

Collector of Central Excise, Bangalore

Vs

Oil & Natural Gas Commission

Collector of Central Excise, Indore

Vs

Jayant Vitamins Ltd.

Civil Appeals No. 6388 of 1995 with No. 12317 of 1996

(S. C. Agrawal, D. P. Wadhwa JJ)

01.09.1998

ORDER

1. The common question which falls for consideration in these appeals is whether the show-cause notices issued under Section 11-A of the Central Excises and Salt Act, 1944 were issued by the competent authority as required by the proviso to sub-section (1) of Section 11-A.

2. Section 11-A(1), as it stood at the relevant time (before it was amended by Act 18 of 1992), provided as follows :

"11-A. (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any duty of excise has not been levied or paid or has not been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words 'Central Excise Officer' the words 'Collector of Central Excise' and for the words 'six months', the words 'five years' were substituted.

Explanation. - Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be."

A perusal of the said section would indicate that the Central Excise Officer was empowered to issue show-cause notice in cases where the excise duty had not been levied or paid or had been short-levied or short-paid or erroneously refunded. But under the proviso to Section 11-A(1), the said

power to issue the show-cause notice was required to be exercised by the Collector of Central Excise in cases where the duty of excise had not been levied or paid or had been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty.

Civil Appeal No. 6388 of 1995

3. In Civil Appeal No. 6388 of 1995, the show-cause notice dated 25-11-1986 was issued by the Superintendent, Central Excise and Customs Headquarters. In the said show-cause notice, it was stated as under :

"In view of the facts discussed in the foregoing paras, it appears that the unit has, by recourse to wilful misstatement and suppression of facts and with a deliberate and wilful intent to evade payment of duty illicitly manufactured and removed 7671-570 kilolitres of NGL (raw naphtha) failing under Chapter/Sub-heading 2710.19 during the period from March 1986 to 25-8-1986 without payment of duty livable thereon, without recounting the same in statutory registers, without issuing Central Excise gate passes and without observing other Central Excise formalities."

It would thus appear that the said show-cause notice was issued on the ground that there was recourse to wilful misstatement and suppression of facts with a deliberate and wilful intent to evade payment of duty. The matter, therefore, falls within the ambit of the proviso to Section 11-A(1) and the show-cause notice was required to be issued by the Collector of Central Excise. The Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") vide its judgment dated 5-1-1991 has held that since the show-cause notice was not issued by the Collector but was issued by the Superintendent, it was bad in law. We are in agreement with the said view of the Tribunal because in view of the proviso, the said show-cause notice could only have been issued by the Collector of Central Excise and the Superintendent of Excise was not the competent authority to issue the notice under Section 11-A(1). The appeal is, therefore, liable to be dismissed.

Civil Appeal No. 12317 of 1996

4. In Civil Appeal No. 12317 of 1996, the show-cause notice dated 7-11-1986 was issued by the Assistant Collector of Central Excise. In the said show-cause notice, it was stated as follows :

"Inaction on the part of the noticee amounts to wilful misstatement and suppression of facts as provided in Section 11-A of the Central Excises and Salt Act, 1944."

The said show-cause notice could only be issued by the Collector of Central Excise in view of the proviso to Section 11-A(1) and the Assistant Collector was not the competent authority to issue the same. The Tribunal has in its judgment dated 9-11-1995 rightly held that the show-cause notice has not been issued by the competent authority. The appeal, therefore, is also liable to be dismissed.

5. In the result, both the appeals are dismissed. No order as to costs.