

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.8098/2011

COMMR.OF CEN.EXC.SURAT II

Appellant(s)

VERSUS

M/S GUJRAT AGRO CHEM LTD.

Respondent(s)

WITH

C.A. Nos. 8099-8100/2011 & C.A. No. 8101/2011

O R D E R

1. Since the issues involved in all the captioned appeals are the same, they were taken up for hearing analogously and are being disposed of by this common order.

2. The subject matter of challenge before the High Court at the instance of the Revenue in appeals filed under Section 35G of the Central Excise Act, 1944 was a consolidated order dated 5-1-2009 passed by the Customs Excise Service Tax Appellate Tribunal (for short, 'CESTAT'). The following questions fell for the consideration of the High Court:-

(A) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that there was no mala fide intention on the part of the assessee to avail inadmissible credit and, therefore, the Department cannot invoke extended period of limitation under proviso to Section 11A of the Central Excise Act, 1944?

(B) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law by setting aside order of the adjudicating authority on limitation,

even though duty of customs were exempted by notification No.34/97-CUS and read with Exim Policy for 2002-07 which categorically disallowed Cenvat Credit of additional customs duty paid through debit from DEPB?"

(C) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in setting aside order of imposition of penalty of Rs.5,00,000/- on the respondent under Rule 15 of the Central Cenvat Credit Rules, 2002?"

3. When the matters were taken up for hearing today, the learned counsel appearing in Civil Appeal No.8098/2011 pointed out that having regard to the low tax effect, the appeal filed by the Revenue may not be entertained. He relied on a Circular dated 2-11-2023 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs which provides the monetary limit upto Rs.2 Crore so far as the Supreme Court is concerned. The Circular states that in exercise of the powers conferred under Section 131BA of the Customs Act, 1962 and in partial modification of earlier instructions issued in F.No.390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes and Customs has fixed the monetary limit below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court. So far as this Court is concerned, the monetary limit fixed is Rs.2 Crore.

4. In view of the aforesaid, without going into the merits of the matters, we dispose of all the appeals in view of the Circular referred to above. However, the questions of law are kept open.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
13TH NOVEMBER, 2024.

ITEM NO.109

COURT NO.15

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 SCivil Appeal No.8098/2011

COMMR.OF CEN.EXC.SURAT II

Appellant(s)

VERSUS

M/S GUJRAT AGRO CHEM LTD.

Respondent(s)

WITH

C.A. Nos. 8099-8100/2011 (III)

C.A. No. 8101/2011 (III)

Date : 13-11-2024 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s)

Mr. S. Dwarakanath, ASG
Mr. H.R. Rao, Adv.
Mr. Udai Khanna, Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. G.S. Makker, AOR

Mr. B. Krishna Prasad, AOR (Not present)

Mrs. Anil Katiyar, AOR (Not present)

For Respondent(s)

M/s. Karanjawala & Co., AOR
Mr. V. N. Raghupathy, AORUPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of, in terms of the signed order.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS(POOJA SHARMA)
COURT MASTER (NSH)

(Signed Order is placed on the file)