

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).10036/2010

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

APPELLANT(S)

VERSUS

M/S R.A.SHAIKH PAPER MILLS P.LTD.

RESPONDENT(S)

WITH

SLP(C) No. 2412/2011, SLP(C) No. 12549/2011, SLP(C) No. 1764/2012, SLP(C) No. 35358/2011 & SLP(C) No. 29737/2011

O R D E R

Though, the learned Additional Solicitor General has referred to the Judgment of this Court in UNION OF INDIA v. M/S RAJASTHAN SPINNING & WEAVING MILLS (2009) 13 SCC 448 wherein it is decided that mandatory penalty contained in Section 11AC of the Central Excise Act cannot be reduced by the courts, learned counsel for the respondent has drawn our attention to the Circular dated May 22, 2008 issued by the Central Board of Excise & Customs which, *inter alia*, states as under:

"In view of the points as discussed above, Board has decided that in all the cases, wherein penalty under Section 11AC of the Act is imposed, the provisions contained in first and second proviso to Section 11AC should be mandatorily mentioned in the Order-in-Original itself by the adjudicating authority."

It is not in dispute that, in these cases, there was no mention of penalty under Section 11AC of the Central Excise Act in

the show cause notice and also in the Order-in-Original dated 30.04.2004. Because of these reasons, as far as this appeal and the special leave petitions are concerned, the same are dismissed leaving the question of law open.

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

.....J.
[R.K.AGRAWAL]

NEW DELHI;
APRIL 18, 2016.

ITEM NO.49

COURT NO.12

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(s). 10036/2010

COMMR.OF CEN.EXC.& CUSTOMS

Appellant(s)

VERSUS

M/S R.A.SHAIKH PAPER MILLS P.LTD.
(with office report)

Respondent(s)

WITH

SLP(C) No. 2412/2011

SLP(C) No. 12549/2011

(With (With appln.(s) for c/delay in filing SLP and appln.(s) for exemption from filing c/c of the impugned order and Office Report)

SLP(C) No. 1764/2012

(With Office Report)

SLP(C) No. 35358/2011

Office Report)

SLP(C) No. 29737/2011

Office Report)

Date : 18/04/2016 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWALFor Appellant(s) Mr. P.S. Narsimha, ASG
Ms. Nisha Bagchi, Adv.
Mr. Rajiv Nanda, Adv.
Mr. B. Krishna Prasad, Adv.For Respondent(s) Ms. Reena Khair, Adv.
Ms. Praveena Gautam, Adv.Mr. A.G. Garg, Adv.
Mr. Rakesh Garg, Adv.
Mr. Sidharth Rathore, Adv.
Ms. Shweta Garg, Adv.UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal and special leave petitions are dismissed in terms of the signed order.

Interlocutory application(s) pending, if any, shall stand disposed of accordingly.

(Ashwani Thakur)

COURT MASTER

(Signed order is placed on the file)

(Tapan Kr. Chakraborty)

COURT MASTER