

SUPREME COURT OF INDIA

Kisan Sahkari Chini Mills Limited

Vs.

Collector of Central Excise, Allahabad

C.A.No.390 of 2000

(S. H. Kapadia, S. N. Variava and Dr. A.R. Lakshmanan JJ.)

01.03.2005

JUDGMENT

S. H. Kapadia, J.-

1. This Appeal is against the order of the Tribunal dated 8th October, 1999.

2. Briefly stated the facts are as follows:

“The Appellants are a sugar factory. By Government order dated 4th November 1987, they were provided incentives which were based on higher percentage of free sale of sugar quota and certain excise duty concessions.”

3. It appears that the Appellants disposed of the free sugar to customers and also charged from the customers full excise duty even though they paid only concessional rate to the Government.

4. With effect from 20th September 1991 Section 11D was introduced.

5. This Section reads as follows:-

"Section 11D. Duties of Excise collected from the buyer to be deposited with the Central Government. –

(1)Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made there under every person who has collected any amount from the buyer of any goods in any manner as representing duty of excise shall forthwith pay the amount so collected to the credit of the Central Government.

(2) The amount paid to the credit of the Central Government under sub section (1) shall be adjusted against the duty of excise payable by the person on finalisation of

assessment and where any surplus is left after such adjustment the amount of such surplus shall either be credited to the Fund or as the case may be refunded to the person who has borne the incidence of such amount in accordance with the provisions of Section 11B and the relevant date for making and application under that Section in such cases shall be the date of the public notice to be issued by the (Assistant Commissioner of Central Excise)."

6. It appears that after this Section was introduced the Appellants have been asked to deposit amounts collected by them from their customers and the adjudication Order to that effect has been upheld by the Tribunal by its order dated 30th March 1998.

7. On 1st August 1994 they were issued another show cause notice directing them to deposit the amounts collected by them during the period January 1994 to February 1994. The demand of Rs. 4, 30, 004/- has been confirmed. The Tribunal has dismissed the Appeal of the Appellants by the impugned Order.

8. In our view, the incentives granted to the Appellants did not permit them to collect, more than what they had themselves paid, from their customers. If they collected by way of excise, more than what they had paid, then by virtue of Section 11D they were bound to deposit that amount with the Government. In our view, there is no infirmity in the impugned judgment. # We, therefore, see no reason to interfere. The Civil Appeal is dismissed. There will however be no order as to costs.