

M/S. USHA RECTIFIER CORPN. (I) LTD. (PRESENTLY
KNOWN AS M/S. USHA (I) LTD.)

v.

COMMISSIONER OF CENTRAL EXCISE, NEW DELHI
(Civil Appeal no.6866 of 2000)

JANUARY 13, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Central Excise Rules, 1944: rr.9 and 49, explanation – Captive consumption – Manufacture of testing equipment by assessee for testing its own final products – Testing equipment manufactured within the factory – Admission by assessee that the import of testing equipment was avoided to save foreign exchange and parts and components were purchased to develop the testing equipment – Demand of duty on testing equipment – Held: Duty payable on the testing equipment – It was admitted by the assessee that they had undertaken such manufacturing process of the testing equipments to avoid importing of such equipment – Such a statement confirmed the position that such testing equipments were saleable and marketable – Explanations to Rule 9 and 49 provides that excisable goods manufactured and consumed or utilized within the factory premises as such are deemed to have been removed from the premises immediately for such consumption or utilization and duty is leviable on such excisable goods.

Central Excise Act, 1944: s.11A – Demand – Limitation – Suppression of relevant facts – Non-payment of duty on the testing equipment manufactured for the purpose of testing the final products – L-4 licence not obtained by the assessee nor the fact of manufacturing of the said equipment disclosed to the department – The said knowledge of manufacture acquired by the department only subsequently – Held: In view

A *of non-disclosure of such information by the assessee and suppression of relevant facts, the extended period of limitation was rightly invoked by the department.*

B **The appellant-assessee, a manufacturer of electronics equipments, manufactured a machinery in the nature of testing equipments costing Rs.31.27 lacs to test its final products. A show cause notice was issued on the assessee demanding duty on the plant and machinery including the testing equipments manufactured by them. After considering the reply of the assessee, the authorities confirmed the demand. The CEGAT dismissed the appeal filed by assessee. The instant appeal was filed challenging the order of the CEGAT.**

C **Dismissing the appeal, the Court**

D **HELD: 1. The demand for payment of central excise duty in the instant case was made on the basis of statement made by the appellant-assessee in their balance sheet to the effect that there was an addition to plant and machinery including testing equipments worth**

E **Rs. 31.26 lacs which were made in the company by capitalisation of the expenditure on raw material, stores and spares and salary/wages and other benefits. The said statement and details were mentioned in Schedule 'Q' appended to notice of balance sheet and profit and**

F **loss account of the appellant for the year ending December, 1987. The said position was further corroborated by the Director's report appearing in the Annual Report for the year ending December, 1988, wherein it was mentioned that during the year the**

G **company developed a large number of testing equipments on its own for using the same for the testing of semi-conductors manufactured by it. Once the appellant had themselves made admission in their own balance sheet, which was not rebutted and was further**

H **substantiated in the Director's report, they could not later**

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turn around and make submissions contrary to their own admissions. Moreover, they also clearly took a stand in their reply to the said show cause notice that they bought various parts and components to develop the testing equipments for use within the factory and that such steps were undertaken to avoid importing of such equipments from the developed countries with a view to save foreign exchange. Even if the testing equipments were used for captive consumption and within the factory premises, considering the fact that they were saleable and marketable, duty was payable on the said goods. The fact that the equipments were marketable and saleable was also an admitted position as the appellant has admitted it in their reply to the show cause notice that they had undertaken such manufacturing process of the testing equipments to avoid importing of such equipments. Such a statement confirmed the position that such testing equipments were saleable and marketable. The provision of Explanations to Rule 9 and 49 of the Central Excise Rules are very clear as it provides that for the purpose of the said rules, excisable goods manufactured and consumed or utilized as such would be deemed to have been removed from the premises immediately for such consumption or utilization. Therefore, the contention that no such duty could be levied unless it is shown that they were taken out from the factory premises is without any merit. [Paras 7 to 11] [352-G-H; 353-A-B-D-H; 354-D]

Calcutta Electric Supply Corpn. v. CWT (1972) 3 SCC 222 – relied on.

2. The appellant had not obtained L-4 licence nor they had disclosed the fact of manufacturing of the said goods to the department. The said knowledge of manufacture came to be acquired by the department only subsequently. In view of non-disclosure of such information by the appellant and suppression of relevant facts, the extended period of limitation was rightly

A invoked by the department. [Para 12] [354-F-G]

Case Law Reference:

(1972) 3 SCC 222 relied on Para 8

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6866 of 2000.

From the Judgment & Order dated 10.08.2000 of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), New Delhi in Excise Appeal No. 5496/92-B.

C Vinod K. Shukla, Shiv Kumari Suri for the Appellant.

R.P. Bhatt, B. Krishna Prasad, Gautam Jha for the Respondent.

D The Judgment of the Court was delivered by

E DR. MUKUNDAKAM SHARMA, J. 1. By this judgment and order we propose to dispose of the appeal which is filed by the appellant herein being aggrieved by the judgments and orders passed by the authorities including the Customs, Excise & Gold [Control] Appellate Tribunal [for short 'CEGAT'] demanding duty of Rs. 4,92,566.28 from the appellant on the plant and machinery including testing equipments manufactured by them.

F 2. The appellant herein is a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture the appellant also manufactured machinery in the nature of testing equipments to test the final products of the assessee company costing Rs. 31,27,405/- as per Note 6 of the Schedule 'Q' page 15 of the balance sheet for the year ending December, 1987. The aforesaid position was further reiterated in the Director's report appearing at page no. 2 of the Annual Report for the year ending December, 1988.

H 3. A show cause notice was issued to the appellant

directing them to show cause as to why central excise duty should not be levied on it along with interest and penalty. The appellant submitted its reply to the aforesaid show cause notice wherein they took a stand that no manufacture of plant and machinery of the nature alleged had taken place during the year to warrant levy of central excise duty. It was further stated that for research and development wing of the company and to carry out trials, experiments and for undertaking development job based on the latest technology available worldwide or through their own resources it had bought out items, parts, components, etc., and for that purpose such items were assembled in the factory. It was also stated that after research is so done, and if it was not successful, the same was disassembled. It was contended that the job that was carried out in that process was purely for research and developmental works and it was not manufacture of testing equipments. In the said reply it was also stated that project to develop the aforesaid testing equipment for use within the factory was undertaken to avoid importing of such equipment from the developed countries with a view to save foreign exchange but since the project failed, no serious effort had since been made to complete the manufacture of the said testing equipments. It was further contended that under Section 3 of the Central Excises and Salt Act, 1944 the imposition of excise duty is on the act of manufacture or production and when there is no manufacture or production, there cannot be any duty so leviable, particularly, when the aforesaid processed material was not marketable.

4. The Additional Collector, Central Excise under order-in-original No. 6/92-93 dated 27.5.1992 after consideration of the contentions confirmed the demand of duty amounting to Rs. 4,92,566.28 and imposed a penalty of Rs. 50,000/- holding that in view of the documentary evidence and the balance sheet it had been proved beyond doubt that they had manufactured plant and machinery/testing equipments worth Rs. 31.26 lacs. Being aggrieved by the said order, an appeal was filed before the Collector (Appeals), who dismissed the said appeal. Still

A aggrieved, the appellant filed an appeal before the CEGAT
which was also rejected after hearing the counsel appearing
for the parties and after extensively going through various facets
arising in the case. Thereafter, the appellant has filed the
present appeal on which we have heard the learned counsel
B appearing for the parties.

5. It was submitted by the counsel appearing for the
appellant that the appellant have their own research and
development wing in which trials and experiments are
undertaken from time to time for the developmental jobs based
C on latest technology and that during the course of such trials
and experiments they bought out various parts and components
which were assembled by them and that after the research is
done the same were disassembled and, therefore, such
research and development process undertaken by them cannot
D be said to be manufacturing process by any stretch of
imagination. It was also submitted by the counsel that the
aforesaid equipments were not taken out from the factory
premises of the appellant and rather they were dismantled and,
therefore, the respondent acted illegally in levying tax on the
E said goods. He also submitted that the department was also
not entitled to invoke the extended period of limitation inasmuch
as there was no cause for invoking the provision of extended
limitation.

F 6. The aforesaid submissions of the counsel appearing for
the appellant were however refuted by the counsel appearing
for the respondent. We have very carefully scrutinized the
records and examined the submissions of the counsel
appearing for the parties in the light of the said records.

G 7. The demand for payment of central excise duty in the
present case appears to have been made on the basis of
statement made by the appellants in their balance sheet to the
effect that there is an addition to plant and machinery including
testing equipments worth Rs. 31.26 lacs which have been made
H in the company by capitalisation of the expenditure on (i) raw

material, (ii) stores and spares and (iii) salary/wages and other benefits. The aforesaid statement and details were mentioned in Schedule 'Q' appended to notice of balance sheet and profit and loss account of the appellant for the year ending December, 1987. Serial No. 6 of the said Schedule reads as follows: -

"Addition to plant and machinery includes testing equipments worth Rs. 31.26 lakhs fabricated in the company by capitalisation of following expenditure:-

(i) Raw material Rs. 26.31 lakhs,

(ii) Stores and spares Rs. 0.02 lakh, and

(iii) Salary/wages and other benefits Rs. 4.93 lakhs (On the basis of estimated time spent)"

8. The aforesaid position is further corroborated by the Director's report appearing at page no. 2 of the Annual Report for the year ending December, 1988, wherein it was mentioned that during the year the company developed a large number of testing equipments on its own for using the same for the testing of semi-conductors. Once the appellant has themselves made admission in their own balance sheet, which was not rebutted and was further substantiated in the Director's report, the appellant now cannot turn around and make submissions which are contrary to their own admissions. (See: *Calcutta Electric Supply Corpn. v. CWT*, (1972) 3 SCC 222 para 8). Moreover, they have also clearly taken a stand in their reply to the aforesaid show cause notice that they bought various parts and components to develop the testing equipments for use within the factory and that such steps were undertaken to avoid importing of such equipments from the developed countries with a view to save foreign exchange.

9. From the aforesaid own admission of the appellant and from the facts brought out from the records it is clearly proved and established that the appellant had manufactured machines in the nature of testing equipments worth Rs. 31.26 lacs to test

A the final products manufactured by them.

B 10. Even if such equipments were used for captive
consumption and within the factory premises, considering the
fact that they are saleable and marketable, we are of the view
that duty was payable on the said goods. The fact that the
C equipments were marketable and saleable is also an admitted
position as the appellant has admitted it in their reply to the show
cause notice that they had undertaken such manufacturing
process of the testing equipments to avoid importing of such
equipments from the developed countries with a view to save
foreign exchange. Such a statement confirms the position that
such testing equipments were saleable and marketable.

D 11. The provision of Explanations to Rule 9 and 49 of the
Central Excise Rules are very clear as it provides that for the
purpose of the said rules excisable goods manufactured and
consumed or utilized as such would be deemed to have been
removed from the premises immediately for such consumption
or utilization. Therefore, the contention that no such duty could
be levied unless it is shown that they were taken out from the
E factory premises is without any merit.

F 12. Submission was also made regarding use of the
extended period limitation contending *inter alia* that such
extended period of limitation could not have been used by the
respondent. The aforesaid contention is also found to be without
any merit as the appellant has not obtained L-4 licence nor they
had disclosed the fact of manufacturing of the aforesaid goods
to the department. The aforesaid knowledge of manufacture
came to be acquired by the department only subsequently and
in view of non-disclosure of such information by the appellant
G and suppression of relevant facts, the extended period of
limitation was rightly invoked by the department.

13. Consequently, we find no merit in this appeal, which
is dismissed without any order as to costs.

H D.G.

Appeal dismissed.