5%	C.E. Notification No. 101/93	
					Basic	Duty	15%	27.12.93	
					(C.E.)				
					For Domestic Sale	Customs	32.5%	C.E. Notification No. 101/93	
					Basic	Duty	15%	27.12.93	
					(C.E.)				

G.O. B. Suburban Mart, Patel Bazar-12 Phone: 443311

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(Contd.)
3..

FORM-I

(Part II)

Manufacturer's
Code No.Serial No. of
Classification List

6. Particulars of all excisable goods (including wholly exempted) produced, manufactured warehoused.

Sl. No.	Full description of each item of the goods produced, manufactured or warehoused including specification (e.g. size, number of counts, Horse power, etc. etc. as the case may be together with the description as would appear in the invoice.	Tariff Item No. & sub-item No. of the First schedule to the Central Excise and Salt Act, 1944 under which the goods fall.	Unit of Assessment		Classification Code No.	Effective rate of duty on which goods are assessable			Remarks
			Unit	Unit Code No.		Type of duty	Rate of duty	No. & date of the relevant Notification (s) if any, bearing bearing on the rate of duty.	
5.	Plastic non cellular not laminated, supported or combined with other material sheets of polycarbonate of various sizes & various thickness	3920	kgs		3920.31	Basic	Nil	For Export C.E. Notification No.125/84 Dated 26.5.84	
					For Domestic sale				
						Custom Basic	32.5%	101/93 dtd.27.12.93	
						(C.E.)	15%		

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FORM-I
(Part III)

Manufacturer's Code No.

Serial No. of Classification List

Particulars of other goods produced or manufactured and intended to be removed by the assessee.

Sr. No.

Full description of goods showing the detailed specifications, brand/model

Remarks

Declaration: I/We declare the particulars to be true and correctly and fully stated.

Signature of the Assessee or the authorised agent (Rubber Stamp)

Biddu Stationery, Mar. Patel, Borsbay-12, Phone: 448333

Verified

Signature and stamp of the Central Excise Officer-in-charge

(Contd.)

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FORM-I
(Part IV)

MEMORANDUM OF APPROVAL BY PROPER OFFICER 15L105/1-50

(strike out the portions which are not applicable)

1-3-94

1. Tariff classification and rate of duty leviable in respect of goods mentioned at Serial No. 01 to 05 of item 6 above is approved until further orders. Tariff classification and rate of duty leviable in respect of goods at Serial No. 05 to 05 of item 6 above as claimed by the assessee is not approved. Their Tariff classification(s) and rate of duty shall be as under, until further orders.

2. Tariff classification and rate of duty in respect of goods described against Serial No. 05 to 05 of item 6 above is approved provisionally. Assesments of these goods shall be made by the Central Excise Officer-in-charge provisionally, under Rule 9-B of the Central Excise Rules 1944.

3. All goods described against Serial No. 05 to 05 of item No. 7 shall be treated as non-excisable until further orders. Goods described against Serial No.(s) 05 to 05 of item No. 7 which have been claimed by the assessee as non-excisable are excisable.

Tariff classification and rate of duty leviable in respect of these goods shall be as under, until further orders.

Place Jalgaon

Date 1-March 94

Signature and stamp of Superintendent/Assistant Collector of Central Excise.

INSTRUCTIONS

NOTE: 1. A running serial number to each Classification List received by the assessment range during a financial year shall be assigned irrespective of commodity or manufacturer particulars against the effected product(s) giving the original serial number(s) assigned in the first Classification List. While filing an amendment to the first Classification List only the changed particulars shall be included in the amended list, unless a new list including all products of the product(s) shall be the same as given in the earlier list except for new products. In case of addition of new products, the new products will bear serial number in continuation of the last serial No. allotted to the products in the Classification List effective at the time of the filing of the additions. Where a product has ceased to be manufactured, the serial No. already assigned in the first Classification List shall not be allotted to any other product.

2. Where products falling under more than one Tariff item are shown under item 6 of this form, manufacturer's code No. for each of such Tariff item together with a suitable indication of the commodity should be shown separately against the head "Manufacturer's Code No."

3. Where a product attracts more than one type of duty such as basic, additional duty, auxiliary duty, cess or is subject to compounded levy each type of duty shall be indicated one below the other horizontally under Column 7 and the rate of duty and relevant notification No. and cite shall be shown under Column 8 and 9 respectively.

4. Classification List as approved by the proper officer shall be effective from the date from which the first clearance of the excisable goods covered by the Classification List, whichever is earlier.

5. If the assessee has any difficulty in filling column 5 to 9, he may leave them blank. These will then be filled up by the Central Excise Officer.

Stamp Stationery Man. Patel, Bombay 12 Phone 414313

8.2 Further, the records placed in the case file also indicate that the Monthly Returns in form RT-12s along with Central Excise invoices, RG23A Part-I & II; RG23C-Part I & II, TR6 challans, Modvat accounts covering the

entire clearances for the month of November, 1995 had been submitted by the appellants to the Superintendent of Central Excise, Jalgaon Range-II on 05.12.1995 and these have also been assessed finally by the jurisdictional Central Excise authorities, without raising any demand for short-payment or non-payment of duties. Therefore, it is evident that the clearances of the impugned goods were not disputed by the jurisdictional authorities either at the time of the assessment of monthly returns filed by the appellants or on verification of self-assessment made by the appellants, after introduction of self-assessment. Further, there does not appear to be any further demands raised after the disputed period, since the question of classification of impugned goods and the eligibility to exemption benefits have been finally settled by the clarificatory circular dated 16.03.1998 issued by the CBEC and in view of the decision of the Hon'ble Supreme Court in the case of *Elgi Ultra Appliances Limited* (supra).

8.3 From the records of the case, it also transpires that the jurisdictional Assistant Collector of Central Excise, Jalgaon-I Division in his order dated 15.06.1998 has held that the impugned goods including various parts and components of irrigation system manufactured out of the plastic material, are appropriately classifiable under 84.24/98.06 and are entitled to the benefit of exemption under notification No.69/87; such goods are excluded from the scope of classification under chapter 39. The said order of the original authority was appealed before the Collector of Customs (Appeals), Bombay by the Department; and vide order dated 03.05.1990, learned Collector of Customs (Appeals) had held that the order of the Assistant Collector dated 15.06.1998 is proper and legal both on the merits of classification as well as in the context of competence jurisdiction. Accordingly, he upheld the order of classification by the party and dismissed the appeal filed by the Department. As the issue of classification of the impugned goods in respect of the appellants was well settled by the aforesaid orders, it is only on 31.10.1994 by issue of a letter from the Inspector of Central Excise (Preventive), Nashik, the appellants were directed for payment of appropriate Central Excise duty on clearance of tubes/tubings; vide letter dated 06.12.1994 of the Superintendent of Central Excise, the appellants were asked to pay the Excise duty under protest, by following the procedure prescribed in Rule 233 *ibid*, and revise the Central Excise Registration so as to indicate the product 'polytubes' classifiable under sub-heading 3917.00 being added in their existing Central Excise Registration certificate. As explained by the appellants, they

had taken up the aforesaid dispute in classification of the impugned goods with the Central Board of Excise and Customs (CBEC) were issued a clarification circular No. 380/13/98-CX dated 16.03.1998 on the issue. This was also reiterated by the jurisdictional Commissioner of Central Excise and Customs, Aurangabad in his letter dated 05.02.2001, addressed to the Assistant Collector of Central Excise, Jalgaon Division informing him about the factual position as follows; that the classification of polytubes, laterals, pipes was finally settled in the order dated 30.07.1999 of the Tribunal in the case of *Elgi Ultra Appliances Ltd.* (supra) which has been upheld by the Hon'ble Supreme Court and the Commissioner, Central Excise, Aurangabad had dropped the demand of duty on polytubes in Order No.44/C.Ex/95 which has also been upheld by the Tribunal; therefore the issue of classification of polytubes, laterals, pipes is finally decided under heading 8424 of the Central Excise Tariff Act, 1985. Accordingly, he directed the jurisdictional Central Excise officers to decide all pending issues. However, it appears that the entire issue of classification dispute of the impugned goods claiming that part of the goods were classified under sub-heading 3917.00 in order to claim Modvat credit, when sold to the consumers; and part of the same goods were classified under heading 8424.10 for clearances made without payment of excise duty by availing exemption, when cleared to depots and shop premises, is without examination of the entire facts of the case right from the beginning of the dispute and with utmost disregard to the laid down law on classification, exemption and the circular issued by the CBEC for uniformity in classification and assessment of goods, orders passed by the higher judicial forum. For these reasons alone, we find that the impugned order is not legally sustainable.

8.4 In view of the above, it also cannot be said that the excisable goods were removed by the appellants from the factory premises of manufacture, without paying the applicable duty to categorise such removals as non-duty paid or clearances made in a clandestine manner, since the Central Excise authorities had approved the removal of goods under the classification of sub-heading 8424.00, on which the applicable excise duty leviable thereon is 'NIL'. Therefore, in our considered opinion there exists no valid ground for treating the clearances made by the appellants being in violation of Rule 9(1) and Rule 173F of Central Excise Rules, 1944.

8.5 From the available records in the case file, we find that the periodical RT-12 returns have been submitted by the appellants to the jurisdictional

Central Excise authorities along with details of RG-23 accounts, copies of Excise invoices covering clearances of the goods from their factory, and these returns had been duly approved by the Department. Further, the daily stock account, in the prescribed form of R.G.1 have been maintained by the appellants and produced before the jurisdictional Central Excise authorities. Further, it has also been explained by the appellants that during the course of manufacture of impugned products there arises waste, defective goods, which are taken further for grinding and granulation for further processing in manufacture of final products. In addition to this, the impugned goods have to undergo various tests prescribed as per BIS Standard IS-12786:1989, in order to enable the impugned products marketed as drip/sprinkler irrigation system. It was also explained by the appellants that the quantity of goods shown as clandestine clearances made by them are nothing but the quantity of waste or rejection; these have been duly accounted for in their factory's log book and that tallies with the quantity taken for reprocessing by grinding of the rejected/waste material; the log sheets of production clearly shows that defective material is sent for grinding and mentioned in the RG-1 register; they have sold the goods directly to their customer (farmers) from their factory premises under cover of central excise invoices and also to their depots, from where duty paid goods were sold to the dealers and customers under cover of commercial invoices. Regarding, the difference in quantities of goods reflected in production report and RG1 report, they had submitted reconciliation statements, re-work grinding register vide their letter No. JISL/NMS/04/2004 dated 28.3.2004 showing the figures of actual production of polytubes (laterals), micro tubes and the HDPE pipes of different varieties made during November 1995 to November 1997 and the production figures of the goods (month wise total) as per log book, recorded in RG1 and the difference quantity for the respective products separately. However, these were not examined by the learned Commissioner of the ground there was no separate account of virgin material and recycled material, and hence he did not accept the stand of the appellants that 90% of virgin material and 10% of re-worked/ground material is taken for production of impugned goods, thereby the accounts of RG-1 have been properly maintained. On the other hand, learned Commissioner has held that the rejected pipes during the quality checks shown by the appellants in the records, have been disposed of in a clandestine manner to their customers/farmers under the cover of shop/the

depot invoices. Since, entire records relating to production/ manufacture of impugned goods, clearances made through Central Excise invoices, Modvat accounts have been produced by the appellants periodically before the jurisdictional authorities, we find that these evidential documents prove the fact that proper assessment of all the goods cleared from the factory have been made by the Department, and therefore there exist no valid ground for alleging violation of sub-rules (1) (2) (3) & (4) of Rule 173G of the Central Excise Rules, 1944.

8.6 In this regard we find that the Co-ordinate Bench of the Tribunal in the case of *Rajasthan Explosives & Chemicals Ltd., Vs. Commissioner of Central Excise, Jaipur-I*⁴ involving identical set of facts, have held that the appellants therein have properly recorded the production of goods in RG-1 register and the allegation of clandestine removal have not been proved by the investigation with any independent evidence, and thus the order confirming the duty demand was set aside. The relevant paragraphs of the said order dated 20.12.2016 of the Tribunal are extracted below:

"3. *We have carefully considered the submissions from both the sides and perused the records. The allegation of duty evasion against the appellant company and duty demand against them is based on the documents called "incentive sheets" from 1995-96 to 1997-98 period, recovered from the residential premises of Shri M.L. Agarwal, Dy. General Manager. The submission of the appellant is that the quantity reflected in incentive sheets are further subjected to quantity controls in terms of the ISI specifications and as much as 35% of the quantities reflected in incentive sheets get rejected in quality control. Subsequent to quality control the goods are packed and it is at this stage that the quantum of production is entered in RG-1.*

We find a lot of merit in the arguments advanced by the appellant. The quantity of production is to be recorded in RG-1 register after it has reached the stage of completion of manufacture. The goods cannot be considered as fully manufactured unless the quality control is completed and it is properly packed. Moreover, the goods are in the nature of explosives and the Chief Controller of Explosives had laid down strict conditions for quality control as well as packing. Hence, we conclude that incentive sheets cannot be a true reflection of the quantum of explosives manufactured.

7. *The allegations made against the appellant are of serious nature. They are engaged in the manufacture of explosives which are strictly controlled. Even the factory of manufacture of such goods are under the strict supervision of the Chief Controller of Explosives. We also find that the appellant is a joint sector company between RIICO and M/s. Ideal Chemicals Ltd. it is on record that almost 90% of the production of explosives is supplied to the Government and Government undertakings to whom goods cannot be supplied clandestinely and without records. As discussed in the above paragraphs, the learned Commissioner has*

⁴ 2017 (357) E.L.T. 269 (Tri. - Del.)

proceeded to confirm the demand on the basis of incentive sheets, photocopies of invoices seized from third party, etc. The appellant has successfully rebutted these evidences relied upon by the Commissioner. We also find that no investigation has been undertaken by Revenue towards procurement of additional raw materials clandestinely. No other corroborative documents have been produced such as increased electricity consumption. No transporters have been covered to establish the trail of supply of the alleged clandestinely cleared goods. Investigations against the consignees have also not been done before raising demand on the allegation of clandestine clearance. The onus is definitely on the Department to establish manufacture and clearance of such goods and also the receipt of payments. In the absence of such investigation and evidence, we are unable to sustain such huge demand for duty. Once the demand for duty payable, is not sustained there is no justification to impose penalties on the appellant company as well as on connected persons."

8.7 In the present case before us, the investigation have not produced any document to state that there was clearances of goods for which the payments were received by the appellants to indicate that it was a clandestine clearance. On the other hand, the appellants have accounted all the clearances made by them (both on payment of Central Excise duty and on availment of exemption benefit) in their books of accounts, and the entire sale proceeds has been duly accounted in the financial records. The entire records relating to production/manufacture, clearances of goods having been submitted to the Department periodically, and when the impugned goods were entitled to full exemption from payment of Central Excise duty, there exist no ground for the claim of the Department that the appellants have in suppression of actual production have cleared unaccounted goods with an intent to evade payment of duty, and for confirmation of adjudged demands invoking extended period.

8.8 We find that in the case of *Collector of Central Excise Vs. Chemphar Drugs & Liniments*⁵, the Hon'ble Supreme Court has held that there should be evidential record to prove that something positive other than mere inaction or failure on the part of the manufacturer or producer, or conscious or deliberate withholding of information, when the manufacturer knew otherwise, is required to saddle the manufacturer with duty liability for the extended period. The relevant paragraph in the said judgement is extracted and given below:

"8.....In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or

⁵ 1989 (40) E.L.T. 276 (S.C.)

erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case."

In view of the above, we are of the considered opinion that the adjudged demands invoking extended period in the impugned order does not stand the legal scrutiny and therefore it is liable to be set-aside on this ground alone.

8.9 With respect to the issue that the appellants have availed ineligible Modvat credit, as the final products were exempt from payment of duty, the facts of the case indicate that the total duty payable for the disputed period (November 1995 to November 1997) demanded by the department is Rs.10,12,51,128/-, whereas the appellants had taken modvat/cenvat credit of Rs.8,14,52,284/- and utilized therefrom Rs.8,06,46,652/-, leaving the balance of Rs.8,05,632/-. In such cases, where there is no legal requirement for payment of Central Excise duty on the final products on account of exemption, then there can be no question of payment of duty; and if the duty has already been paid on such clearances, then the Modvat credit cannot be denied by holding that the goods are exempted. The above view also finds support in the judgement of Hon'ble High Court of Gujarat in the case of *Commissioner of Central Excise & Customs, Surat-III Vs. Creative Enterprises*⁶, wherein it was held that if the activity of the respondent-assessee does not amount to manufacture, there can be no question of levy of duty, and if duty is levied, Modvat credit cannot be denied by holding that there is no manufacture.

9. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal, Hon'ble High Courts and Hon'ble Supreme Court, we are of the considered view that the impugned order dated 24.10.2006 in confirmation of the adjudged demands by invoking the extended period of limitation under Section 11A(2) of the Central Excise Act, 1944 read with Rule 9(2) of Central Excise Rules, 1944 and consequent imposition of penalties on the appellants is not legally sustainable.

⁶ 2009 (235) E.L.T. 785 (Guj.)

10. In the result, the impugned order dated 24.10.2006 passed by the learned adjudicating authority is set aside and the appeals filed by the appellants are allowed in their favour.

(Order pronounced in open court on 17.07.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha