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C.A.No. 3437-3438 OF 2000

ITEM NO. 102

COURT NO. 5

SECTION: III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NOS. 3437-3438 OF 2000@@  
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M/S SURYA AGRO OILS LTD. . . . . APPELLANT(S)

Versus

COMMNR., CENTRAL EXCISE, INDORE . . . . . RESPONDENT(S)

(With office report)

With

- C.A. No. 4986/2001 - (With office report and appln. for urging additional grounds to amend the prayer in appeal)
- C.A. No. 3553/2000 - (With office report)
- C.A. No. 7090/2000 - (with appln. for ex-parte stay and office report)
- C.A. No. 335/2001 - (With appln. for ex-parte stay and with office report)
- C.A. No. 422/2001 - (With appln. for stay and office report)
- C.A. No. 2140/2001 - (With appln. for stay and office report)
- C.A. No. 4263/2000 - (With office report)
- C.A. Nos. 8113-8114/2001 - (With appln. for c/delay in filing appeal and stay and office report)
- C.A. No. 3688/2000 - (With appln. for stay and office report)
- C.A. Nos. 3805-3807/2000 - (With office report)
- C.A. No. 4767/2000 - (With appln. for stay and with office report)
- C.A. Nos. 4832-4834/2000 - (With office report)
- C.A. No. 6272/2000 - (With office report)
- C.A. No. 6828/2000 - (With office report)
- C.A. No. 4103/2000 - (With appln. for permission to place additional documents on record and office report)
- C.A. Nos. 72-73/2001 - (With office report)
- C.A. Nos. 4249-4250/2001 - (With office report)
- C.A. Nos. 302-303/2002 - (With office report)
- C.A. No. 5323/2002 - (With appln. for ex-parte stay and office report)
- C.A. No. 3638/1999 - (With appln. for stay and with office report)

Date: 17/12/2002 This appeal(s) was/were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE M.B. SHAH  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

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For the Revenue:

Mr. Soli J. Sorabjee, A.G.  
Mr. Prateek Jalan, Adv.  
Mr. K. Swami, Adv.  
Ms. Nisha Bagchi, Adv.  
Mr. K.C. Kaushik, Adv.  
Ms. Vibha Dutta Makhija, Adv.  
Mr. B. Krishna Prasad, Adv.  
Mr. P. Parmeswaran, Adv.  
(for appellants in all matters except in  
C.A. Nos. 3437-3438/00, 4986/00  
and 3638/99)

For the assesseees :  
For appellants in

in CA 3437-3438/00

Ms. Manjula Gupta, Adv.

in CA 4986/01

Mr. M.N. Chandrashekharan, Sr. Adv.  
Mr. M.N. Rao, Sr. Adv.  
M/s Tara Chandra Sharma, C. Harishankar &  
Rupesh Kumar, Adv.

in CA 3638/99

Mr. M. Chandrashekharan, Sr. Adv.  
Mr. M.L. Shyjatha, Adv.  
Mr. C.N. Sreekumar, Adv.

For RRs in  
CA 3553/00

Mr. Ravindra Narain, Adv.  
Mr. Rajan Narain, Adv.  
Ms. Sonu Bhatnagar, Adv.  
Ms. Sampada Narang, Adv.

CA 7090/00

Ms. Rohini Nath, Adv.  
Mr. Umesh Kumar Khaitan, Adv.

CA 422/01

Mr. Balbir Singh, Adv.  
Mr. Rajesh Kumar, Adv.

CA 2140/01

Mr. V. Lakshmikumaran, Adv.  
Mr. A.R. Madhav Rao, Adv.  
Mr. V. Balachandran, Adv.

CA 8113-8114/01

Mr. Rupesh Kumar, Adv.  
Mr. Tara Chandra Sharma, Adv.

CA 3805-3807/01

Ms. V. Mohana, Adv.

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CA 6272/00

Mr. V. Lakshmikumaran, Adv.  
Mr. A.R. Madhav Rao, Adv.  
Mr. V. Balachandran, Adv.

CA 6828/00

Mr. Ravindra Narain, Adv.  
Mr. Ajay Aggarwal, Adv. for

M/s JBD & Co., Advs.

CA 4249-4250 &  
302-303/02

Mr. V.J. Francis, Adv.  
Mr. P.I. Jose, Adv.  
Mr. Jenis V. Francis, Adv.

CA 5323/02

Mr. T. Ramesh, Adv.  
Mr. S. Nanda Kumar, Adv.  
Mr. V. Vijayan, Adv.  
Mr. Yogesh Khanna, Adv.  
Mr. Rakesh K. Sharma, Adv.

CA 335/01, 4263/00,  
3688/00, 4767/00,  
4832-4834/00, 4103/00,  
and 72-73/01

Ex-parte

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

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Delink C.A. Nos. 422/2001, 2140/2001 and 3638/1999.  
At the request of the learned Attorney General C.A.  
Nos. 4986/2001 and 4103/2000 are adjourned for six weeks.  
Learned Attorney General also seeks four weeks time for  
producing the order passed by the Commissioner and correct  
copy of the Tribunal's order in C.A. Nos. 72-73/2001.  
Four weeks time is granted as prayed for, for production  
and correction.

Mr. Soli J. Sorabjee, learned Attorney General  
commenced his arguments at 12.15 P.M. and concluded 2.10  
P.M. Thereafter Ms. V. Mohana made her submissions for  
fifteen minutes. Mr. Ravindra Narain made his submissions  
for ten minutes. Thereafter Mr. T. Ramesh made his  
submissions for half an hour.

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C.A. No. 6828/2000 is dismissed in terms of the  
signed order.

Hearing concluded and judgment reserved in rest of  
the matters.

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Kalyani. (JANKI BAHTIA) @@  
AA  
COURT MASTER@@  
A AA

(Signed Order in C.A. No. 6828/2000 is placed on the file.)

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L.....T.....J

CA NOS. 3805-3807/2000@@  
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MR. SOLI J. SORABJEE@@

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Finding regarding suppression.

Tribunal issued notice beyond extended period of suppression.

Finding is against revenue.

Suppression not believed to be dislodged.

Assessee@@

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Question of classification has not been gone into by the Tribunal.

Deptt. issued notice to Hosur unit and not to Coimbatore unit.

Whether classification is right or not is the question to be gone into.

Remand to Tribunal on the question of classification.

Bench@@

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Appreciate the Tribunal's judgment with regard to the finding of suppression.

Counsel require re-classification

CIVIL APPEAL 5323/2002@@

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Concurrent finding

No suppression.

Whether to be classified under Chapter 73 or 81.

Under 73 25 and correspondingly paying duty and also filed. During the disputed period price list whereby the assessee is obligated to file.

Dispute with regard to classification.

Adjudicating authority has dropped the entire proceedings.

For the period July 1991- July 1993 Show Cause Notice issued on 8.2.1995 extending the invoked period.

Goods were cleared under Part-II Price List.

Assessee has filed with the Deptt. with regard to the comparison of goods so there is no suppression the entire demand godes. It is beyond two years.

Finding of suppression - page 28 Supreme Court notice at page 42

Page 39 Para 11

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This suppression is merely ipsi dixit.

Only question involved is was there deliberate or non-deliberate not classified under 72 but re-classifiable u/81. ultimately wrong classification.

Question whether today also you can do it within one year.

In the beginning, it was pointed out that this amendment would not help the revenue.

Para 13 :- Clear finding

Bench@@  
CCCCC

Original 11A as well as amended 11A does not give power to go beyond one year except suppression.

There is no suppression on the part of the assessee.

Similarly when there is an error or incorrect classification after one year, would be not to follow 11A but follow some other procedure to revise or review classification.

After classification list is approved after the amendment, issue show cause notice. After show cause notice you can also hold that you are liable for a period of one year after 2 years if there is suppression.

Prospectively also 11A.

11A only deals with short levy, short-payment, erroneous refund, non-levy or non-payment.

Relevant date is 12th January, 2000.

After the expiry of the limitation period nothing can be done.

If there is suppression then its five years.

Suppose classification list is approved assesment is passed would arise only in classification list.

Rule 173B - (In appeal 2693/2000 reserved on 11/12/2002)

Classification if revised will lead to the liability of duty.

There is some lacuna. This would create some difficulty once you confine yourself to one year or five years and in an obvious error you can't reclassify it.

Legislature has wrongly included 11A

Question of interpretation of the provisions.

There is no necessary period of limitation for reclassification.

There can also be a bona fide mistake.

As far classification is concerned, chapter is closed.

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Tribunal's order para 5

He does not challenge the classification. Wrongly claimed. Classification under Chapter 72.

There was specific allegation in the show cause notice that the Commissioner has not dealt with it.

All the allegations were disapproved at the time of giving reply to the show cause notice.

There would be a categorical finding. All the documents produced before this Court is available with the department. It was also available before the Commissioner, Appellate Authority. Why special finding has not been given by the Tribunal.

Page 5 of the paper book - Submissions made before the Appellate Authority paragraph 3.

Fact finding authority should give some reasons to accept any contention.

Page 51 of the paper book para 10.

It is for the party to go into the question with a clear finding.

Considering the documents which are available on record we do not think that there is any suppression.