IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.72 OF 2015

Commissioner of Central Excise,
Pune-I .... Appellant
Vs.
Emcure Pharmaceuticals Ltd. .... Respondent

Mr. Swapnil Bangur with Mr. Sham V. Walve for the Appellant.
Mr. V. Sridharan, Senior Counsel with Mr. Prakash Shah and Mr. Jas Sanghavi i/by M/s. PDS Legal for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 24, 2016

P.C:

1. We have heard Mr. Bangur, appearing for the appellant. He submits that the questions proposed at pages 5 and 6 are all substantial questions of law.

2. He would submit that they arise from the erroneous understanding of the Tribunal with regard to the applicability of

Section 11A of the Central Excise Act, 1944 and secondly, the concessional rate of duty in terms of serial No.3 of Notification No.23/2003-Central Excise, dated 31-3-2003. These are substantial questions of law, according to Mr. Bangur, for the show cause notice was issued on 3-7-2009, within a period of five years. The assessee was working under a scheme of self-removal procedure and it was for them to have availed of the Notification if that was applicable. In the present case, there was a wilful misstatement and until the evasion was discovered, it was not possible for the Revenue to proceed. The extended period of limitation is rightly invoked.

3. Upon a reading of the Tribunal's order, we are unable to agree. The Tribunal found and as a matter of fact that whatever may be the procedure adopted and if it contravenes the law, the Department should have taken prompt action. The Department though in the know of things on 14-6-2004, allowed the assessee to avail of the benefit of the above Notification. The Tribunal found that the returns were filed in which the assessee indicated that it effected advance Domestic Tariff Area

clearances under Notification No.23/2003. Thus the fact was known to the Department and hence issuing a show cause notice dated 3-7-2009 covering a period April, 2004 to March, 2006 was barred.

4. These very facts were, therefore, appreciated by the Tribunal and in arriving at the conclusion that the show cause notice and the proceedings in pursuance thereof were barred by limitation. It may be that the Tribunal dealt with an incidental contention of the Revenue. Merely because that incidental question has been dealt with, we cannot loose sight and shift the focus from the main question. The main question was the applicability of Section 11A and invocation of the extended period thereunder. The extended period could not have been invoked in the absence of the requisite ingredients and to be found in Clauses (a) to (e) of sub-section (4) of Section 11A of the Central Excise Act, 1944. This is clearly a finding of fact and reached in the backdrop of the assessee's peculiar case. We do not think that such findings raise any substantial question of law. The Tribunal's view cannot be said to be perverse. It is a

possible view of the matter. The appeal is devoid of merits and is dismissed.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)