

CENTRE FOR DEVELOPMENT OF ADVANCED
COMPUTING, PUNE

v.

COMMISSIONER OF CENTRAL EXCISE, PUNE

FEBRUARY 27, 2002

[B.N. KIRPAL, SHIVARAJ V. PATIL AND
BISHESHWAR PRASAD SINGH, JJ.]

Central Excises Act, 1944

S.11-A, first proviso—Levy of duty within extended period—Research organization—Import of goods—Getting exemption from payment of customs duty—Goods emerged during research and experiments—Bona fide believed by assessee as exempt from duty—Revenue imposing duty under the provisions of s.11-A—Held, it can not be said that goods supplied by assessee come within the expression “that the goods are produced during the carrying out of experiments or research”—However, since the assessee was treated as a research and development unit and was entitled to import goods without payment of customs duty, it cannot, be-ruled out that assessee might have believed that the goods manufactured and supplied by it were not liable to excise duty—There was no tangible basis for Revenue to conclude that there was wilful suppression for evasion of duty by assessee—Thus, though duty was leviable on the said goods, Revenue could not invoke the extended period of limitation of five years u/s 11-A.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2749 of 2001.

From the Judgment and Order dated 18.12.2000 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/1790/96-B in F.O. No. 1965 of 2000-B.

V. Lakshmikumaran, M.P. Devanath and V. Balachandran for the Appellant.

N.K. Bajpai, Jaideep Gupta, Ms. Nisha Bagchi and B. Krishna Prasad for the Respondent.

A The following Order of the Court was delivered :

In the instant case, duty is sought to be levied by the respondent by taking recourse to the extended period of limitation under Section 11A of the Central Excises Act.

B The plea of the appellant is that it was established as a research organisation and had even been importing goods from abroad and getting exemption from payment of customs duty on the basis that it was a research organisation. In reply to the show cause notice in paragraph 2.3 it has been specifically stated that the appellant was under a *bona fide* belief that the goods emerged during the research and experiments were fully exempt from payment of duty and therefore, no further compliance with the provisions of Excise Law was called for. Mr. Lakshmikumaran submits that in view of this explanation, the provisions of Section 11A proviso were not applicable and he further submits that in actual fact the products supplied by the appellant emerged out of their research activity and no excise duty was payable.

D We are unable to agree with the learned counsel that what was supplied by the appellant would come within the meaning of the expression "that the goods are produced during the carrying out of experiments or research". It is quite obvious that the appellant had a technical expertise to manufacture sophisticated equipment on the orders placed on it even though the appellant is a Research & Development Organisation. As a result of its research it had acquired sufficient acumen to be able to manufacture the equipment tailor-made for the use of the purchaser. The equipment so manufactured in supply cannot be regarded as being a product of research.

F We, however, agree with the learned counsel for the appellant that on the facts of the present case, the extended period of limitation would not apply. Our attention has been drawn to the fact that the main object as per the Memorandum of Association whereby the appellant was established, was to carry out research etc. Furthermore, by letter dated 12th July, 1988, the Department of Electronics had recognised the appellant as a research and development unit. A similar recommendation was also made on 7th May, 1991 by the Ministry of Science and Technology, Government of India. Such recommendation entitled it to make imports from abroad without payment of customs duty. Under the circumstance, there is no reason to conclude that the appellant would not have believed that the goods manufactured by it and supplied were not liable for payment of excise duty. There does not appear

✓ to be any tangible basis for the Department to come to the conclusion that there was wilful suppression for evasion of duty by the appellant. This being so, while duty was leviable on the goods manufactured by the appellant the Department, however, could not invoke the extended period of limitation of five year under Section 11A of the Act. A

For the aforesaid reasons, this appeal is allowed.

B

R.P.

Appeal allowed.