

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 2741-2742 OF 2001

Commissioner of Central Excise, Pune.

Appellant (s)

Versus

M/s. Pudumjee Pulp & Paper Mills Ltd.
& Anr.

Respondent (s)

(With office report)

Date: 20/04/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. H.K. Puri, Adv.
Ms. Shalu Gupta, Adv.
Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. Rupesh Kumar, Adv. for

Mr. Tara Chandra Sharma, Adv.

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

Appeals are dismissed. No costs.

(J.S. Rawat)
AR-cum-PS

(Kanwal Singh)
Court Master

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2741-2742 OF 2001

Commissioner of Central Excise, Pune.

Appellant (s)

Versus

M/s. Pudumjee Pulp & Paper Mills Ltd.
& Anr.

Respondent (s)

O R D E R

By the impugned judgment, The Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench, Mumbai [for short "the Tribunal"], relying upon the another two Members' Bench decision of the Tribunal in Everest Convertors v. C.C.E., Calcutta [1995 (80) ELT 91], which decision has been consistently followed in various other cases, namely, Burroughs Welcome (I) Ltd. v. C.C.E, Mumbai-III [2000 (124) ELT 522], S.A.I.L. v. C.C.E., Bhubaneswar [2001 (129) ELT 636], Albright & Wilson Chemicals v. C.C.E., Mumbai, [2001 (137) ELT 786], Bhor Industries Ltd. v. C.C.E., Mumbai [2001 (138) ELT 224], Bansal Auto Parts v. C.C.E., New Delhi [2003 (161) ELT 1163] and Mafatlal Industries Ltd. v. C.C.C.E., Vadodara 2003 (162) ELT 1143], has allowed the appeals.

The Revenue did not file any appeal either against the decision in the main case, i.e., Everest Convertors (supra) or the subsequent cases referred to above, except the present one. This Court in Birla Corporation Ltd. v. Commissioner of Central Excise [2005 (186) ELT 266 (S.C.)], relying upon an earlier decision of this Court, held that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. In paragraph 5 of the said judgment, this Court observed, thus:

"In the instant case the same question arises for consideration and the facts are almost identical. We

cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd. (supra) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assesseees in a quandary."

The aforesaid decision in Birla Corporation's case was followed in a catena of cases. See: Collector of Central Excise, Pune vs. Tata Engineering & Locomotives Co. Ltd. [2003 (11) SCC 193]; Berger Paints India Limited vs. Commissioner of Income Tax, Calcutta [2004 (12) SCC 42]; Birla Corporation Limited vs. Commissioner of Central Excise [2005 (6) SCC 95 = 2005 (186) ELT 266(SC)]; Jayaswals Neco Limited vs. Commissioner of Central Excise, Nagpur [2006(195) ELT 142(SC)], M/s. Vishal Malleables Limited v. C.C.E., Vadodara, [C.A. No. 2363 of 2001 decided on 19th January, 2006.].

Counsel for the Revenue relying upon Clause (1A) of Section 5A of the Central Excise Act, 1944, which reads as under:

"5A. Power to grant exemption from duty of excise.--

xxx xxx xxx

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods."

submits that the relief prayed by the assessee cannot be granted. We find from the foot Note that Clause (1A) of Section 5A of the Act was introduced by Act No. 18/2005 with effect from 13th May, 2005. Counsel contends

that Clause (1A) being clarificatory in nature would be retrospective in operation. Prima facie, in view of the fact that Clause (1A) came into effect w.e.f. 13th May, 2005, we do not find any substance in the submission that Clause (1A) would come into operation with retrospective effect. Counsel for the Revenue has not produced the speech of the Finance Minister. Leaving the question open and without recording any finding regarding the applicability or its being retrospective in operation at this stage, we reject the submission.

Thus, in view of the settled position in law, the present appeals are dismissed. No costs.

.....J.

.....
(ASHOK BHAN)

New Delhi;
.....J.
April 20, 2006.

.....
(MARKANDEY KATJU)