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C.A.No. 25 OF 2001
ITEM NO.102 (Part-Heard)

COURT NO.09

SECTION III

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

CIVIL APPEAL NO.25 OF 2001@@
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UNION OF INDIA & ORS.

... APPELLANT(S)

VERSUS

M/S CHARAK PHARMACEUTICALS (INDIA) LTD.

... RESPONDENT(S)

(With appln.(s) for c/delay in filing counter affidavit and with office reeport)

Date: 26/03/2003. This matter was called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s) Mr. Raju Ramachandran, ASG
Mr. N.K. Bajpai, Adv.
Mr. Hemant Sharma, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. A.R. Madhav Rao, Adv.
Mr. V. Lakshmikumaran, Adv.
Mr. Alok Yadav, Adv.
Mr. V. Balachandran, Adv.

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

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Mr. Raju Ramachandran, learned ASG appearing for the appellants resumed his arguments at 10.35 A.M. and concluded at 11.00 A.M. Thereafter, Mr. A.R. Madhav Rao, learned counsel for the respondent commenced his arguments and concluded at 11.20 A.M.

Delay condoned in filing counter affidavit.
The appeal is allowed in terms of the signed order. There will be no order as to costs.

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(K.K. Chawla) (Jasbir Singh)@@
AA
Court Master Court Master
[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.25 OF 2001@@
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UNION OF INDIA & ORS.

APPELLANTS

VERSUS

M/S CHARAK PHARMACEUTICALS
(INDIA) LTD.

RESPONDENT

O R D E R@@
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Heard parties.

This appeal is against a judgment dated 13.1.2000. The question before the Court is whether the respondents are entitled to the benefit of Kar Vivad Samadhan Scheme, 1998 (in short "KVSS").

Briefly stated the facts are that the respondents were clearing physicians samples. Between the Department and the respondents there was a dispute on the question how the value of the samples were to be worked out. A letter dated 26.7.1995 was issued by the Superintendent, Central Excise calling upon the respondents to calculate the value in a particular manner and to file a revised price declarations accordingly. The respondents were also asked to execute bonds.
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Subsequently, two show cause notices dated 28.7.1995 and 25.10.1995 were issued to the respondents. Those show cause notices were for the period January to August, 1995. Pending adjudication of these proceedings, the respondents followed the directions issued in the letter dated 26.7.1995 and cleared the samples on the basis of a provisional assessment and on executing bonds/bank guarantees.

In respect of the two show cause notices, which had been issued, adjudication took place on 16th March, 1998. Thereafter, as the KVSS was floated, the respondents applied under this Scheme in respect of the subject matter of those two show cause notices. These declarations were accepted and they were given the benefit of the Scheme.

For the subsequent period i.e. from 1.9.1995 to 31.1.1998, a show cause notice was issued on 16th March, 1999. Assessment then took place on 17th September, 1998. The respondents then applied under the KVSS for this period also. The respondents' declaration was returned on the
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ground that for this period no show cause notice had been issued to them prior to 31st March, 1998. It was pointed out that the show cause notice had been issued much after the relevant date i.e. 31.3.1998.

The respondents then filed a writ petition in the High Court seeking a direction that the declaration filed by them be accepted and that they be given benefit under the Scheme. By the impugned judgment, the writ petition has been allowed. The High Court has held that the Scheme being a beneficial one a liberal interpretation must be given. The High Court has held that the letter dated 26.7.1995 "tantamounts to a show cause notice" and "it is in the nature of a show cause notice". On that basis, the High Court has directed the appellants to process the declaration of the respondents. The High Court has also quashed the show cause notice dated 16th March, 1999.

If benefit is sought under a Scheme, like the KVSS, the party must fully comply with the ..4/-

provisions of the Scheme. If all the requirements of the Scheme are not met then on principles of equity, Courts cannot extend the benefit of that Scheme.

Let us now see the provisions of the Scheme. Under the Scheme "tax arrears" has been defined under Section 87(m). The said Section reads as follows:-

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"(m) "tax arrear" means.

(i) In relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration:

(ii) In relation to indirect tax enactment

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration under Section 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest,

fine or penalty which constitutes the subject matter of a demand notice or a show-cause notice issued on or before the 31st day of

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March, 1998 under that enactment but remaining unpaid on the date of making a declaration under Section 88 but does not include any demand relating to erroneous refund and where a show-cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

Explanation - Where a declarant has already paid either voluntarily or under protest, any amount of duties, cesses, interest, fine or penalty specified in this sub-clause, on or before the date of making a declaration by him under Section 88 which includes any deposit made by him pending any appeal or in pursuance of a court order in relation to such duties, cesses, interest, fine or penalty, such payment shall not be deemed to be the amount unpaid for the purposes of determining tax arrear under this sub clause;

(n) all other words and expressions used and not defined in this scheme but defined in any direct tax enactment or indirect tax enactment shall have the meanings respectively assigned to them in those enactments."

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Further, Section 95 provides as follows:-

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"Scheme not to apply in certain cases@@
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95. The provisions of this Scheme shall not apply -

(i) in respect of tax arrear under any direct tax enactment. -

- (a)
- (b)
- (c)

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(ii)

(a)

(b) In a case where show cause notice or a notice of demand under any indirect tax enactment has not been issued. "

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Thus, it is to be seen that for the Scheme to be applicable the amount of duties, cesses, interest, fine or penalty must have been determined as due or payable as on 31st March, 1998 and have remained unpaid or there must have been a demand or show cause notice issued before 31st March, 1998. It is further provided that the Scheme will not apply if there is no demand or show cause notice. It could not be disputed that the only provision for issue of a demand or show cause notice is Section 11-A.

We have read the letter dated 26.7.1995. This letter is merely the starting point of the dispute between the parties. Thereafter show cause notices dated 28.7.1995 and 25.10.1995 were issued. To be noticed that these show cause notices are issued after the letter dated 26.7.1995. If as held by the High Court the letter dated 26.7.1995 "tantamounted to a show cause notice" or was "in the nature of a show ..7/-

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cause notice" then there would have been no requirement or need to issue further show cause notices. Pending adjudication, under those show cause notices, the respondents decided to comply with the direction given in the letter of 26.7.1995 and provisionally paid and/or gave bonds/executed bank guarantees. However, for the period 1.9.1995 to 31.1.1998, no show cause notice had been issued till 16th March, 1999. Thus, it is clear that the High Court fell in error in holding that the letter dated 26.7.1995 "tantamounts to a show cause notice" or "was in the nature of a show cause notice".

Even otherwise this Court has held in the case of Metal Forgings v. Union of India reported@ CCCCCCCCCCCCCC CCCCCCCCCCCCCC in (2003) 2 SCC 36, that the law requires a show cause notice to be issued under a specific provision of law and not merely as a correspondence or part of some other order. It has been held that the notice must indicate the amount demanded and call upon the assessee to show if he has any objection to such demand. It is clear that the letter dated 26.7.1995 is not a ..8/-

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show cause notice under Section 11-A. There is no amount demanded under that notice nor is assessee

called upon to show cause whether he has any objection to the demand of that amount.

It was next argued that in any case there were two show cause notices dated 28.7.1995 and 25.10.1995 which had been adjudicated on 16th March, 1998. It was submitted that therefore there was determination on or before 31st March, 1998. It was submitted that the case of the respondents would therefore fall within Section 87(m)(ii)(a). In our view, this is a submission which merely needs to be stated to be rejected. The adjudication and the determination under the earlier show cause notices was for the period prior to January 1998. For the period 1.9.1995 to 31.1.1998 the adjudication took place only on 17.9.1998. Therefore, the assessee would not be entitled to the benefit of clause (a).

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In this view of the matter, we are unable to uphold the judgment of the High Court. The same is accordingly set aside. The appeal is allowed. The writ petition will stand dismissed. There will be no order as to costs.

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.....J.
(S.N. Variava)

.....J.
(H.K. Sema)

New Delhi, 0 0 0 0 0
March 26, 2003.