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

Appeal No. E/6180/2004,6182/2004-6187/2004,6181/2004 - EX[DB] Date 30/09/2009

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

To :
M/S HINDUSTAN LEVER LTD.
KASGANJ ROAD,ETAH,U.P
M/S HINDUSTAN LEVER LTD.

Appellant
Vs
Respondent

C.C.E.LUCKHNOW

I am directed to transmit herewith a certified copy of **Final order No.** 739-746/ 2009 EX[DB] dated 22-9-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E.LUCKHNOW
   7-A,ASHOK MARG,LUKHNOW U.P
2. Adv. / Consult
   MR.PRADEEP KUMAR MITTAL
   171, CHITRA VIHAR, DELHI-110092
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 6180-6187 of 2004

(Arising out of Order-in-Appeal No. 286 to 293-CE/2004 dated 24.09.2004 passed by the Commissioner of Central Excise (Appeals), Lucknow).

DATE OF HEARING : 02.09.2009
DATE OF DECISION : 22.09.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

M/s Hindustan Lever Ltd. .... **Appellants**
(Rep by Sh. P.K. Mittal, Adv.)

VERSUS

CCE, Lucknow .... **Respondent**
(Rep. by Sh. P.K. Singh, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

FINAL ORAL ORDER NO. 739-746/09-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Since common questions of law and facts arises in all these appeals, they were heard together and are being disposed of by this common order.

2. We have heard at length the learned advocate for the appellants and the learned DR for the Revenue, and have also perused the records placed before us.

3. The appellants challenge the order dated 24th September, 2004 passed by the Commissioner (Appeals), Lucknow, whereby the appeals filed by the appellants were disposed of rejecting the contentions of the appellants in relation to the merits of the case and merely by modifying the penalty amounts, the Commissioner (Appeals) by the said order has disposed of the proceedings arising out of the eight orders passed by the Deputy Commissioner, Aligarh, in relation to ten show cause notices issued during the period from December, 1999 till July, 2002 relating to the period from 1995-96 to July, 2003. The details of such appeals, disposed of by the Commissioner (Appeals) along with the corresponding date of show cause notice, period for which the show cause notice related to, number and date of the order

passed by the Deputy Commissioner and the amount confirmed are described in the table hereinbelow :

Appl. No.	SCN Date	Period	O-I-O & Date	Amount Confirmed
112/2000	16.12.99	July 1999 to November 99	78/Dem/2000, dt. 28.3.2000	D-30,960/- P-20,000/-
113/2000	4.8.99	Jan. 1999 to June 1999	80/Dem/2000, dt. 05.4.2000	D-99,360/- (no proposal for penalty in SCN)
245/2001	2.3.2001	1995-96 to 1998-99 (upto 12/98)	31/ADC/IPL/01, dt. 4.9.2001	D-3,94,475/- P-3,94,475/- (+Int.)
246/2001	(i) 5.3.01 (ii) 16.4.01	April 2000 to Aug. 2000 Sept. 2000 to Feb. 2001	40/Dem/2000, dt. 04.10.2001	D-73,791/- D-84,447/- Total:1,58,238/- P-1,58,238/- (+Int.)
286/2001	18.4.2000	Dec. 1999 to March 2000	47/Dem/2000, dt. 31.10.2001	D-54,414/- P-28,000/- (+Int.)
140/2003	29.8.2003	Nov. 2002 to July, 2003	36/DMD/2003, dt. 06.11.2003	D-1,81,727/- P-181,727/- (+Int.)
141/2003	18.5.2003	April 2002 to Oct. 2002	34/DMD/2003, dt. 22.10.2003	D-1,15,191/- P-1,15,191/- (+Int.)
22/2003	(i) 5.4.02 (ii) 24.7.02	March 2001 to June 2001 July 2001 to March 2002	25/DMD/2002, dt. 29.11.2002	D-71,064/- D-1,11,616/- Total:1,82,680.50 P-1,82,680.50 (+Int.)

The appellants are 100% EOU, registered manufacturer under the provisions of Central Excise Rules, 1944, and have bonded warehousing licence under the provisions of the Customs Act, 1962 to manufacture under bond a product being Instant Tea

Powder falling under Chapter Heading 2101.20 of the Central Excise Tariff Act, 1985.

4. As it was revealed to the Revenue Department that during the period from January, 1999 to June, 1999 the appellants had exported the said product to the tune of 3,31,200 kg. without payment of cess payable in terms of Section 3(n) of the Tea Act, 1953, a show cause notice dated 04.08.1999 came to be issued to the appellants requiring them to show cause as to why the cess amount, which they had failed to pay on clearance of the Instant Tea Powder of the stated quantity amounting to Rs. 99,360/-, should not be demanded from them under Section 9 and Section 11-A of the Central Excise Act, 1944 read with the provisions of Tea Act, 1953. Similar show cause notices came to be issued relating to the remaining period from July, 1999 to July, 2003 in respect of which failure on the part of the appellants to pay cess was noticed. The appellants contested the proceedings and the same were disposed of initially by order dated 20th March, 2000 followed by orders dated 5th April, 2000, 4th September, 2001, 4th October, 2001, 31st October, 2001, 6th November, 2003, 22nd October, 2003, and 29th November, 2002, as described in the table hereinabove. The adjudicating authority confirmed the demand of duty as well as imposed penalty, as described in the table hereinabove. Being

aggrieved, the appellants filed eight appeals which came to be disposed of by the impugned order after condoning the delay in respect of three of the appeals which were filed beyond the period of limitation but within thirty days' time during which the delay could be condoned by the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) dismissed the appeals as far as they relate to the merits of the case and also confirmed the penalties imposed in three of the appeals before him, namely, Appeal Nos. 112/2000, 245/2001 and 286/2001, while reduced the penalties to Rs. 1,00,000/- each in Appeal Nos. 246/2001, 140/2003 and 22/2003, whereas reduced to Rs. 75,000/- in Appeal No. 141/2003. Being aggrieved, the appellants have preferred the present appeals.

5. It is the case of the appellants that the Instant Tea Powder is a different commodity from tea as defined under the Tea Act, 1953 and this aspect was totally ignored by the lower authorities. It is their further case that, though the Apex Court in the matter of **CCE, Cochin vs Tata Tea Ltd.,** 2002 (142) ETL 3 (SC), had opined contrary to the contention of the appellants, the Apex Court did not have occasion to deal with the issue concerning non-levy of cess on the Instant Tea Powder exported by 100% EOU pursuant to Exemption Notification No. 125/84-CE dated 26.05.1984 and also the

benefits/incentives under Chapter 9 Para 9.29A(vi) of the Export Policy issued by the Commerce Ministry and this aspect has also not been considered by the lower authorities. Their further case is that, the cess being leviable on the tea at the garden stage itself before tea is being sent to auction centres or packet tea factories, as the case may be, the same cannot be said to be leviable subsequently when either it is packed or instant tea is produced as it will amount to multiple levy of cess without any provision of law for the same.

6. On the other hand, it is the case of the respondent that the issue, as to whether the Instant Tea Powder is tea within the meaning of the said expression under the provisions of law comprised under Tea Act, 1953, stands concluded by the decision of the Apex Court in **Tata Tea Ltd.**'s case (supra) and the non-applicability of the provisions of Notification No. 125/84-CE dated 26th May, 1984 to claim exemption in relation to the cess amount also is settled by the law laid down in that regard by the Apex Court. It is further the case of the respondent that, there is no material placed on record, at any point of time, by the appellants about prior payment of cess in relation to the product in question or at any stage of its production. Being so, there is no case of any multi stage levy of cess. The provisions of Export Policy and

the clarification in that regard have no application to the matter in issue.

7. The learned advocate for the appellants while placing reliance in the decision in the matter of **Mathew M. Thomas & Ors. Vs Commissioner of Income Tax,** AIR (1999) SC 999, **ECE Industries Ltd. vs CCE, New Delhi,** 2004 (164) ELT 236 (SC), **Barnagore Jute Factory Co. vs Inspector of Central Excise,** 1992 (57) ELT 3 (SC), **Onkar S. Kanwar & Ors. Vs Union of India & Ors.,** 2001 (249) ITR 258 (Ker.), **Tata Tea Ltd. vs CCE, Cochin,** 1998 (104) ELT 661 (T), **Mahindra & Mahindra Ltd. vs CCE, Mumbai,** 2007 (221) ELT 481 (T), and **Dunsandle Tea Factory vs CCE, Salem,** 2008 (222) ELT 551, submitted that, the authorities below erred in blindly following the decision of the Apex Court in **Tata Tea Ltd.**'s case (supra) ignoring the fact that the Apex Court had no occasion to deal with the issue concerning the non-levy of cess on the instant tea exported by 100% EOU pursuant to the Exemption Notification No. 125/84-CE dated 26th May, 1984 and in the circumstances where the Export Policy clearly speaks of certain benefits to such products in terms of Para 9.29A(vi) thereof and further ignoring the Notification dated 1st September, 2004 issued by the Ministry of Commerce and Industry as also Departmental clarification dated 11th April, 1986. According to the learned

advocate, the bar against multi stage levy of cess would be attracted even in cases where the assessee avails the exemption from payment of duty in relation to the inputs procured for the manufacture of the final product and even in such circumstances cess would not be leviable at the final stage of manufacture. He further submitted that, the Notification issued in 2004 clearly discloses the intention of the Legislature to exclude the product in question from the liability of payment of cess. Being so, according to the learned advocate, the impugned order needs to be set aside and the claim of exemption for payment of cess by the appellants should be allowed.

8. The learned DR, on the other hand, drawing our attention to the Notification issued by the Ministry of Commerce on 11th November, 1999 read with the Notification dated 4th April, 1994, submitted that, where the Government wanted to exempt the product from the duty of cess in relation to the variety of tea products are clearly enlisted in the said Notifications and they do not include the product classifiable under Chapter sub-heading 2101.20. He further submitted that, the Apex Court in **Tata Tea Ltd.**'s case (supra) has clearly ruled that, the instant tea is a variety of tea and is liable to payment of cess. Further placing reliance in the decision of the Apex Court in the case of **Union of**

India & Ors. Vs Modi Rubber Ltd. & Ors., 1986 (25) ELT 849 (SC), and the Larger Bench decision of the Tribunal in the case of **Nellimarla Jute Mills vs Collector of Central Excise, Guntur,** 1987 (31) ELT 209 (T), submitted that, the Exemption Notification No. 125/84-CE dated 26th May, 1984 nowhere refers to the duty of cess and it is confined to the excise duty referred to therein and, therefore, by way of interpretation the Tribunal or the Courts are not empowered to include some other duties even though they may be in the nature of excise duties in the said Notification. He further submitted that, mere policy by itself cannot entitle the manufacturers to claim exemption. According to him, no fault can be found with the orders passed by the lower authorities.

9. The learned advocate for the appellants has also submitted that, the proceedings in relation to the show cause notice dated 2nd March, 2001 was clearly barred inasmuch as that the respondents were not entitled to invoke the extended period of limitation once they had already issued show cause notice on 4th August, 1999 for the same cause of action in relation to the period from January, 1999 to June, 1999. Law in that regard, being well settled by the Apex Court, the Commissioner (Appeals) ought to have quashed the proceedings in relation to the show cause notice dated 2nd March, 2001 for the period 1995-96 to December, 1998. He

has also further submitted that, the authorities below also ought to have quashed the demand in relation to March 2001, and April 2002 as the claim in that regard was beyond the period of one year on the date of issuance of the show cause notices. The contention in this regard is disputed on behalf of the respondent while contending that, it was an on going process and in spite of show cause notices having been issued, the appellants having failed to pay the cess, there was deliberate attempt on the part of the appellants to evade the duty and, therefore, there is no substance in the contention sought to be canvassed on behalf of the appellants.

10. Undoubtedly, as rightly pointed out by the learned DR, the issue as to whether the product in question i.e. 'Instant Tea Powder' is tea within the meaning of the said expression under the Tea Act, 1953 or not, stands concluded by the decision of the Apex Court in **Tata Tea Ltd.**'s case (supra). The Apex Court therein has clearly ruled thus :

> **"The term 'instant tea' is not the brand name of the product manufactured by the assessee but the name of the product itself. It is a variety of tea. Further, the term 'instant tea' gives a meaning that it is a 'tea', which can be prepared/used instantaneously. Merely because the product is known as 'instant tea', it does not cease to be known commercially as 'tea'. Whether tea is consumed as hot beverage or a cold beverage depending upon one's liking and taste, it does not make any difference in deciding whether it is a tea**

falling within the definition of Section 3(n) of the Act. In our view, the manner of preparation of tea and the process of manufacture of 'instant tea' powder cannot take away 'instant tea' out of definition of 'tea' under the Act. Ultimately 'instant tea' is produced from the leaves of the plant Camellia Sinensis (L) O. Kuntze. In these circumstances, the 'instant tea' is covered by the definition of tea within the meaning of Section 3(n). Once 'instant tea' falls within the definition of Section 3(n), a cess can be levied on it under Section 25 of the Act. In our view, the Commissioner (Appeals) was right in upholding the order of the Assistant Commissioner but the Tribunal went wrong in holding that 'instant tea' is different from 'tea' and it fell outside the scope of Section 3(n) of the Act referring to Prevention of Food Adulteration Rules, 1955 and the Tea Waste (Control) Order, 1959. When the Act defined 'tea' specifically, the Tribunal ought not to have strained itself by referring to other enactments to construe 'instant tea' as the product not included within the definition of 'tea' under the Act."

11. As far as Notification No. 125/84-CE dated 26.05.2004 is concerned, the same reads thus :

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts all excisable goods produced or manufactured in a hundred per cent export oriented undertaking from the whole of the duty of excise leviable thereon under Section 3 of the Central Excises and Salt Act, 1944 (1 of 1944) :

Provided that the exemption contained in this notification shall not apply to such goods if allowed to be sold in India."

12. Apparently, the said Notification has been issued under Rule 8(1) of the Central Excise Rules, 1944 and relates to exemption of excise duty leviable under Section 3 of the Central Excise Act, 1944. It does not relate to any other duty, even though it may be termed or classified as excise duty. Cess is not leviable under Section 3 of the said Act. Cess is leviable under different provisions of law comprised under the Finance Act. Being so, the exemption which has been granted specifically in relation to the excise duty leviable under the said Act, could not be extended by way of interpretation of the said Notification to the cess which is leviable under totally different Statute.

13. In the case of **Modi Rubber Ltd.** (supra), the Apex Court while dealing with the similar issue had held thus:

> **"The respondents have in fact produced several notifications granting exemption in respect of special duty of excise or additional duty of excise and in each of these notifications, we find that the source of power is described as sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 read with the relevant provision of the statute levying special duty of excise or additional duty of excise by which the provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder including those relating to exemption from duty are made applicable. Moreover the exemption granted under all these notifications specifically refers to special duty of excise or additional duty of excise, as the case may be. It is,**

> **therefore, clear that where a notification granting exemption is issued only under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 without reference to any other statute making the provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder applicable to the levy and collection of special, auxiliary or any other kind of excise duty levied under such statute, the exemption must be read as limited to the duty of excise payable under the Central Excises and Salt Act, 1944 and cannot cover such special, auxiliary or other kind of duty of excise. The notifications in the present case were issued under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 simpliciter without reference to any other statute and hence the exemption granted under these two notifications must be construed as limited only to the duty of excise payable under the Central Excises and Salt Act, 1944."**

14. Obviously, therefore, merely by referring to Notification No. 125/84-CE dated 26th May, 1984, the appellants cannot claim the exemption from the payment of cess.

15. As far as Policy Item No. 9.29(A)(f) is concerned, it, undoubtedly, states that, "Procurement of raw materials, components and consumables and export of finished products shall be exempt from Central levies." Referring to the expression 'Central Levies', it was sought to be strenuously argued on behalf of the appellants that, it would disclose the intention of the Government to grant exemption in relation to

the obligation to pay the cess by 100% EOU units and, therefore, the appellants were justified in claiming exemption from payment of cess. The contention is totally devoid of substance. Mere Policy document would not entitle the assessee to claim exemption from payment of duty or tax. To claim exemption, there has to be specific Notification in that regard issued by the competent authority. No such Notification has been disclosed at least for the period prior to 1st September, 2004. To what extent the appellants can claim benefit of Notification dated 1st September, 2004 issued by the Ministry of Commerce and Industry in relation to the liability to pay the cess in question is a totally different issue and does not arise for our consideration in the matter in hand as the relevant period for us is prior to 1st August, 2003. Even otherwise, merely because there was a Notification issued granting exemption from the obligation of payment of cess on 1st September, 2004 onwards that would not automatically be operative retrospectively.

16. As rightly pointed out by the learned DR, the Circular dated 3rd March, 2004 along with Notification dated 04th April, 1994 read with amended Notification dated 11th November, 1999 issued by the Ministry of Commerce in relation to exemptions available from the payment of duty of cess by variety of products of tea and *ex facie* those varieties

do not include the products classifiable under Chapter Heading 2101.20.

17. For the reasons stated above, therefore, there is no substance in the claim of the appellants about the exemption from payment of cess for the relevant period.

18. As regards the contention about multiple payment of cess, as rightly pointed out by the authorities below, there is absolutely no material brought on record in that regard and it is a mere argument in the air without any factual matrix in support thereto.

19. As regards the contention that the Apex Court while delivering decision in **Tata Tea Ltd.**'s case (supra) had occasion to deal with the issue concerning non-levy of cess on instant tea being exported by 100% EOU pursuant to the Exemption Notification No. 125/84-CE dated 26th May, 1984 read with Export Policy and clarification by Department, the same is also devoid of substance for the reasons stated above. As already seen above, even under the said Notification the appellants are not entitled to claim exemption in relation to the obligation to pay the cess. Neither the Export Policy nor the Departmental clarification is of any help in that regard. The Departmental clarification dated 11th April, 1986 reads thus :

> **"Cess on tea "The Tea Act, 1953, under which cess is imposed on tea, does not appear to have scope for collecting any additional rate of cess for package tea or instant tea, etc., unless necessary amendment is made to this effect. [Ministry of Commerce O.M. No. F. 1301 1(3)/86-Plant A dt. 11.4.1986]"**

20. In any case, the clarification is neither here nor there, besides being not binding upon the Tribunal and more particularly in view of the law laid down by the Apex Court in **Tata Tea Ltd.**'s case (supra) read with the decision in **Modi Rubber Ltd.**'s case (supra).

21. The Larger Bench of the Tribunal in **Nellimarla Jute Mills**'s case (supra), after considering the provisions of Central Excise Act, 1944 as well as Jute Manufacture Cess Act, 1983 and the decision of the Apex Court in **Union of India & Ors. Vs Ahmedabad Mfg. & Calico Printing Co. Ltd.,** 1985 (21) ELT 633 (SC), held as under :

> **"Now coming specifically to the provisions relating to exemption from cess, the authority or power of the Central Government to grant exemption to any jute manufacture from the cess leviable under the Cess Act would be Central Excise Rule 8 as made applicable by Section 3(4) of the Central Cess Act. A notification issued under Section 3(4) of the Cess Act read with Central Excise Rule 8(1) would achieve the object. The learned counsel's contention is that since Central Excise Notification No. 56/72 issued under Rule 8(1) exempts from payment of Central Excise duty jute**

manufactures used captively for the manufacture of other jute manufactures, a similar exemption from the Cess leviable under the Cess Act would be the result insofar as the present cases are concerned because of the operation of Section 3(4) of the Cess Act. In our opinion, this result will not follow from Central Excise Notification No. 56/72. Our reason for saying so are the following. Firstly, that notification exempts goods in the circumstances stated therein from "duty". The expression "duty" for the purpose of the Central Excise Rules is defined as "duty payable under Section 3 of the Act" [Central Excise Rule 2(v)]. Section 3 of the Act (i.e. the Central Excises Act) provides for levy and collection of duties of excise on all excisable goods produced or manufactured in India as, and at the rates set forth, in the First Schedule to the Act. This duty is not the same thing as the duty levied in terms of Section 3(1) of the Cess Act. Though both levies are described as duties of excise, the authority for levy is, as already noted, through separate and different enactment's. Therefore, the exemption by means of a notification issued under Central Excise Rule 8(1) exempting goods from duty (leviable under the Central Excises Act) will not constitute an authority for exemption from the cess leviable under the Cess Act. For this purpose, there has to be an exemption notification specifically in terms of Section 3(4) of the Cess Act read with Central Excise Rule 8(1). No such notification has been placed before us, nor is it contended that there is any such notification."

22. That brings us to the last point sought to be contended on behalf of the appellants regarding non-entitlement of the Department to issue show cause notice for

a period beyond one year. It is noticed that, the issue which is sought to be canvassed was never raised before the lower authorities. Even in the Memo of Appeal, the same has not been raised. The appellants are not entitled to raise new grounds of challenge at eleventh hour. However, considering the fact that the ground is sought to be raised on the basis of factual matrix, already available on record, and in undisputed facts, we consider it appropriate to deal with the same.

23. It is apparent from the records that, the initial show cause notice was issued on 4th August, 1999 in relation to the period from January 1999 to June 1999. It was on account of failure on the part of the appellants to pay the duty of cess. The notice in relation to the period from 1995-96 to 1998-99 was issued only on 2nd March, 2001. In between there was another notice issued in relation to the period from July 1999 to November 1999. All these notices were issued on the same cause of action. In these circumstances, there is no scope to contend that the Department had no knowledge about alleged suppression of facts.

24. It is well settled that once the Department issues the show cause notice for a particular period, the Department normally thereafter on the same set of facts and grounds cannot issue second show cause notice by invoking the

extended period of limitation relating to earlier period thereto. The appellants are justified in contending that the respondents were not entitled to initiate proceedings on the basis of show cause notice dated 2nd March, 2001. The said notice related to the demand of duty of Rs. 3,94,475/-. The impugned order discloses that equal amount of penalty has also been imposed in respect thereto apart from demanding interest on the said amount.

25. As regards the dispute relating to March, 2001 and April, 2002 is concerned, we do find that the said notices were issued during the course of the proceeding which was indeed an on going process. Merely because the matter was pending for adjudication, it did not absolve the appellants from the liability to pay the duty. Being so, the contention in regard to the bar of limitation sought to be raised in relation to the months of March, 2001 and April, 2002, cannot be accepted.

26. As regards the issue relating to penalty, as rightly pointed out by the learned advocate for the appellants, the dispute related to the interpretation of statutory provisions and it did not disclose intension to evade the payment of duty and, therefore, there was no justification for imposition of penalty in the matter. Hence, the penalty imposed under the impugned order is liable to be set aside.

27. For the reasons stated above, therefore, the Appeal No. E/6184/2004 (Appeal No. 245/2001 before the Commissioner (Appeals) in relation to the show cause notice dated 2nd March, 2001 succeeds and the impugned order is hereby set aside and demand thereof is quashed. As regards imposition of penalty in all the other appeals is concerned, the impugned order to that extent is set aside, whereas duty demanded thereunder and also interest, are confirmed. All the appeals are disposed of in the above terms.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay