

Sl. NO. 101
II
(Part-heard)

COURT NO.4

SECTION I

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

C.A. NOs. 3908-3909 of 2001

M/s. Devans Modern Brewries Ltd.
Appellant(s)

App

VERSUS

Commissioner, Central Excise, Chandigarh
Respondent(s)
(with office report)

Res

With

C.A. No. 6276/2001, C.A. No. 4001/2002, C.A. No. 4002/2002 (with office report)

C.A. No. 9724/2003 (with prayer for interim relief and office report)

Date: 22/08/2006 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)
in CA3908-09 &
6276/2001

Mr. P.C. Jain, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Sandeep Jain, Adv.

In CAS 4001 & 4002/02

Mr. B.S. Chahar, Adv.
Mr. Vinay Garg, Mrs. Jyoti Chahar, Adv. for
Mr. Rajiv Nanda, Adv.

In CA 9724/03

Mr. Ashok Mathur, Adv.

For Respondent(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Raghavendra Rao H, Adv.
Mr. Tufail A. Khan, Adv. for
Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are disposed of in terms of the signed order leaving the parties to
bear their

own costs.

(Parveen Kr. Chawla)
Singh)

(Kanwal

Court Master

Court Master

Court M

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3908-3909 OF 2001

M/S DEVANS MODERN BREWRIES LTD.

..APPELLANT

VERSUS

COMMISSIONER, CENTRAL EXCISE,
CHANDIGARH

..RESPONDENT

WITH

CIVIL APPEAL NOS.6276/2001, 4001-4002/2002 & 9724/2003

O R D E R

This order shall dispose of all these appeals as the points involved in these appeals are the same.

For the sake of convenience, facts are taken from Civil Appeal Nos.3908-3909 of 2001.

These appeals are directed against final order Nos. 28 and 30/2001-D dated 12.1.2001 passed by Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal') in Appeal Nos. E/2844/2000-D and E/2694/2000-D whereby and whereunder the Tribunal has set aside the order passed by the Commissioner(Appeals) and restored the order-in-original.

Learned counsel appearing for the appellant has addressed his arguments on four points i.e. (i) appellant is a small scale industry; (ii) regarding maintainability of appeal before the Tribunal under Section 35B(2); (iii) regarding limitation and (iv) regarding penalty.

Heard learned senior counsel appearing for the revenue.

After hearing counsel on both sides, we do not find much substance in the submissions made by the learned counsel for the appellant on point Nos. (i) and (ii) and the findings recorded by the Tribunal on these points are confirmed. On the point of limitation and penalty, we are of the opinion that the Tribunal has not examined these points satisfactorily.

Five Show cause notices dated 10.8.1998, 23.9.1998, 26.11.1998, 31.12.1998 and 17.3.1999 for the period 18.2.1998 to 10.3.1998, 11.3.1998 to 22.5.1998, 23.5.1998 to 3.6.1998, 4.6.1998 to 30.6.1998 and December, 1998 to February, 1999 respectively were issued. Allegedly, according to the counsel for the appellant, the first four show cause notices were served on 14.1.1999. He fairly conceded that in so far as the fifth show cause notice dated 17.3.1999 is concerned, the same is within the period of limitation.

In view of the concession made by the learned counsel for the appellant, the finding of the Tribunal regarding fifth show cause notice is affirmed. In so far as other four show cause notices are concerned, if the date of service i.e. 14.1.1999 as given by the counsel for the appellant is accepted then the show cause notices would be clearly barred by time. In this connection, the Tribunal has relied upon the following findings recorded in the order-in-original:

"I have perused the acknowledgements of the party in respect of these Demand Notices. The SCNs dated 10.8.98, 23.9.98, 26.11.98 & 31.12.98 contain the dates of issue in bold and conspicuous numericals which couldn't escape the notice of even semi-literate man while acknowledging the receipt. Accordingly the party's contention of the notices being hit by time limitation appears to be an afterthought though mis-conceived and without any evidence to substantiate it. It wouldn't normally take more than two months for the party to agitate one as grave a matter as the

time barred nature of a demand. The chronology of the events and the facts on record clearly points to the baselessness of the party's contention."

Learned senior counsel appearing for the revenue contended that the Tribunal held that the notices were served within the period of limitation. In our view, the Tribunal has not recorded an independent finding on this point. The Tribunal has not considered as to what was the relevant date within the meaning of Section 11A(3)(B & C) of the Central Excise Act, 1944 (for short 'the Act'). Similarly, the Commissioner(Appeals) did not record any finding on the point of limitation.

So far as point of penalty is concerned, Section 11AC of the Act reads as follows:

"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."

A bare reading of the above section shows that penalty can be levied only if the excise duty 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 misstatement or suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of duty.

This Court in the case of Collector of Central Excise vs. H.M. M.

Limited reported in 1995 (76) ELT 497 (SC) also held that the limitation for

extended period is not invocable unless show cause notice puts assessee to notice

specifically as to which of the various commissions or omissions stated in the

proviso to Section 11A(1) of the Act had been committed. In para 2, this Court

observed as follows:

"...Therefore, in order to attract the proviso to Section 11A(1) it must be alleged in the show cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful mis-statement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is

no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been noticed or that the assessee was guilty of wilful mis-statement or suppression of fact. In the absence of such averments in the show cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11A(1) of the Act..."

Having gone through the show cause notices, we do not find that

assessee was put to notice as to which of the various commissions or omissions

stated in the proviso to Section 11A(1) of the Act had been committed by it and

only general show cause notices were issued.

In view of the foregoing reasons, we accept these appeals on the points

of limitation and penalty; set aside the order of the Tribunal and remand the case

back to the Tribunal to decide these points afresh in accordance with law without

being influenced by any of the observations made herein. It is made clear that no

fresh evidence shall be taken into consideration by the Tribunal for deciding

these issues.

The appeals are disposed of in the above terms leaving the parties to

bear their own costs.

J.

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[ASHOK BHAN]

NEW DELHI;

.J.

AUGUST 22, 2006.

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[MARKANDEY KATJU]