(2007) 10 DEL CK 0202

In the Delhi High Court

Case No : C.E.A.C. No. 15 of 2005

Commissioner of C. Ex.	APPELLANT
Vs	
Wonderax Laboratories, I.P.L.	RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A(1)

Citation : (2010) 255 ELT 60

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Jaswinder Singh, for the Appellant; S.K. Anand, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dated 6th September, 2004 passed by 2005 (118) ECR 92

2. The only issue in this case is whether the appellant could have invoked the extended period of limitation as mentioned in the proviso to Section 11A(1) of the Central Excise Act, 1944 (''Act'').

3. It appears that the brand name WONDERAX was being used for manufacturing shaving cream but the owner of the brand name (a sister concern) did not actually manufacture those goods. The Assessee, who is a small scale industry, was using the brand name WONDERAX for its own goods (other than shaving cream). According to the Assessee, this was permissible and it was under the bona fide belief that it was exempted from payment of central excise duty even if it was using the brand name of another person on goods manufactured by it.

4. It appears that there was conflict of views among different Benches of the Tribunal on the interpretation of the exemption Notification No. 1/93 dated 28th February, 1993 which dealt with this issue. Consequently, the dispute was referred to a larger Bench of the Tribunal and was ultimately settled in 2003 (85) ECC 97 The Full Bench of the Tribunal held that for the denial of exemption, both

the Assessee and the brand name owner, should manufacture identical goods. In the present case, the Assessee was using the brand name for a product other than shaving cream which was the product intended to be manufactured by the brand name owner. In these circumstances, the Tribunal took the view that the Assessee appears to have acted bona fide in making its clearances and claiming exemption from excise duty. Consequently, the Tribunal took the view that there was no warrant for extending the time of limitation beyond the period of one year under the proviso to Section 11A(1) of the Act.

5. We are of the view that opinion expressed by the Tribunal is well reasoned. There is no doubt that there was a conflict of views and that was resolved much later in the year 2002. The period with which we are concerned is 1998-1999 and 1999-2000 at which time the controversy had not been settled by the larger Bench of the Tribunal. The Assessee was justified in proceeding on the basis that it was exempt from excise duty particularly during the pendency of controversy.

6. No substantial question of law arises for consideration.

7. The appeal is dismissed.