

Vinod Paper Mills Ltd

Vs

Collector, Central Excise, Punjab

Civil Appeals Nos. 4-5 of 1989

(Sujata V. Manohar, S. C. Sen JJ)

19.02.1997

### ORDER

1. Two show-cause notices were issued under Section 11-A of the Central Excises and Salt Act, 1944 on the ground of wilful suppression of material facts. The periods involved are 1-7-1980 to 31-12-1980 and 1-1-1981 to 30-6-1981. The first show-cause notice issued on 29-8-1981 is clearly beyond the period of six months from the end of the period 1-7-1980 to 31-12-1980. The second notice dated 14-9-1981 is within six months for the period 15-3-1981 to 30-6-1981 but the period of 1-1-1981 to 31-3-1981 falls outside the permissible period of six months.

2. The contention of the Department is that this is a case of wilful suppression of material facts and the case will clearly come within the extended period of 5 years. On behalf of the appellants, it has been contended that on the strength of a notification they had taken relief of exemption of 50 per cent duty and they were entitled to do so. There is some dispute on this and ultimately the Tribunal held that because of the amended provisions of law which came into force by virtue of the Finance Bill of 1982 with retrospective effect from 1975, and in view of that it had to be held that the appellant's price list was not correct. What is the effect of the amendment is a question of law. The question is on the day when the price list was filed, was there any wilful suppression? The appellants may have wrongly understood the effect of the amended law granting exemption. That will not make it a case of wilful suppression of facts. In the facts of this case, we are of the view that this is not a case of wilful suppression. The order passed by the Tribunal dated 14-9-1988 must be set aside. The show-cause notice dated 29-8-1981 is quashed. The second show-cause notice dated 14-9-1981 can be enforced only for the period 15-3-1981 to 30-6-1981. The appeals are partly allowed. There shall be no order as to costs.

3. The appellant states that they are entitled to the refund of the amount deposited with the Tribunal. If they apply for the refund of the amount, the Tribunal will deal with it in accordance with law and in the light of the order passed hereinabove.