

# SUPREME COURT OF INDIA

Union of India

Vs.

Namdang Tea Estate

C.A.No.7853 of 1996

(Brijesh Kumar and P. Venkatarama Reddi JJ.)

13.01.2004

## ORDER

The Order of the Court is as follows:-

1. In this appeal, the question involved pertains to refund of the excise duty, which according to the respondent was realised at a higher rate not applicable to it. Accordingly, the respondent moved an application under Section 11B of the *Central Excises and Salt Act, 1944*, for refund of the excess amount. The application was rejected by the Assistant Collector, Customs and Central Excise, Digboi, on the ground that it was beyond time as six months had already lapsed from the relevant date. The appeal preferred by the respondent was, however, allowed by the Collector (Appeals) which gave rise to filing of an appeal by the Revenue before the CEGAT. The CEGAT upheld the order passed by the Assistant Collector holding that the claim for the period beyond six months from the relevant date would not be admissible.

2. Aggrieved by the order passed by the CEGAT the respondent filed a writ petition in the High Court. The High Court by means of a brief order disposed of the writ petition ordering refund of the amount said to be in excess of the duty liable to be levied. The High Court observed that the learned Counsel for the writ petitioner as well as the learned Senior Central Government Standing Counsel both represented that the ratio of the decision reported in [ 5], *Salonah Tea Co. Ltd. & Ors. v. Superintendent of Taxes, Nowgong & Ors* governed the case in hand. Therefore, following that decision the order was passed for refund of the amount. We have perused the decision in the case of *Salonah Tea Co. Ltd. (supra)* and find that it does not apply to the present case since the refund was applied for under the provisions of Section 11B of the *Central Excises and Salt Act* which itself makes a provision for limitation of six months from the relevant date i.e. the date of payment.

3. We must, however, at the outset observe that in all fairness the learned Counsel for the respondent has brought to our notice an order of this Court passed in *Union of India & Ors. v. Manager, Dirok Tea Estate* reported in, in which the factual position relating to zoning of the same area was under consideration and it has been held that only because the Central

Excise notification was not amended simultaneously with bifurcation of District Lakhimpur, it would not change the position and the area falling in Dibrugarh District, as in the present case, would continue to be governed by Zone V where the rate of duty was higher. In that view of the matter, similar claim for refund was refused.

4. The position thus being as indicated above, we allow the appeal and set aside the order passed by the High Court. But looking to the peculiar facts and circumstances of the case, we provide that in case at some stage the amount has been refunded to the respondent no