

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5145 OF 2008

COMMISSIONER OF CENTRAL EXCISE  
AND CUSTOMS, SURAT-I

... Appellant

VERSUS

M/S. VANDANA ART PRINTS PVT. LTD.

... Respondent

O R D E R

In the instant matter, special leave to appeal was granted limited to the question of penalty.

In this behalf, we may point out that in the Show Cause Notice issued by the Department, three duty demands were raised which were as follows: -

- (1) Duty demand of Rs.26,94,890/- based on Delivery Challans.
- (2) Duty demand of Rs.13,49,830/- based on duplicate invoices.
- (3) Duty demand of Rs.79,39,162/- based on two diaries seized from one Shri Maheshkumar Satyanarayan Jhwar and on his statement which was recorded during the investigation.

The Show Cause Notice was adjudicated upon and the demands were confirmed and on that basis, penalty equivalent to the duty demand was also imposed. The Tribunal, in appeal, set aside the duty demand of Rs.79,39,162/- but

maintained the other two duty demands. However, on that basis, the penalty is reduced to Rs.20 lakhs.

A neat submission that has been made by Mr. K.Radhakrishnan, learned senior counsel appearing for the appellant, is that in terms of Section 11AC of the Central Excise Act (hereinafter referred to as 'Act'), the penalty has to be equal to the duty so determined.

Section 11AC of the Act reads as under:-

"11AC. Penalty for short-levy or non-levy of duty in certain cases - Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined:

Provided that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account."

On the basis of the aforesaid language in the Section, the submission of Mr. Radhakrishnan is meritorious. Thus, while the penalty as demanded in respect of one Show Cause Notice had been quashed, the Tribunal could not reduce it for an amount lesser than the duty which has been upheld. The duty in respect of two demands comes to Rs.40,44,720/-. Therefore, going by the provisions of Section 11AC of the Act, the penalty should also have been Rs.40,44,720/- and not

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Rs.20 lakhs.

The appeal is, therefore, allowed to the aforesaid extent holding that the respondent shall pay penalty of Rs.40,44,720/-. Sum of Rs.20 lakh which has already been paid shall be adjusted and the balance amount of penalty shall be paid by the respondent-assessee within two months.

The appeal stands disposed of accordingly.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ROHINTON FALI NARIMAN ]

New Delhi;  
September 05, 2016.

ITEM NO.305

COURT NO.10

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 No. 5145/2008

COMMISSIONER OF CENTRAL EXCISE  
AND CUSTOMS, SURAT-I

Appellant(s)

VERSUS

M/S. VANDANA ART PRINTS PVT. LTD.

Respondent(s)

(With office report)

Date : 05/09/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.  
Mr. Rupesh Kumar, Adv.  
Ms. Aruna Gupta, Adv.  
Mr. H. K. Naik, Adv.  
Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. Alok Yadav, Adv.  
Mr. Somnath Shukla, Adv.  
Mr. Udit Jain, Adv.  
Mr. Praveen Kumar, Adv.

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

The appeal stands disposed of in terms of the signed  
order.

(Nidhi Ahuja)  
Court Master

(Tapan Kr. Chakraborty)  
Court Master

[Signed order is placed on the file.]