

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1363-1366 OF 2002

COMMNR. OF CENTRAL EXCISE & CUSTOMS

Appellant (s)

VERSUS

M/S. SURESH SYNTHETICS & ANR.

Respondent(s)

(With office report )

Date: 21/08/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA  
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s) Mr. Nagendra Rai, Sr. Adv.  
Ms. Shweta Garg, Adv.  
Mr. B.K. Prasad, Adv.

For Respondent(s) Mr. S.K. Bagaria, Sr. Adv.  
Mr. Tarun Gulati, Adv.  
Mr. Jaiveer Shergil, Adv.  
Ms. Bina Gupta, Adv.

UPON hearing counsel the Court made the following  
ORDER

Civil Appeals are dismissed with no order as to costs.

(Suman Wadhwa)  
Court Master

Court Master

(Madhu Saxena)

Signed order is placed on the file.  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1363-1366 OF 2002

APPELLANT COMMNR. OF CENTRAL EXCISE & CUSTOMS ..

vs.

RESPONDENTS M/S. SURESH SYNTHETICS & ANR. ..

ORDER

On 14.7.2000 a show cause notice was issued to the assessee demanding a sum of Rs.23.85 lacs leviable on 50,536.30 kgs. of Polyester Textured Yarn valued at Rs.26.83 lacs by way of customs duty together with imposition of penalty and interest. By his order dated 28.3.2001 the Commissioner confirmed the demand. Aggrieved by the decision of the Commissioner the matter was carried in appeal by the assessee to the

Tribunal.

Before the Tribunal the short point raised by the assessee was that duty to be paid by a 100% export oriented unit for clearance in the Domestic Tariff Area is the duty of excise and not customs duty. There is merit in the above contention. The duty in question is excise duty and not customs duty. Even the investigations were made under the Central Excise Act, 1944. Therefore, the show cause notice was defective in law and since it was defective notice the demand was not maintainable. For the aforesaid reasons the Tribunal

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was right in coming to the conclusion that the show cause notice was defective.

Before concluding we may refer to the judgment of the Division Bench of this Court in the case of Sachi Allied Products Limited, U.P. vs. Commissioner of Central Excise, Meerut reporting in 2005 (7) SCC 159 we quote herein below para 16 and 17 of the said judgment.

"16. Thus according to the Appellate Tribunal, since the dealers in Uttar Pradesh who purchased the goods from Syndet, and independent dealers in other parts of the country to whom the appellants directly sold the goods are different class of buyers, the appellants' price to the independent dealers cannot be taken as the basis for assessing the appellants' sales to Syndet in Uttar Pradesh. This finding of the Appellate Tribunal is based on first proviso to Section 4(1)(a) of the Act. While the show-cause notice and the order of the Collector proceeded on the basis of the invocation of third proviso to Section 4(1)(a) of the Act, the Appellate Tribunal for the first time in the impugned order has sustained the proceedings on the basis of first proviso to Section 4(1)(a) of the Act. It was argued that the first proviso to Section 4(1)(a) of the Act was never invoked by the Department either in the show-cause notice or in the impugned order and it was for the first time that the Appellate Tribunal in the impugned order has sought to sustain the impugned order by invoking the first proviso to Section 4(1)(a) of the Act. It is thus seen that the Tribunal has gone totally beyond the show-cause notice and the order of the Collector, which is impermissible. The Appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show-cause notice or in the order.

17. In this context, we may usefully refer to the judgment of this Court in the case of Reckitt & Colman of India Ltd. vs. CCE. This Court held that it is beyond the competence of the Tribunal to make

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out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet." [Emphasis supplied by us]

In view of the said decision of this Court in Saci Allied Products Ltd. (Supra) there is no merit in these Civil Appeals filed by the Department. Accordingly, the same are dismissed with no order as to costs.

Before concluding we may mention that ordinarily we would have given permission to the Department to proceed in accordance with law to recover the amount as arrears of excise duty. However, in the present case we are concerned with the period 24/1/2000 to 27/2/2000. Therefore there is no question of our granting permission to the Department to proceed to recover duty as excise duty since the same is barred by limitation.

(S.H. KAPADIA) .....J.

.....J.  
(B.SUDERSHAN REDDY)

NEW DELHI;  
AUGUST 21, 2007.