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5/11/07

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/637/1998-639/1998,654/1998

Date 31/08/2007

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SITA JUNEJA & ASSOCIATED
J-3, MAHARANI BAGH NEW DELHI

M/S SITA JUNEJA & ASSOCIATED

Appellant

M.C. JAIPUR I

MISC ORDER NO. 129/03-B

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 479-482/07 dated 29-8-07
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

M. O. R.
Assistant Registrar
(Excise Appeal Branch)

Copy to :

Respondent

C.C.E. JAIPUR I

N.C.R. BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

Adv. / Consult

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. D.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co. Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

2. SH. A.N. HAKSAR, SR. ADV.
SH. ASHOK GUPTA, ADV,
C-3/25, JANAK PURI,
N. DELHI-58

M. O. R.
Assistant Registrar
(Excise Appeal Branch)

1 SHRI SUNIL JUNEJA, PARTNER OF DISSOLVES PARTNERSHIP FIRM M/S SEETA JUNEJA & ASSOCIATES
SHRI SHUNIL JUNEJA, J-3, MAHARANI BAGH, NEW DELHI

2 SHRI JAYANT JUNEJA, PARTNERS OF DISSOLVED PARTNERSHIP FIRM M/S SITA JUNEJA & ASSOCIATES
SHRI JAYANT JUNEJA D-⁸²⁷ NEW FRIENDS COLONY NEW DELHI
110065

3 M/S HOTEL RAJPUTNA PALACE SHERATON ATAL BAN, JAIPUR (UNIT OF ITC. HOTEL LTD..
HOTEL RAJPUTANA PALACE SHERATON ATAL BAN JAIPUR

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No. E/637-639/98-D

(Arising out of Order-in-Original No. 3/98 dated 8.1.98 passed by the
Commissioner of Central Excise, Jaipur)

Sh. Sunil Juneja and Others

Appellant
(Rep. by Shri M.P. Devnath, Advocate)

Vs.

CCE, Jaipur

Respondent
(Rep. by Shri Atul Dikshit, SDR)

Appeal No. E/654/98-D

(Arising out of Order-in-Original No. 3/98 dated 8/9.1.98 passed by the
Commissioner of Central Excise, Jaipur)

M/s Hotel Rajputana Palace Sheraton

Appellant
(Rep. by Shri A.N. Haksar, Sr.
Advocate) & Sh. Ashok Gupta, Advocate)

Vs.

CCE, Jaipur

Respondent
(Rep. by Sh. Atul Dikshit, SDR)

Date of decision.....

CORAM: SHRI V.K. AGRAWAL, MEMBER (TECHNICAL)
SHRI P.G. CHACKO, MEMBER (JUDICIAL)

Misc Order No. 129/03-B dated.....

Final Order No. 479 To 482/2007 EX dated- 29-8-2007
Per P.G. Chacko

Smt. Sita Juneja (appellant in appeal No. 637/98), Shri Shunil Juneja
(appellant in appeal No. 638/98) and Shri Jayant Juneja (appellant in appeal
No. 639/98) were partners in the partnership firm viz. Sita Juneja &

Associates, New Delhi [hereinafter referred to as M/s SJA] till the firm was dissolved on 5.10.1996. On 13.1.1992, M/s SJA were awarded a contract by M/s ITC Limited (incorporated under the Companies Act, with registered office at Kolkata) to make different items of furniture for a 5-Star Deluxe Hotel at Jaipur, which later on came to be known as Hotel Rajputana Palace Sheraton (appellant in appeal No. 654/98). The work was to be done on labour contract basis and as per the drawings and specifications supplied by M/s ITC. All materials for the work were supplied by M/s ITC and any wastage thereof was to the contractor's account. The responsibility of organizing material movement was with the contractor. In respect of all labour directly or indirectly employed for the contracted works, SJA had to comply with the provisions of the Contract Labour (Regulation & Abolition) Act (1970), the Minimum Wages Act (1948), the Payment of Wages Act (1936) and all other laws made for the benefit of labourers. It was open to them, under the contract, to employ sub-contractors to execute the works. But, in that case, M/s SJA were liable to ensure that all the obligations of the contractor were duly carried out by the sub-contractors. The work was executed by M/s SJA through sub-contractors in 1992-93, with the raw materials supplied by ITC and as per the specifications, drawings and designs supplied by ITC. On 12.12.95, officers of Central Excise visited Hotel Rajputana Palace Sheraton (owned by M/s ITC) and called for details of the above contract, which were furnished by M/s ITC. Statements of Shri

Jayant Juneja of SJA and one Shri Abhijit Chakrawarthy of ITC were recorded under Section 14 of the Central Excise Act. Details of the work were also gathered from them. The Central Excise officers subsequently inspected the various items of furniture work carried out at site by M/s SJA, valued at over Rs.69 lakhs. They seized the furniture items which were believed to be liable to confiscation under the Central Excise Act. On the basis of scrutiny of the agreement, details of the works done thereunder and the statements recorded under Section 14, the department found that M/s SJA had manufactured various furniture items chargeable to duty of excise under Headings 94.01 and 94.03 and had cleared the same without payment of duty. The department also found that M/s SJA had suppressed material facts relating to such manufacture and clearance. Accordingly the proviso to Section 11-A(1) of the Central Excise Act was invoked and show-cause notice dated 22.10.96 was issued to M/s SJA & Sh. Jayant Juneja as also to M/s ITC & Hotel Rajputana Palace Sheraton. The SCN alleged that, by suppressing material facts and contravening various provisions of the Central Excises & Salt Act 1944 and the Central Excise Rules 1944 with intent to evade payment of duty, M/s SJA had manufactured and removed furniture items of total value of over Rs.69 lakhs without payment of Central Excise duty amounting to Rs.23,90,715/-. Apart from demanding the duty, the SCN proposed to impose penalty on M/s SJA under Rules 9 (2), 52A & 173Q and Section 11AC. The notice also proposed to impose penalties on

Sh. Jayant Juneja and M/s ITC under Rule 209A. Further, it called upon M/s SJA and M/s ITC to show cause why the seized furniture items should not be confiscated under Rules 9(2) and 173Q. The SCN was contested by the noticees. The Commissioner of Central Excise who adjudicated on the disputes passed an order confirming against M/s SJA a demand of duty of Rs.17,51,329/- under Section 11A read with Rule 9(2) and imposing on them a penalty of equal amount under Section 11AC. He held that Smt. Sita Juneja, Sh. Shunil Juneja and Sh. Jayant Juneja as partners of the erstwhile firm were jointly and severally liable to pay the duty and penalty amounts as also to pay interest under Section 11AB on the duty amount. The Commissioner also imposed penalties of Rs. 1.50 lakhs and Rs. 10 lakhs respectively on Sh. Jayant Juneja and M/s Hotel Rajputana Palace Sheraton under Rule 209A. All the seized furniture items in respect of which duty demand was confirmed were confiscated under rule 173Q with option to M/s Hotel Rajputana Palace Sheraton to redeem the goods by paying Rs. 5.25 lakhs as redemption fine along with the duty amount of Rs.17,51,329/- (in the event of this amount of duty not having been paid by the assesseees by the time of redemption of the goods). The present appeals are against the order of the adjudicating authority.

2. Heard counsel for the appellants and Sh. Atul Dikshit (SDR) for the Revenue. The main issue raised in appeal Nos. 637-639/98 was whether, after the dissolution of the firm, any goods manufactured by M/s SJA could

validly be assessed to duty in their name and whether any demand of such duty could be raised on them under the Central Excise Act and the relevant rules framed thereunder. The firm had been dissolved on 5.10.96 and one of the partners namely, Sita Juneja as proprietress was running the business thereafter under the name and style of "Sita Juneja & Associates". The adjudicating authority has also found precisely to this effect. In the show-cause notice issued on 22.10.96, the demand of duty was raised on the partnership firm viz. M/s SJA. This demand was resisted by the erstwhile partners in their replies to the notice on various grounds, one of which was that the partnership firm was no more in existence. This is one of the grounds raised in these appeals too. Shri Lakshmikumar, counsel for the appellants submitted that there was no provision in the Central Excise Act or any rules framed thereunder for assessment and demand of duty of excise on a partnership firm after its dissolution. In the absence of any such provision, it was not open to the department to raise a demand of duty on M/s SJA after 5.10.96. Learned counsel relied on the Supreme Court's decisions in the cases of *The State of Punjab Vs. Jullundur Vegetables Syndicate* [(1966) 17 STC 326] and *Khushi Ram Behari Lal & Co. Vs. The Assessing Authority, Sangrur* [(1967) 19 STC 381].

3. Learned SDR argued (with reference to Section 47 of the Indian Partnership Act) that, even after its dissolution, the partnership firm viz. M/s SJA continued for the purpose of winding up its business and discharging its

debts including dues to Government. He claimed support from the Supreme Court's decision in *Agarwal Trading Corporation & others Vs. Assistant Collector of Customs, Calcutta* [1983 (13) ELT 1467 (SC)] and the Tribunal's decision in *Mentha & Allied Products, Sambhal Vs. CCE, Meerut* [1988 (33) ELT 606]. It was also contextually submitted that any appeal against the Commissioner's order against M/s SJA should have been filed by the firm itself. The present three separate appeals by individual partners were not competent. SDR sought to draw support to this point from the Tribunal's decision in *Hindustan Foam Industry Vs. CCE* [1990 (48) ELT 33]. It was also pointed out that the intimation of dissolution of the firm was given to the department by the appellants on 9.11.96 only and, therefore, the show-cause notice dated 22.10.96 was rightly issued to the firm.

4. We have examined the rival contentions on the main issue. At the outset, we reject the DR's objection as to maintainability of the erstwhile partners' separate appeals. The appellants are aggrieved by the Commissioner's finding that they are severally liable to pay the duty on the goods cleared by the dissolved firm. Their appeals are competent under Section 35B of the Central Excise Act. We shall now proceed to consider the substantive issue. The adjudicating authority has held that, by reason of the fact that one of the partners of SJA continued to run the business (after dissolution of the firm) with the same assets and from the same premises under the name and style of "Sita Juneja & Associates", the firm continued

to exist and hence the partners were jointly and severally responsible for all the liabilities of the firm. Yet another finding, still more relevant to the issue under our consideration, in the impugned order is as follows :-

“Moreover, the instant case is not merely one of simple *assessment of duty*. The case pertains to the clandestine removals of the goods manufactured by M/s SJA without payment of duty and the duty so evaded by anybody can be demanded and confirmed under Section 11-A of the Act, *either before, or after the dissolution of the firm under the Central Excise Law.*” (emphasis added).

Obviously, the Commissioner accepted the case on hand as one of assessment of duty. The learned Commissioner has, however, taken the view that the duty on goods clandestinely removed can be assessed in the name of, and demanded from, a firm, either before or after its dissolution, under the Central Excise Law. However, he has not cited any particular provision of Central Excise law which permitted assessment of duty in respect of a partnership firm after its dissolution, nor has the SDR been able to cite any. Section 11-A of the Central Excise Act 1944 or Rule 9 of the Central Excise Rules 1944 which were invoked by the department in the show-cause notice to raise the demand of duty on M/s SJA does not provide any clue in this regard. Admittedly, in this case, the partnership firm, M/s SJA, was assessed to duty of excise (on the goods manufactured and cleared in 1992-93) only after its dissolution which had taken place on 5.10.96. The show-cause notice demanding the duty from the firm was issued on 22.10.96 when the firm was not in existence. The Revenue has no case that the

dissolution of the firm' was not lawful and genuine but effected only to defraud it. The Commissioner's finding that the firm continued to exist even after 5.10.96 is not supported by the facts of the case, nor by the provisions of the Indian Partnership Act. Section 47 of the Partnership Act, which was relied on by the DR, only envisaged that a dissolved partnership would continue till its winding-up and pending transactions were complete. It did not provide that the partnership would continue, beyond the date of its dissolution, *for any other purpose*. The Hon'ble Supreme Court's ruling in *Jullundur Vegetable Syndicate* requires to be considered in this context.

5. In the above case, an order of assessment of sales tax on the turnover of sales of a partnership firm for the period 4.10.1952 to 31.3.1953 was passed by the Sales Tax Officer on 3.9.1955. But the firm had been dissolved on 11.7.1953. The Supreme Court upheld the order of the High Court of Punjab quashing the assessment order on the ground that the firm was not liable to be assessed to tax after its dissolution. Their lordships of the apex Court gave the following ruling :-

“Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad.

In this context as we have stated earlier, there cannot be a distinction on principle between an assessment made on a firm under a proceeding initiated before the dissolution and that made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity.

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Nor the provisions of the Partnership Act can possibly be called in aid to resuscitate a dissolved firm for the purpose of assessment. They deal only with the relationship between the partners and their rights and liabilities. They have no bearing on the question of assessment under a different statute.”

The above ruling was followed by the court in the case of *Khushi Ram Behari Lal & Co.* also, wherein it was held that the view taken by the High Court of Punjab that the dissolution of partnership firm did not stand in the way of the assessing authority passing order of assessment in a proceedings initiated prior to such dissolution was not correct. The apex Court’s ruling in *Jullundur Vegetable Syndicate* case was followed by this Tribunal in the case of *D. Matai Vs. CCE, Mumbai* [2000 (126) ELT 1264] wherein it was noted that there was no provision in the Central Excise Act or the rules thereunder for commencing proceedings of assessment against a partnership firm after its dissolution. The decisions cited by Id. SDR in justification of the impugned order are distinguishable. In any of the cases cited by the DR, no issue similar to the one now being considered by us was involved.

6. A partnership firm is undisputedly a legal entity under the Central Excise Act. It ceases to be a legal entity upon its dissolution, whereafter, in the absence of specific statutory provision providing to the contrary, there can be no assessment or demand of Central Excise duty against the dissolved firm. Therefore, applying the ruling of the apex Court given in *Jullundur Vegetables Syndicate* case to the instant case, we hold that the assessment and demand of Central Excise duty raised on M/s SJA after the dissolution of the firm cannot be sustained in law and, consequently, the penalties imposed on the firm are also unsustainable. Even otherwise, the penalty imposed on M/s SJA under Section 11AC in relation to the period 1992-93 cannot be sustained as this provision of law was not in force during the said period. The penalty of Rs. 1.5 lakhs imposed on Shri Jayant Juneja under Rule 209A has also to be vacated for want of any finding in the Commissioner's order that the appellant had in any manner dealt with the subject goods with the knowledge or belief that such goods were liable to confiscation. The only reason stated in the order is that Sh. Jayant Juneja was "responsible for dealing in the goods liable to confiscation". This is not enough for a penalty under the rule. On similar grounds the penalty of Rs. 10 lakhs on M/s Hotel Rajputana Palace Sheraton under Rule 209A also requires to be set aside.

7. It is trite law that confisability of any goods is a separate issue not depending on whether any demand of duty on such goods is sustainable or

not against the manufacturer thereof. We shall now address the former issue in this case. The Commissioner has confiscated the items specifically mentioned in Annexure-1 to his order (hereinafter referred to as the "specified items"] under Rule 173Q, giving option to M/s Hotel Rajputana Palace Sheraton to redeem the goods on payment of a fine of Rs. 5.25 lakhs. Section 34 of the Central Excise Act provides that, whenever confiscation is adjudged, option shall be given to the owner of the goods to redeem the same on payment of such fine as the adjudicating authority deems fit. In the present case, M/s Hotel Rajputana Palace Sheraton were, admittedly, the owners of the specified items when the show-cause notice was issued proposing to confiscate the same and when the adjudicating authority ordered confiscation. The question now is whether the specified items were liable to confiscation under Rule 173Q. Under this Rule, any excisable goods which were manufactured and removed in contravention of provisions of the Central Excise Rules were liable to confiscation. The show-cause notice had alleged that M/s SJA had contravened Rule 9(1) read with Rules 173F and 173C inasmuch as they had removed excisable goods without payment of duty. It had also alleged that Rule 52A had been contravened by M/s SJA by removing the goods otherwise than under Central Excise gate passes. The Commissioner upheld the allegation and ordered confiscation. The primary question is whether the specified items were excisable and dutiable goods as held by the Commissioner.

8. It was contended by ld. counsel that the specified items (the items mentioned in Annexure-1 to the order of the Commissioner) were made by skilled artisans and should be considered to be handicrafts by virtue of their aesthetic appeal. In this connection, counsel relied on a certificate issued by one Shri B.B. Bhasin who was said to be an expert and had stated (in the certificate) that the subject furniture items (said to have been inspected by him at Hotel Rajputana Palace Sheraton) were handcrafted by skilled craftsmen and could definitely be categorized as handicrafts. Handicrafts were exempt from payment of Central Excise duty under Notification No. 76/86-CE dated 10.2.86. Ld. counsel also heavily relied on the decision of the Supreme Court in the case of *CCE Vs. Louis Shoppe* [1996 (83) ELT 13 (SC)]. Counsel further submitted that many of the items such as wardrobes were fixtures, which were not removable. Such items were not excisable and could not be considered to be "furniture" falling under Heading 94.03 of the CET Schedule. Opposing the counsel's arguments, ld. SDR submitted that, by virtue of Note 2 in Chapter 94 of the CET Schedule, all the specified items could be considered to be "furniture" falling under Heading No. 94.03 of the CET Schedule. He further submitted that, in respect of the specified items, the appellants had not been able to satisfy the tests laid down in *Louis Shoppe* for goods to be considered as "handicrafts". Urging us to reject the opinion of Sh. B.B. Bhasin, ld. SDR submitted that Sh. Bhasin's certificate had been issued only at the instance of Shri Jayant

Juneja (one of the appellants) and was not a reliable evidence. It was further submitted that Sh. Bhasin's opinion was not backed by any technical authority or literature on the subject. To the plea for rejection of the above certificate, support was drawn from the Supreme Court's decisions in the cases of *Novapan India Ltd. Vs. CCE & C Hyderabad* [1994 (73) ELT 769], *MMTC Vs. R.C. Mishra* [1993 (65) ELT 474 (SC)] and *State of Himachal Pradesh Vs. Jai Lal & others* [AIR 1999 SC 3318].

9. We have examined the rival submissions. We note that, on the question whether any wooden furniture can be treated as handicraft within the meaning of Notification No. 76/86-CE, the Hon'ble Supreme Court's ruling in the case of *Louis Shoppe* is the final authority. The relevant part of the judgment of the apex Court is extracted below :-

“The question is whether wooden furniture by itself can be treated as “handicrafts” within the meaning of Notification No. 76 of 1986 dated February 10, 1986? It must be said straightaway that furniture as such does not qualify as handicrafts. It may be characterized as “handicrafts” if the following tests are satisfied:

- “ (1) It must be predominantly made by hand. It does not matter if some machinery is also used in the process.
- (2) It must be graced with visual appeal in the nature of ornamentation or in-lay work or some similar work lending it an element of artistic improvement. Such ornamentation must be of a substantial nature and not a mere pretence.”

Whenever the above question arises, the authorities shall examine the matter from the above stand-point and pass orders accordingly.

The above principles shall apply to all pending matters and to all matters arising hereinafter.”

Their lordships have laid down two tests for characterizing any wooden furniture as “handicraft”. There is no dispute in the instant case that the first test laid down by the Court has been satisfied. However, in relation to the second test laid down by the Court, both sides have agreed that it is a matter of subjective satisfaction to determine whether the furniture under consideration is graced with visual appeal in the nature of ornamentation or in-lay work or some similar work lending it an element of artistic improvement. In the instant case, Id. Commissioner has found thus: “*there is no substantial ornamentation, or special visual appeal, in the goods such as is normally associated the work of traditional handicrafts, or any delicate workmanship and special aesthetic appeal.*” We are not inclined to interfere with this subjective finding of fact, in the absence of any reliable evidence on record to prove to the contrary. Sh. B.B. Bhasin’s certificate cannot be relied upon for the valid reasons stated by Id. SDR. We are supported, in this context, by the apex Court’s decisions in the cases of *Novapan India* and *MMTC* cited by Id. SDR. We, therefore, hold that none of the specified items was a “handicraft” within the meaning of the Notification. On the other hand, having regard to Chapter Note (2) of Chapter 94 of the CET

Schedule, we find that all the specified items are covered by the description "other furniture" falling under Heading 94.03. The specified items were excisable and dutiable as held by the Commissioner. As it is not disputed that the specified items were removed by M/s SJA without coverage of Central Excise gate passes and without payment of duty, the provisions of Rule 173Q were attracted and the goods were liable to confiscation as rightly held by the Commissioner. Option to redeem the goods was rightly given under Section 34 *ibid* to the owners of the goods, viz. M/s Hotel Rajputana Palace Sheraton. However, the quantum of redemption fine imposed by the adjudicating authority is not justifiable in the facts and circumstances of the case. We reduce the fine to Rs.3 lakhs.

10. Owner of the goods, who is directed to redeem them, can be asked to pay the duty also, as done by this Tribunal in the cases of *Remi Tex Vs. CCE* [1993 (65) ELT 94] and *Sumant Sood Vs. CC* [2001 (134) ELT 817] cited by SDR. In the impugned order, it was directed by the Commissioner, in the context of giving the option as above, that the duty of Rs.17,51,329.00 also be paid by M/s Hotel Rajputana Palance Sheraton if the same had not already been paid by M/s SJA. We have but to set aside this direction of the Commissioner for two reasons. Firstly, we have already set aside the demand of duty raised on M/s SJA. Secondly, the above direction is beyond the scope of the show-cause notice wherein there was no proposal to demand duty on the goods from M/s Hotel Rajputana Palance Sheraton.

11. In the result, Appeal Nos. E/637 to 639/98-D are allowed and Appeal No. E/654/98-D is allowed in part. The impugned order stands set aside to this extent.

(V.K. AGRAWAL)
MEMBER (TECHNICAL)

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM

Per V.K. AGRAWAL:

12. I have had the opportunity to go through the Order as recorded by learned Member (Jud.). I find myself unable to agree with his findings that the Central Excise duty cannot be raised on M/s. SJA after the dissolution of the firm. The judgment of the Apex Court in the case of Jullundur Vegetable Syndicate, supra, was pronounced in view of the definition of the "dealer" contained in the East Punjab General Sales Tax Act, 1948. As per Section 2(d) of the said Act "Dealers" means any person, firm or Hindu Joint family engaged in the business of selling or supplying goods in East Punjab....." The Supreme Court observed that the definition of "dealer" takes in three categories of assessable units, namely, person, firm or a Hindu joint family and reading the expression "firm" in substitution of the word "dealer" the Supreme Court observed that the "it will be apparent that a firm is an independent assessable unit for the purpose of the Act." The Supreme Court thus held that in view of the fact firm being a legal entity under the said Act there need be "a statutory provision permitting the assessment of a dissolved firm" and "as in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said Order was bad."

13. In the Central Excise Act, the provisions are different from the provisions in the East Punjab General Sales Tax Act. The Central Excise duty, as per Section 3 of the Central Excise Act, is levied and collected on goods produced or manufactured in India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act. The word manufacturer as per Section 2(f) of the Act shall be construed as per the definition of the term "manufacture" and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engage in their production or manufacture on his own account. Section 6 of the Central Excise Act provides for the registration of any person who is engaged in the production or manufacture or the wholesale purchase or sale or the storage of any excisable goods. Rule 2(3) of the Central Excise Rules, 1944 defines "assessee" as any person who is liable for payment of duty assessed and also includes any producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored. Rule 173I of the Central Excise Rules, which contained provisions for assessment at the material time, provided that the Proper Officer shall on the basis of the information contained in the return filed by the assessee, and after such further enquiry as he may

consider necessary assess the duty due on the goods removed and complete the assessment memorandum on the return. This is why the relevant date for the purpose of issuing show cause notice for demanding duty not levied/not paid etc. relates to filing of return where the return is to be filed. Thus there is no provision in the Central Excise Act and Central Excise Rules, 1944 which is similar to the definition of "dealer" as given in Section 2(d) of the East Punjab General Sales Tax, 1948 on the interpretation of which the decision in Jullundhur Vegetables Syndicate was delivered. It cannot, therefore, be held that a partnership firm is a legal entity under the Central Excise Act. On the other hand, the Tribunal has held in many cases that no penalty is imposable on a partner when the penalty has been imposed on the Partnership firm. The Tribunal has held in the case of Harish Dye & Ptg. Works vs. CCE, Surat-I, 2001 (138) ELT 772 (T) that "where the assessee is a partnership firm it is not necessary, legally for me to consider the assessee as a different with that of the partner. I, therefore, do not consider it legally to impose penalty on the partner this is because partnership firm is not different from that of partner." Similarly in the case of B.C. Sharma vs. CCE, Jaipur, 2000 (122) ELT 158 (T), the Tribunal has held that "M/s. Agro Engineers Ltd, Jaipur is a partnership firm.

That firm has been imposed a penalty of Rs. 2 lakhs. Therefore, we do not find any justification for imposing any penalty on partner of that partnership firm.” Accordingly the demand of duty from M/s. Sita Juneja & Associates is sustainable in law.



(V.K. AGRAWAL)
MEMBER (TECHNICAL)

DIFFERENCE OF OPINION

Whether, as proposed by Member (J), it should be held that it was not permissible, under the Central Excise Act and any Rules made thereunder, to assess M/s. Sita Juneja Associates to Central Excise duty and raise demand of duty on them, after the dissolution of the said partnership firm, in respect of the excisable goods manufactured and cleared by them prior to the dissolution.

OR

Whether, as proposed by Member (T), it should be held that it was permissible, under the Central Excise Act and any Rules made thereunder, to assess M/s. Sita Juneja Associates to Central Excise

duty and raise demand of duty on them, after the dissolution of the said partnership firm, in respect of the excisable goods manufactured and cleared by them prior to the dissolution.

(P.G. CHACKO)
MEMBER (JUDICIAL)

(V.K. AGRAWAL)
MEMBER (TECHNICAL)

Dated 11th November, 2003

RK

E/ 637- 39/98, E/654/98.

M/s SUNIL JUNEJA and OTHERS

VS

C. C. E. JAIPUR

The following difference of opinion is referred to the 3rd

Member :-

"Whether, as proposed by Member (J), it should be held that it was not permissible, under the Central Excise Act and any Rules made thereunder, to assess M/s Sita Juneja Associates to Central Excise duty and raise demand of duty on them, after the dissolution of the said partnership firm, in respect of the excisable goods manufactured and cleared by them prior to the dissolution.

OR

Whether, as proposed by Member (T), it should be held that it was permissible, under the Central Excise Act and any Rules made thereunder, to assess M/s Sita Juneja Associates to Central Excise duty and raise demand of duty on them, after the dissolution of the said partnership firm, in respect of the excisable goods manufactured and cleared by them prior to the dissolution."

2. Now, both the sides submits that the issue is settled by the Larger Bench of the Tribunal in the case of **M/s Gopal Industries Ltd. Vs. CCE** reported in 2007-TIOL-932-CESTAT. The Larger Bench of the Tribunal decided the

issue in favour of the Revenue. In view of the above decision of the Larger Bench, I agree with the view taken by the Hon'ble Member (T) that it is permissible under Central Excise Act and Rules made thereunder to assess the appellant to Central Excise duty and raise demand of duty after the dissolution of the partnership firm in respect of excisable goods manufactured and cleared by them prior to dissolution. The matter may place before the Regular Bench.

DT 27.7.07

Sd

(S.S. KANG)
VICE PRESIDENT

RM

E/Appeal Nos 637-639/98, E/A No.654/98

In view of the majority opinion, Appeal Nos. 637-639/98
filed by Shri Sunil Juneja, Smt. Sita Juneja and Shri Jayant Juneja
~~and~~ dismissed and Appeal No. 654/98 filed by M/s Hotel
Rajputana Palace is partly allowed.

(*Pr...* on 27/8/07)

sd

(C.N.B. Nair)
Member(Tech)
MPS

sd

(S.S. Kang)
Vice President

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10.9
भारतीय प्रमाणित प्रतिलिपि (भारतीय प्रमाणित प्रतिलिपि)
जहाँ प्रमाणित प्रतिलिपि (भारतीय प्रमाणित प्रतिलिपि)
व्यक्तिगत रूप से
नई दिल्ली / New Delhi-68