

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 4229 OF 2003

COMMNR. OF CENTRAL EXCISE, MUMBAI

Appellant (s)

VERSUS

S. NARENDER KUMAR &amp; CO.

Respondent(s)

(With prayer for interim relief and office report )

Date: 13/04/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA  
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)

Mr. Harish Chandra, Sr. Adv.  
Ms. Aruna Gupta, Adv.  
Mr. B.K. Prasad, Adv.  
Mrs Anil Katiyar, Adv.

For Respondent(s)

Mr. Jay Savla, Adv.  
Mr. Sumit Ghosh, Adv.  
Ms. Renuka Sahu, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal has no merit and is dismissed in terms of  
the signed order.

(DEEPAK MANSUKHANI)  
Court Master

(RENU DIWAN)  
Court Master

(The signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

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O R D E R

This appeal is directed against the judgment and order dated 15.7.2002 passed by CEGAT allowing the appeal of the respondent holding that the extended period of limitation was not available to the department. Being aggrieved by the said judgment and order, the present appeal is filed by the appellant.

We have heard learned counsel appearing

for the parties.

The assessee manufactured the product Jaljira powder. It filed a classification declaration from time to time, i.e. from 1994 to 1999 under Chapter sub heading no. 0903.10 claiming exemption from payment of central excise duty. The aforesaid declarations of the respondent were also approved by the department. The classification list of Jaljira as submitted by the respondent was approved by the department over the years, i.e. from 1994 to 1999 and, therefore, the aforesaid assessment reached finality.

However, subsequently, a circular was issued wherein it was stated that Jaljira masala cannot be treated as spice and that it has to be essentially taken as an edible preparation falling under Chapter 21. In the said notification, it was further clarified that since Jaljira is used as a drink in the water, it is rightly classified under Chapter Heading no. 2108.

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Pursuant to the aforesaid clarification issued, a show cause notice was issued by the Commissioner of Central Excise in which it was also stated that proviso to Section 11 is applicable to the facts and circumstances of the case and, therefore, extended period of limitation is being taken recourse to and exercised by the commissioner. The respondent submitted its reply to the show cause contending, inter alia, that there was no wilful suppression on the part of the respondent and, therefore, the benefit of extended period of limitation cannot be invoked by the department. The Commissioner, however, held that there is suppression of facts and also clandestine removal or evasion of Central Excise duty and, therefore, the respondent is liable for duty. On appeal being filed, the Tribunal however, set aside the aforesaid order holding that the extended period of limitation is not available by passing the impugned judgment and order, as against which the present appeal is filed.

From 1994 to 1999, the respondent has been regularly filing their classification list with the department and the same have been approved by the department over the years. In that view of the matter, in our considered opinion, the decision of this court in the case of Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut 2005(188) E.L.T. 149 is squarely applicable to the facts and circumstances of the case. We may refer to paragraph 26 of the said judgment which reads as follows:-

"26. In Tata Iron & Steel Co. Ltd. Vs. Union of India & Ors. [1988(35) E.L.T. 605 (S.C.)], this Court held that when the classification list continued to have been approved regularly by the department, it could not be said that the manufacturer was guilty of "suppression of facts". As noted herein earlier, we have also concluded that the classification lists supplied by the appellant were duly approved from time to time regularly by the Excise authorities and only in the year 1995, the department found that there was "suppression of facts" in the matter of post-forming manufacturing process of the products in question. Furthermore, in view of our discussion made herein earlier, that the department has had the opportunities to inspect the products of the appellant from time to time and, in fact, had inspected the products of the appellant. Classification lists supplied by the appellant were duly approved and in view of the admitted

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fact that the flow-chart of manufacturing process submitted to the Superintendent of Central Excise on 17-5-1990 clearly mentioned the fact of post-forming process on the

rubber, the finding on "suppression of facts" of the CEGAT cannot be approved by us. This Court in the case of Pushpam Pharmaceutical Company Vs. Collector of Central Excise, Bombay [1995 Supp. (3) SCC 462], while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court, further, held:-

"In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

We may also refer to another decision of this Court in O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon (2005) 2 SCC 460 wherein in paragraph 38 of the said judgment, this Court has held thus:-

"We do not find any merit in these arguments. Nothing prevented the Department from calling upon the assessee over the years to produce their catalogues. The classification lists were duly approved by the Department from time to time. All the facts were known to the Department, whose officers had visited the factory of the assessee on at least 12 occasions. In the circumstances, we do not find any infirmity in the reasoning given by the Tribunal in coming to the conclusion that there was no wilful suppression on the part of the assessee enabling the Department to invoke the extended period of limitation under the proviso to Section 11-A(1) of the 1944 Act. However, we may clarify that the show-cause notices dated 24-6-1997, 27-5-1998, 15-10-1998, 31-3-1998 and 30-9-1999 are in time as held by the Tribunal."

The facts of the said cases are almost identical with the facts of the present case. In those cases also, the classifications were duly approved by the department from time to time. It was also held that the department could have called upon the assessee to produce their catalogues in case there was some confusion or doubt over the product of the respondent. Considering the facts and circumstances of the case, we find no infirmity in the reasoning given

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by the Tribunal and come to the conclusion that, in the facts and circumstances of the case, there was no wilful suppression on the part of the assessee enabling the department to invoke the extended period of limitation under the proviso to Section 11(A) of Central Excise Act, 1944.

Therefore, the appeal has no merit and is dismissed.

.....J.  
(DR. MUKUNDKAM SHARMA)

.....J.  
(ANIL R. DAVE)