

üY

C.A.No. 6456-6458 OF 2000  
ITEM NO.110

COURT NO.08

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 NOS.6456-6458 OF 2000@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

NATIONAL WINDER ... APPELLANT(S)

VERSUS

COMMNR. OF CENTRAL EXCISE, ALLAHABAD ... RESPONDENT(S)

(with office report)

Date: 11/03/2003. These matters were called on for hearing today.@@  
AAAAAAAAA

CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant(s) Mr. A.R. Madhav Rao, Adv.  
Mr. Alok Yadav, Adv.  
Mr. B. Balachandran, Adv.

For Respondent (s) Mr. Rajiv Nanda, Adv.  
Mr. B.Krishna Prasad, Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

Heard learned counsel for the parties for about  
half an hour.

The appeals stand disposed of in terms of the  
signed order. There will be no order as to costs.

.SP1

(K.K. Chawla)  
Court Master

(Jasbir Singh)  
Court Master

[Signed order is placed on the file]

.PA  
.PL58

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6456-6458 OF 2000@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

VERSUS

O R D E R@@  
CCCCCCCC

.SP2

These appeals are against a decision of the larger Bench of the Customs, Excise And Gold (Control) Appellate Tribunal (CEGAT). The majority have held that a purchaser who claims refund under Section 11B must do so within six months of the date of purchase of the goods. It is held that the purchaser is not entitled to the benefit of the proviso to that Section even if the manufacturer has paid the duty under protest.

To consider the question, it is necessary to set out herein the relevant portion of Section 11B. The relevant portion of Section 11B reads as under:-

.....L.....I.....T.....T.....T.....T...J.

.SP1

"SECTION 11B. Claim for refund of duty. - (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy

..2/-

Commissioner of Central Excise before the expiry of six months from the relevant date@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC  
in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by him and the incidence of@@  
CCCCCCCCCCCCCCCC  
such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excise and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:

Provided further that the limitation@@  
CCCCCCCC  
of six months shall not apply where any duty@@



of the goods by such person;" (Emphasis@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC  
added)

.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

Section 11B was amended in 1991. After the amendment by virtue of sub-clause (a) in explanation "B" of Section 11B even a purchaser can claim refund. A manufacturer has to file his claim for refund within six months from the relevant date. The purchaser also has to file a claim for refund within six months from the date of purchase of the goods. The wordings of the ...4/-

-4-

proviso are relevant viz., "Provided further that the period of limitation of six months shall not apply where any duty has been paid under protest". Significantly, the proviso does not state that the period of limitation of six months will not apply where no protest has been lodged by the purchaser. Duty will always be paid by the manufacturer. Under Rule 233-B, at the time the manufacturer pays duty, he has to lodge a protest. A receipt or endorsement of "duty paid under protest" is issued to the manufacturer. There is no Rule or provision by which protest can be lodged by a purchaser. The wording of the proviso shows that the Legislature has worded the proviso in a manner which covers all claims for refund. The wide language of the proviso shows that it covers not just claims for refund by the manufacturer but also claims for refund by the purchaser. Thus, if duty is paid by a manufacturer under protest, then the limitation of six months will not apply even to a claim for refund by the purchaser.

We are, therefore, unable to accept the majority view. The impugned judgment accordingly needs to be and is hereby set aside.

..5/-

-5-

However, it must be clarified that before refund can be claimed either by the manufacturer or by the purchaser, the conditions of Section 11B must be fulfilled viz., it must be shown that the amount of duty of excise in relation to which such refund is claimed was "collected from or paid" by the person claiming refund and that the incidence of such duty has not been passed on by him to any other person. Therefore, even in a claim for refund by the purchaser, he would have to satisfy the Department that these conditions are fulfilled before any refund can be made to him.

In this view of the matter, we remit the matter back to the appropriate authority for consideration in the light of the law laid down herein.

The appeals stand disposed of accordingly. There will be no order as to costs.

.SP1

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

.....J.  
(B.P. Singh)

New Delhi,  
March 11, 2003