

(2017) 01 GUJ CK 0204
In the Gujarat High Court

Case No : 539 of 2004 With CIVIL APPLICATION (OJ) NO 93 of 2005

G T C INDUSTRIES LIMITED.

APPELLANT

Vs

COMMISSIONER OF CENTRAL EXCISE

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

[Central Excise Act, 1944](#), [Section 11D](#) -
Duties of excise collected from the buyer to be deposited with the Central Government

Citation : (2017) 01 GUJ CK 0204

Hon'ble Judges : M.R. Shah, B.N. Karia

Bench : Division Bench

Advocate : TRIVEDI & GUPTA, SUDHIR M MEHTA

Judgement

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Customs Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the learned tribunal") dated 09/06/2004 by which the learned tribunal has dismissed the said Appeal preferred by the appellant and has confirmed the demand of excise duty recovered by the appellant by invoking Section 11D of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), the appellant has preferred the present Appeal to consider the following substantial questions of law; (i) Whether Notification No.355/86-CE dated 24/06/1986 is a notification granting Set Off of the duty paid on the input viz., cut tobacco while paying duty on the finished product i.e. Cigarettes or is a notification granting exemption, simplicitor from payment of excise duty to Cigarettes?

(ii) Whether the Board Circulars dated 06/07/1990 and 01/04/1981 and the Trade Notice dated 08/08/1986 did not establish that Notification No.355/86 in effect conferred benefit on the manufacturer in the nature of Set Off and the same was not in the nature of an exemption notification simplicitor?

(iii) Whether by virtue of the operation of Notification No.355/86-CE dated 24/06/1986, the appellants had in fact paid the full effective duty on the final

products and hence were within their rights to recover the full duty from their customers?

(iv) Whether the provision of Section 11D of the Central Excise Act, 1944 could be invoked in respect of payment of duty under Notification No.355/86 when the duty collected from the buyer of the finished products was not more than the duty already paid on the input and the duty paid on the finished product at the time of removal cumulatively?

(v) Whether the Tribunal did not err in treating a delay of six years as reasonable on the ground that this is a mere technicality?

2. The facts leading to the present Appeal in a nutshell are as under; 2.1 The appellant herein ? M/s. GTC Industries Ltd. (hereinafter referred to as "the assessee") was engaged inter alia in the manufacture of machine rolled cigarettes falling under Chapter 24 of the Central Excise Tariff Act, 1985. The factory premises of the assessee was visited by the Officers of the Preventive Branch of Central Excise, Head Quarters, Vadodara on 14/10/1994, which reveals as under;

"(i) GTC were manufacturing /clearing the machine rolled cigarettes and were clearing under physical control system.

(ii) In respect of each clearance of machine rolled cigarettes, GTC filed AR-1 with the Range Officer and followed the detailed procedure laid down in the Central Excise law.

(iii) GTC prepared invoice under Rule 52B of Central Excises and Salt Act for covering each consignment of machine rolled cigarettes from their factory. Such invoices showed inter alia details providing variety, brand of cigarettes under clearance, value amount of duty payable and other charges recoverable from the customer etc.

(iv) GTC also maintained PLA register for making entries relating to deposits & debits of Central Excise duty."

2.2 During the course of the checks, Officers noticed that the assessee was availing partial exemption from payment of duty under Notification No.355/86-CE dated 24/06/1986 as amended from time to time in respect of machine rolled cigarettes. The Officers also observed that the assessee was determining their duty liability on the basis of effective rate of duty prescribed under Notification No.3/94-CE dated 01/03/1994 in respect of machine rolled cigarettes manufactured and cleared by them. Under the Notification No.355/86-CE dated 24/06/1986 the assessee was availing exemption from payment of duty on cigarettes of the amount equal to the duty already paid on the Cut Tobacco used in the manufacture of such machine rolled cigarettes. For arriving at consumption of Cut Tobacco in the manufacture of such machine rolled cigarettes, assessee submitted to the Central Excise Department "Blend and Brand Information" in respect of each brand of cigarettes manufactured by them. On the basis of the

formula adopted in such "Blend and Brand information", GTC calculated the amount of exemption available to them under Notification No.355/86-CE dated 24/06/1986 at the time of clearance of machine rolled cigarettes. The assessee therefore availed of partial exemption under Notification No.355/86-CE dated 24/06/1986 and accordingly paid duty after subtracting the amount of concessions available to them. The Officers observed that though the assessee actually paid duty at concessional rates under Notification No.355/86-CE dated 24/06/1986 in respect of machine rolled cigarettes, they indicated on the duty paying documents the entire amount of excise duty as per the rates prescribed under Notification No.3/94-CE dated 01/03/1994 and consequently recovered the entire amount of excise duty from the customer, and therefore, it was found that the said extra amount was charged to their customer representing excise duty and it was equal to the amount of concession availed by them under Notification No.355/86-CE. Therefore, appropriate authority issued notice upon the assessee dated 05/12/2000 in exercise of powers under Section 11D of the Act. It was found by the Officer that the assessee recovered total amount of Rs.3,08,33,015/- from their customers as representing central excise duty without crediting the same to the Central Government for the period from January, 1993 to 15/03/1995, and therefore, the assessee was called upon to show cause notice why the amount of Rs.3,08,33,015/- for the period from January, 1993 to 15/03/1995 recovered by them from their customers as representing the amount of central excise duty and not credited to the Central Government may not be recovered from them under Section 11D of the Act. The assessee was called upon to show cause why penalty should not be imposed upon them under Rule 210 of the Central Excise Rules, 1944 for commencement of the provisions of Section 11D of the Act. The Joint Commissioner of Central Excise held in favour of the assessee. The order passed by the Joint Commissioner of Central Excise was subject matter of Appeal before the first appellate authority to set aside the order passed by the Joint Commissioner. The Commissioner (Appeals) disallowed the Appeal and confirmed the demand mentioned in the show cause notice under Section 11D of the Act by order dated 11/06/2003. Aggrieved by the order passed by the Commissioner (Appeals), assessee preferred Appeal before the learned tribunal. It was contended that the Notification No.355/86-CE allowed only set off Notification. It was contended that all other duty was paid on the final product by utilizing credit of duty already paid on Cut Tobacco, which was available as set off and such payment has been accepted by the Department. It was contended that Section 11D shall not be applicable. Before the learned tribunal the assessee heavily relied upon Trade Notice No.153/86 dated 02/07/1996 and Trade Notice No.174/86 dated 08/08/1986 in support of their case that Notification No.355/86-CE was set off Notification and not general exemption Notification. It was also contended on behalf of the assessee that in the aforesaid Trade Notices, Department construed Notification No.355/86-CE as set off notification. By the impugned judgment and order the learned tribunal has dismissed the Appeal preferred by the assessee. Hence, the assessee has preferred the present Appeal to consider the above

referred substantial questions of law.

3. Shri Uday Joshi, learned advocate has appeared on behalf of the assessee and Shri Sudhir Mehta, learned advocate has appeared on behalf of the Department.

3.1 (i) Whether Notification No.355/86-CE dated 24/06/1986 is a notification granting Set Off of the duty paid on the input viz., cut tobacco while paying duty on the finished product i.e. Cigarettes or is a notification granting exemption, simplicitor from payment of excise duty to Cigarettes?:-

3.2 Shri Uday Joshi, learned advocate appearing on behalf of the assessee has vehemently submitted that in the facts of the case the learned tribunal has materially erred in not properly appreciating and /or interpreting Notification No.355/86-CE dated 24/06/1986.

3.3 It is vehemently submitted by Shri Joshi, learned advocate appearing on behalf of the assessee that the learned tribunal has materially erred in treating Notification No.355/86- CE as exemption notification /general exemption notification. It is submitted that as such Notification No.355/86-CE is an exemption notification granting set off paid on the inputs viz Cut Tobacco, while paying duty on the finished product i.e. Cigarettes and is unlike majority of notifications, where the extent of exemption granted to the finished product is quantified and indicated as a particular percentage or amount. It is submitted that such amount of set off of duty paid on the input was as such utilized while making payment of excise duty on the finished product. It is submitted that admittedly the assessee was entitled to set off of the duty paid on the input, namely, Cut Tobacco. It is submitted that therefore if the Notification No.355/86-CE have been considered as Notification granting set off of duty, in that case, Section 11D of the Act would not have been applicable, more particularly, when what was recovered by the assessee was the excise duty paid by the assessee on finished product ? rolled Cigarettes. It is submitted that subsequently even the Department also came out with the Trade Notice in which it was clarified that to the extent of duty paid by the assessee on input, namely, Cut Tobacco, the assessee is entitled to the set off of the duty while making payment of excise duty on finished product. It is submitted that therefore Department also construed that Notification No.355/86-CE was notification granting set off of duty and not exemption as now sought to be contended by the Department.

3.4 In support of the above submissions, Shri Joshi, learned advocate appearing on behalf of the assessee has relied upon the decision of the Hon"ble Supreme Court in the case of J.K. Synthetics Vs. CCE, Jaipur reported in 1996 (81) ELT 648. It is submitted that in the case before the Hon"ble Supreme Court in the case of H.M.M. Ltd. Vs. Collector of Central Excise, New Delhi reported in 1996 (87) ELT 593 (SC) similar notification, being Notification No.201/79-CE, was for consideration before the Hon"ble Supreme Court and it was held to be notification granting set off of duty. Shri Joshi, learned advocate appearing on behalf of the assessee has also relied upon the following decisions of the tribunal;

(i) J.K. Synthetics Vs. CCE, Jaipur reported in 1996 (81) ELT 648 dealing with the Notification No.225/86-CE;

(ii) CCE Vs. ITC Ltd. reported in 1993 (67) ELT 852;

(iii) Andhra Pradesh Paper Mills Ltd. Vs. Collector of Central Excise, Guntur reported in 1987 (27) ELT 692.

3.5 Making the above submissions, it is requested to answer question no.(i) in favour of the assessee and against the revenue.

4. (ii) Whether the Board Circulars dated 06/07/1990 and 01/04/1981 and the Trade Notice dated 08/08/1986 did not establish that Notification No.355/86 in effect conferred benefit on the manufacturer in the nature of Set Off and the same was not in the nature of an exemption notification simplicitor?:- 4.1 Much reliance has been placed upon Trade Notices Nos.153/86 dated 02/07/1996 and 174/86 dated 08/08/1986 and relying upon the aforesaid Trade Notices it is the case on behalf of the assessee that even the Department understood that Notification No.355/86-CE is notification granting set off of duty paid on inputs, namely, Cut Tobacco. It is submitted that the said Trade Notices are binding to the Department. In support of his above submissions, Shri Joshi, learned advocate appearing on behalf of the assessee has relied upon the followed decisions of the Hon"ble Supreme Court;

(i) Desh Bandhu Gupta and Co. Vs. Delhi Stock Exchange Association Ltd. reported in (1979) 4 SCC 565;

(ii) Collector of CE, Guntur Vs. Andhra Sugar Ltd. reported in 1988 (38) ELT 564;

(iii) State of Tamilnadu Vs. Mahi Traders reported in 1989 (40) ELT 266;

(iv) UCO Bank, Calcutta Vs. Commissioner of Income Tax, W.B. reported in (1999) 4 SCC 599; (v) Collector Central Excise, Vadodara Vs. Dhiren Chemical Industries reported in 2002 (139) ELT 3.

4.2 Making the above submissions and relying upon the above decisions, it is requested to answer question no.(ii) in favour of the assessee and against the revenue.

5. (iii) Whether by virtue of the operation of Notification No.355/86-CE dated 24/06/1986, the appellants had in fact paid the full effective duty on the final products and hence were within their rights to recover the full duty from their customers? 5.1 Now so far as question no.(iii) is concerned, it is vehemently submitted by Shri Joshi, learned advocate appearing on behalf of the assessee that the duty suffered in respect of inputs in the present case (Cut Tobacco) by consequent credit in set off account can very well be used for effective payment of duty on finished goods by debiting the set off account for payment of duty on the finished goods. In support of his above submissions, he has relied upon the following decisions of the tribunal.

(i) Rasoi Ltd. Vs. CCE, Kolkata reported in 2009 (247) ELT 174;

(ii) Maruti Udyog Ltd. Vs. CCE, Delhi-III reported in 2004 (166) ELT 360.

5.2 Making the above submissions and relying upon the above decisions, it is requested to answer question no.(iii) in favour of the assessee and against the revenue.

6. (iv) Whether the provision of Section 11D of the Central Excise Act, 1944 could be invoked in respect of payment of duty under Notification No.355/86 when the duty collected from the buyer of the finished products was not more than the duty already paid on the input and the duty paid on the finished product at the time of removal cumulatively?:- 6.1 Now so far as question no.(iv) is concerned, it is vehemently submitted by Shri Joshi, learned advocate appearing on behalf of the assessee that the show cause notice was issued for the period covering January, 1993 to March, 1995 on dated 05/12/2000. It is submitted that therefore the same ought not to have been treated and considered and issued after unreasonable period. It is submitted that when the manufacture, removal and assessment of excise duty on Cigarettes for the period covering January, 1993 to March, 1995 were carried out under the physical control system by the Central Excise Officers followed by the finalization of the said assessment of duty on the finished goods during the said period by them, the provisions of Section 11D of the Act cannot be invoked by issuing show cause notice dated 05/12/2000. It is submitted that this is because of the fact that the said finalization of the assessment ought to have been challenged by the Department or at the best, a show cause notice ought to have been issued within reasonable time as held by the Hon''ble Supreme Court in catena of decisions. It is therefore submitted that as such show cause notice was either beyond the period of limitation and /or was issued after unreasonable period /time, and therefore, the same ought not to have been confirmed. In support of his above submissions, Shri Joshi, learned advocate appearing on behalf of the assessee has relied upon the following decisions of the Hon''ble Supreme Court; (i) Easland Combines Vs. CCE, Coimbatore reported in 2003 (152) ELT 39;

(ii) CCE, Kanpur Vs. Flock (India) Pvt. Ltd. reported in 2000 (120) ELT 285;

(iii) Government of India Vs. Citadel Fine Pharmaceuticals reported in (1989) 3 SCC 483;

(iv) Ani Elastic Industries Vs. Union of India reported in 2008 (222) ELT 340.

6.2 Making the above submissions, it is requested to allow the present Appeal and answer question no.(iv) in favour of the assessee and against the revenue.

7. The present Appeal is opposed by Shri Sudhir Mehta, learned advocate appearing on behalf of the revenue. 7.1 It is vehemently submitted that as such Notification No.355/86-CE is very clear and it is a Notification for exemption. It is submitted that therefore the learned tribunal has rightly considered and construed Notification No.355/86-CE as exemption Notification. It is vehemently

submitted by Shri Mehta, learned advocate appearing on behalf of the revenue that in the present case the assessee though paid the excise duty on the final product of Cigarettes after getting the set off of the amount of tax paid on input, being Cut Tobacco, they recovered the entire excise duty (including the amount of set off of tax paid on input, Cut Tobacco from the consumer). It is submitted that therefore the assessee collected more amount of excise duty than paid and did not recover the excise duty on the final product from the customers, after deducting the excise duty as per Notification No.355/86-CE. It is submitted that therefore the difference of the amount of actual excise duty and the amount of set off of duty paid on input - Cut Tobacco would be enrichment, and therefore, the assessee was not liable to keep the same with it, and therefore, Section 11D of the Act shall be applicable. It is vehemently submitted by Shri Sudhir Mehta, learned advocate appearing on behalf of the revenue that as such Trade Notice No.153/86 dated 02/07/1996 and Trade Notice No.174/86 dated 08/08/1986 cannot be said to be in conflict with the exemption Notification NO.355/86-CE. It is submitted that the Trade Notice No. 153/86 dated 02/07/1996 and Trade Notice No. 174/86 dated 08/08/1986 are clarificatory in nature with respect to the procedure to be followed while claiming the set off of duty paid on input. It is submitted that therefore there is no question of any conflict between Notification No.355/86-CE and Trade Notice No. 153/86 dated 02/07/1996 and Trade Notice No. 174/86 dated 08/08/1986 as sought to be contended on behalf of the assessee. It is submitted that therefore the decisions, which are relied upon by the learned advocate appearing on behalf of the assessee, shall not be applicable to the facts of the case on hand.

7.2 Now so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of H.M.M. Ltd (Supra) is concerned, it is submitted that in the case before the Hon''ble Supreme Court the dispute was with respect to the entitlement of the set off of the duty paid on input and no such controversy was before the Hon''ble Supreme Court as is there in the present Appeal. It is submitted that therefore the aforesaid decision shall not be applicable to the facts of the case on hand and /or the same shall not be of any assistance to the assessee. It is submitted that similar decisions of the tribunal, which are relied upon also shall not be applicable to the facts of the case on hand.

7.3 Now so far as the contention on behalf of the assessee that the show cause notice was either beyond the period of limitation and /or issued after unreasonable period is concerned, it is submitted that Section 11D of the Act has been amended by Finance Act, 2000 making it applicable retrospectively effective with effect from 20/09/1991. It is submitted that therefore it can be said that the cause of action to issue notice under Section 11D of the Act can be said to have been arisen when Section 11D of the Act is amended. It is submitted that therefore starting point of limitation can be said to be from the date on which Section 11D of the Act is amended, by Finance Act, 2000. It is submitted that any other contrary view will lead to make Section 11D of the Act, as amended by Finance Act, 2000, applicable retrospectively nugatory. It is submitted that

therefore in the present case when the show cause notice has been issued on 05/12/2000 the same cannot be said to be either beyond the period of limitation and /or beyond unreasonable period. Making the above submissions, it is requested to dismiss the present Appeal and answer the questions against the assessee and in favour of the revenue.

8. Heard the learned advocates appearing on behalf of the respective parties at length. Now so far as the question, whether Notification No.355/86-CE dated 24/06/1986 can be said to be exemption Notification or it can be said to be Notification granting set off of duty paid on inputs, namely Cut Tobacco is concerned, it is required to be noted that the said Notification is unambiguous and clear. Notification No.355/86- CE dated 24/06/1996 reads as under; "In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts Cigarettes, falling under sub heading no.2403.11 of the Schedule to the Central Excise Tariff Act,1985 (5 of 1986), from so much of the duty of excise leviable thereon under the Central Excises and Salt Act, 1944 (1 of 1944), as is equivalent to the duty of excise leviable under the said Central Excises and Salt Act already paid on "Cut Tobacco" falling under sub-heading No.2409.90 of the said Schedule and used in the manufacture of such Cigarettes. Explanation: For the purpose of this notification, the expression "Cut Tobacco" means the prepared or processed cut-to-size tobacco which is generally blended or moisturized to a desired extent, for use in the manufacture of machine rolled cigarettes."

8.1 On fair reading of Notification No.355/86-CE, it appears that the said Notification has been issued in exercise of powers under Sub-Rule (1) of Rule 8 of the Central Excise Rules, 1944 by which the Central Government has exempted the Cigarettes falling under sub heading No.2403.11 of the Schedule to the Central Excise Tariff Act, 1985, from so much of the duty of excise leviable thereon under the Central Excises and Salt Act,1944 as is equivalent to the duty of excise leviable under the said Central Excises and Salt Act already paid on "Cut Tobacco" falling under sub heading No.2404.90 of the said Schedule and used in the manufacture of such Cigarettes. Therefore, on fair reading of the Notification it can be said to be and rightly held to be exemption Notification, and therefore, while making payment of excise duty leviable on Cigarettes, excise duty is required to be reduced to the extent equivalent to the duty of excise already paid on "Cut Tobacco". It cannot be disputed and as per the settled position of law, exemption Notification is required to be construed strictly and having regard to the language employed therein. Under the circumstances, we are of the opinion that no error has been committed by the learned tribunal in holding Notification No.355/86-CE dated 24/06/1986 as exemption Notification. It may be a different thing that while making the payment of excise duty on the final product ? Cigarettes the assessee might use such credit of the duty of excise already paid on Cut Tobacco. However, by that, it cannot be said that Notification No.355/86-CE is a Notification granting set off of excise on the duty already paid on Cut Tobacco as sought to be contended on behalf of the assessee.

8.2 Now so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of H.M.M. Ltd (Supra) is concerned, on considering the controversy raised before the Hon''ble Supreme Court, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and /or the same shall not be of any assistance to the assessee in support of his submissions that Notification No.355/86-CE can be said to be Notification granting set off. In the case before the Hon''ble Supreme Court the controversy was with respect to the amount of set off and before the Hon''ble Supreme Court such controversy was not raised, which is raised in the present case. Under the circumstances, the said decision shall not be applicable to the facts of the case on hand. In view of the above, question no.(i) is answered against the assessee and in favour of the revenue.

9. Now so far as reliance placed upon Trade Notice No.153/86 dated 02/07/1996 and Trade Notice No.174/86 dated 08/08/1986 and the Board Circular are concerned, and the case on behalf of the appellant that the Department also understood that the Notification No.355/86-CE is a notification granting set off, and therefore, the same shall be binding to the Department, the aforesaid has no substance. On considering the Trade Notices and the Circular, we are of the opinion that the said Circular and the Trade Notices are clarificatory in nature with respect to the procedure to be followed while availing set off /claiming the set off with respect to the amount of excise duty paid on input ? Cut Tobacco. The said Trade Notices, as such, cannot be said to be in conflict with the Notification No.355/86-CE dated 24/06/1986. As observed and held hereinabove, Notification No.355/86-CE dated 24/06/1986 is a Notification granting exemption on excise duty payable on Cigarettes to the extent of duty paid on the input, namely, Cut Tobacco. Under the circumstance, question no.(ii) is answered against the assessee and in favour of the revenue.

10. Now so far as question no.(iii) is concerned, as such, the same shall not arise in the facts of the case. As can be seen from the invoice produced on record that while making payment of excise duty on finished product, the assessee deducted /debited the duty already paid on input ? Cut Tobacco after availing benefit of set off. However, the question is despite the above the assessee collected the duty from the customer, the entire duty payable on Cigarettes, for e.g. the excise duty payable on Cigarette is Rs.100/- and the assessee paid Rs.20/- towards excise duty on input, namely, Cut Tobacco. As per exemption Notification No.355/86-CE excise duty liability would be Rs.80/- only. In the present case though the assessee paid the excise duty at Rs.80/- (after debiting Rs.20/- paid on input, namely, Cut Tobacco) they recovered excise duty at Rs.100/- from the customer. Thus, Rs.20/- was recovered by the assessee in excess of the duty payable, and therefore, to that extent, Rs.20/- can be said to be enrichment, which is not permissible, that is exactly for which Section 11D of the Act has been introduced. The principles underlying Section 11D is the principle of enrichment. Section 11D as per Finance Act, 2000 reads as under; Section 11D Duties of excise collected from the buyer to be deposited with the

Central Government. (i) Notwithstanding anything to the contrary contained in any order or direction of the appellate tribunal or any Court or in any other provisions of this Act or the Rules made thereunder, (every person who is liable to pay duty under this Act or Rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the Rule made thereunder from the buyer of such goods) in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government. (ii) Where any amount is required to be paid to the credit of the Central Government under Sub Section (i) and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause, why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(iii) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under Sub Section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(iv) The amount paid to the credit of the Central Government under Sub Section (1) or Sub Section (3) shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in Sub Section(i).

(v) Where any surplus is left after the adjustment under Sub Section (4), 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 such person may make an application under that Section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount."

Under the circumstances, question no.(iii) is answered against the assessee and in favour of the revenue.

11. Now so far as the question whether the show cause notice was beyond the period of limitation and /or after unreasonable period is concerned, it is the case on behalf of the assessee that the show cause notice came to be issued in the year 2000 for the alleged transactions for the period between 1993 to 1995, and therefore, the same has been issued after six years i.e. unreasonable period. The aforesaid seems to be attractive but has no substance. It is required to be noted that Section 11D of the Act came to be amended by the Finance Act, 2000 making it applicable retrospectively with effect from 20/09/1991, and therefore, the cause of action for the Department to invoke the provisions of Section 11D of the Act can be said to have been occurred on amendment of Section 11D of the Finance Act, 2000. 11.1 When Section 11D of the Act is made applicable

retrospectively with effect from 20/09/1991, show cause notice has been issued in the month of December, 2000, and therefore, it cannot be said that the same can be said to have been issued after unreasonable period. If the submissions on behalf of the assessee is accepted, in that case, the amendment in Section 11D by Finance Act, 2000 making Section 11D applicable retrospectively with effect from 20/09/1991 would become nugatory. If the show cause notice is issued after five or six years or unreasonable period from the amendment of Section 11D by Finance Act, 2000 then the assessee can justifiably make a grievance. However, after amendment in Section 11D by Finance Act, 2000, immediately show cause notice has been issued, and therefore, the same cannot be said to be either issued after unreasonable period or beyond the period of limitation. Under the circumstances, none of the decisions cited and relied upon by the learned advocate appearing on behalf of the assessee shall be applicable to the facts of the case on hand. The decisions, which are relied upon by the learned advocate appearing on behalf of the assessee on limitation and /or unreasonable period, are with respect to the powers exercised under Section 11A of the Central Excise Act and Section 28 of the Customs Act, which prescribes the period of limitation. Under the circumstances, question nos.(iv) & (v) are also answered against the assessee and in favour of the revenue.

12. In view of the above and for the reasons stated hereinabove, the Appeal fails and the same deserves to be dismissed and is accordingly dismissed. All the questions are held against the assessee and in favour of the revenue. CIVIL APPLICATION NO.93/2005 In view of dismissal of the Tax Appeal, no order in the Civil Application and the same stands dismissed.