

SUPREME COURT OF INDIA

Centre for Development of Advanced Computing, Pune

Vs.

Commissioner of Central Excise, Pune

C.A.No.2749 of 2001

(B.N. Kirpal, Shivaraj V. Patil and Bisheshwar Prasad Singh JJ.)

27.02.2002

ORDER

B.N. Kirpal, J.

1. 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 Excise Act.

2. 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.

3. 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.

4. 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 circumstances, 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 years under Section 11A of the Act.

5. For the aforesaid reasons, this appeal is allowed.