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C.A.No. 3783 OF 2000

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Item No.	Court No.	Section
101	02	III

S U P R E M E C O U R T O F I N D I A  
Record of Proceedings

Civil Appeal No. 3783/2000

Commissioner of Central Excise, Delhi Appellant (s)

vs.

M/s. Maruti Udyog Ltd. Respondent(s)

(with office report)

C.A. No. 660/2000 (Commissioner of Central Excise, New Delhi vs. Hilton Rubber Ltd.) (with office report),  
C.A. No. 3841/2000 (Commissioner of Central Excise, Mumbai vs. Rammaica (India) Ltd.) (with office report),  
C.A. Nos.5867-68/2000 (Commissioner of Central Excise, Tamil Nadu vs. K. Manickam & Anr.) (with office report),  
C.A. No. 3913/2001 (Commissioner of Central Excise, Pune vs. M/s. Centre for Dev. of Advance Computing) (with office report),  
C.A. No. 4082/2001 (Commissioner of Central Excise, Delhi vs. M/s. Haldi Ram Manufacturing Co. Ltd.) ,  
C.A. No. 2749/2001 (Centre for Dev. of Adv. Computing, Pune vs. Commissioner of Central Excise, Pune) (with office report),,  
C.A. No. 4455/2001 (Commissioner of Central Excise, New Delhi vs. M/s. Ajay Footwear (I) Ltd.) (with office report),  
C.A. No. 6072/2001 (Commissioner of Central Excise, Delhi vs. M/s. Prabhat Zarda Factory) (with appln.(s) for ex-parte stay),  
C.A. No. 8455/2001 (Commissioner of Central Excise, Chandigarh vs. M/s. Standard Tarpaul Industries) (with appln.(s) for ex-parte stay),  
C.A. No. 92/2002 (Commissioner of Central Excise, Delhi vs. M/s. Sonia Engineering Works Pvt. Ltd.) and  
C.A. Nos. 2178-2179/2001 (Commissioner of Central Excise, Shillong vs. M/s. Woodcraft Products Ltd.) (with appln.(s) for ex-parte stay and with office report).

Date:27/02/2002 This/These matter(s) was/were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.N. KIRPAL  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For the Appellant (s):

in all appeals except Mr. N K Bajpai, Adv.  
CA 2749/2001 Mr. Jaideep Gupta, Adv.  
Ms. Nisha Bagchi, Adv.  
Mr. B. Krishna Prasad, Adv.

in CA2749/02 Mr. V. Lakshmikumaran, Adv.  
Mr. M.P. Devanath, Adv.  
Mr. V Balachandran, Adv.

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For the Respondent(s):

in CA 3783/2000, Mr. V. Lakshmikumaran, Adv.  
3913/01 & 4082/01 Mr. M.P. Devanath, Adv.  
Mr. A R Madhav Rao, Adv.  
Mr. V Balachandran, Adv.

in CA 660/2000 Mr. S N Mehrotra, Adv.  
Mr. Attar Singh, Adv.

in CA 3841/00 Mr. V J Francis, Adv.  
Mr. P I Jose and Mr. Jenis, Adv.

in CA 5867-5868/00 Mr. S. Nanda Kumar, Adv.  
Mr. V. Vijayan, Adv.  
Mr. L K Pandey, Adv.

in CA 2749/01 Mr. N K Bajpai, Adv.  
Mr. Jaideep Gupta, Adv.  
Ms. Nisha Bagchi, Adv.  
Mr. B. Krishna Prasad, Adv.

in CA 4455/01 Ex-parte.

in CA 6072/01 Mr. Mahendra Anand, Sr. Adv.  
Mr. Himanshu Munshi, Adv.

in CA 92/02 Mr. Rajesh Kumar, Adv.

in CA 2178-79/01 Mr. M.L. Lahoty, Adv.  
Mr. Paban K. Sharma, Adv.  
Mr. Himanshu Shekhar, Adv.

UPON hearing counsel, the Court made the following  
O R D E R

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C.A. No. 3783/2000@@  
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Mr. V Lakshmikumaran resumed his arguments at 10.35 A.M. and concluded at 12 Noon. Thereafter, Mr. N K Bajpai made his submissions in reply till 12.20 P.M. Thereafter, Mr. Jaideep Gupta advanced his submissions for 10 minutes. Arguments concluded.

For the reasons stated in the signed order, the appeal is dismissed. No costs.

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(D.P. WALIA) (S.L. GOYAL) @@  
AA  
COURT MASTER COURT MASTER @@  
A AAA

(Reportable Signed Order in C.A. No.3783/2000 is placed on the file)

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C.A. No. 660/2000, C.A. No. 3841/2000, C.A.@@  
CC  
Nos.5867-68/2000, C.A. No. 4082/2001, C.A. No. 4455/2001,@@  
CC  
C.A. No. 6072/2001, C.A. No. 8455/2001 and C.A. No.@@  
CC  
92/2002.@@  
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.....L.....I.....T.....T.....T.....T.....T.....T.....T....J.R  
For the reasons stated in our order passed today in  
Civil Appeal No. 3783 of 2000 entitled Commissioner of  
Central Excise, Delhi vs. M/s Maruti Udyog Ltd., these  
appeals are dismissed.

C.A. No. 3913/2001@@  
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After hearing the learned counsel for the parties, we  
see no reason to interfere with the decision of the Tribunal.  
Hence, the civil appeal is dismissed.

C.A. No. 2749/2001.@@  
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Heard the counsel for the parties from 2.15 P.M. to  
3.10 P.M.

For the reasons stated in the signed order, this  
appeal is allowed.

C.A. Nos.2178-2179/2001.@@  
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List before a Bench of which Hon'ble Mr. Justice B.N.  
Kirpal is not a Member.

Kalyani (S.L. GOYAL) @@  
AA  
COURT MASTER @@  
A AA

.....L.....T.....T.....T.....T.....T.....T.....T.....T....J.R  
(Signed order in C.A. No. 660/2000, C.A. No. 3841/2000,  
C.A. Nos.5867-68/2000, C.A. No. 4082/2001, C.A. No.  
4455/2001, C.A. No. 6072/2001, C.A. No. 8455/2001, C.A.  
No. 92/2002 & C.A. No. 3913/2001 and another signed order  
in C.A. No. 2749/2001 are placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3783 OF 2000@@  
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Commissioner of Central Excise, Delhi ..Appellant(s)

vs.

M/s. Maruti Udyog Ltd.

..Respondent(s)

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The respondent is manufacturing motor vehicles and it had availed of MODVAT credit of the duty paid on inputs under Rule 57A of the Central Excise Rules. As it had not paid any excise duty on the raw material, it became liable to pay excise duty on the waste and scrap of aluminium and iron and steel which scrap had been sold by the respondent.

The Collector raised a demand of excise duty on the waste and scrap which was sold. The demand was challenged by the respondent who contended that excise duty was not payable. Having been unsuccessful before the Collector, an appeal was filed before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal by the impugned order came to the conclusion that excise duty was payable on the scrap sold by the respondent. It further came to the conclusion that the price on which the waste and scrap had been sold should be considered to be cum-duty price and the assessable value should be determined after deducting the element of excise duty. It is this part of the decision of the Tribunal which is sought to be challenged by the Revenue in this appeal.

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The respondent had sold the scrap and according to it the purchaser was not liable to pay any amount in addition thereto and it is for this reason the Tribunal regarded this transaction as being one of cum-duty price.

Section 4 of the Central Excises and Salt Act, 1944 provides for valuation of excisable goods for purposes of charging of duty of excise. Under Section 4(1), the duty of excise is chargeable on any excisable goods with reference to the value which is deemed to be the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade where the buyer is not a related person and the price is the sole consideration for the sale. Section 4(4)(d)(ii) states that value in relation to any excisable goods does not include the amount of duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount, etc., is also to be allowed as a deduction.

A reading of the aforesaid Section clearly indicates that the wholesale price which is charged is deemed to be the value for the purpose of levy of excise duty, but the element of excise duty, sales tax or other taxes which is included in the wholesale price is to be excluded in arriving at the excisable value. This Section has been so construed by this Court in Asstt. Collector of Central Excise and Others vs.@@

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Bata India Ltd., 1996 (4) SCC 563, and it is thus clear that@@  
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when cum-duty price is charged, then in arriving at the  
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excisable value of the goods the element of duty which is payable has to be excluded. The Tribunal has, therefore, rightly proceeded on the basis that the amount realised by the

respondent from the sale of scrap has to be regarded as a normal wholesale price and in determining the value on which excise duty is payable the element of excise duty which must be regarded as having been incorporated in the sale price, must be excluded. There is nothing to show that once the demand was raised by the Department, the respondent sought to recover the same from the purchaser of scrap. The facts indicate that after the sale transaction was completed, the purchaser was under no obligation to pay any extra amount to the seller, namely, the respondent. In such a transaction, it is the seller who takes on the obligation of paying all taxes on the goods sold and in such a case the said taxes on the goods sold are to be deducted under Section 4(4)(d)(ii) and this is precisely what has been directed by the Tribunal. There is also nothing to show that the sale price was not cum-duty.

It will be useful here to refer to the observations of this Court in Hindustan Sugar Mills vs. State of Rajasthan &@  
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Others, 1978 (4) SCC 271, at page 280, as follows :@@  
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"Take for example, excise duty payable by a dealer who is a manufacturer. When he sells goods manufactured by him, he always passes on the excise duty to the purchaser. Ordinarily it is not shown as a separate item in the bill, but it is included in the price charged by him. The 'sale price' in such a case could be the entire

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price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of the goods. True, the excise duty component of the price would not be an addition to the coffers of the dealer, as it would go to re-imburse him in respect of the excise duty already paid by him on the manufacture of the goods. But even so, it would be part of the 'sale price' because it forms a component of the consideration payable by the purchaser to the dealer. It is only as part of the consideration for the sale of the goods that the amount representing excise duty would be payable by the purchaser. There is no other manner of liability, statutory or otherwise, under which the purchaser would be liable to pay the amount of excise duty to the dealer. And, on this reasoning, it would make no difference whether the amount of excise duty is included in the price charged by the dealer or is shown as a separate item in the bill. In either case, it would be part of the 'sale price'. ....."

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The example given in the aforesaid decision is clearly applicable in the present case. The sale price realised by the respondent has to be regarded as the entire price inclusive of excise duty because it is the respondent who has,

by necessary implication, taken on the liability to pay all taxes on the goods sold and has not sought to realise any sum in addition to the price obtained by it from the purchaser. The purchaser was under no obligation to pay any amount in excess of what had already been paid as the price of the scrap.

Under the circumstances, the Tribunal was right in directing that the respondent is entitled to the benefit of Section 4(4)(d)(ii) of the Central Excises & Salt Act.

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For the aforesaid reasons, this appeal is dismissed.  
No costs.

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.....J.  
(B.N. KIRPAL)

.....J.  
(SHIVARAJ V. PATIL)

.....J.  
(BISHESHWAR PRASAD SINGH)

New Delhi;  
February 27, 2002.

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 660 OF 2000@@  
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Commissioner of Central Excise, New Delhi ..... Appellant

Versus

Hilton Rubbers Ltd. .... Respondent

CIVIL APPEAL NO. 3841 OF 2000@@  
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Commissioner of Central Excise, Mumbai ..... Appellant

Versus

Rammaica (India) Ltd. .... Respondent

CIVIL APPEAL NOS. 5867-5868 OF 2000@@  
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Commissioner of Central Excise, Tamil Nadu ..... Appellant

Versus

K. Manickam & Anr. . . . . Respondents

CIVIL APPEAL NO. 3913 OF 2001@@  
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Commissioner of Central Excise, Pune . . . . . Appellant

Versus

M/s Centre for Dev. of Advance Computing . . . . . Respondent

CIVIL APPEAL NO. 4082 OF 2001@@  
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Commissioner of Central Excise, Delhi . . . . . Appellant

Versus

M/s Haldiram Manufacturing Co. Ltd. . . . . Respondent

CIVIL APPEAL NO. 4455 OF 2001@@  
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Commissioner of Central Excise, New Delhi . . . . . Appellant

Versus

M/s Ajay Footwear (I) Ltd. . . . . Respondent  
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CIVIL APPEAL NO. 6072 OF 2001@@  
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Commissioner of Central Excise, Delhi . . . . . Appellant

Versus

M/s Prabhat Zarda Factory . . . . . Respondent

CIVIL APPEAL NO. 8455 OF 2001@@  
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Commissioner of Central Excise, Chandigarh . . . . . Appellant

Versus

M/s Standard Tarpaul Industries . . . . . Respondent

CIVIL APPEAL NO. 92 OF 2002@@  
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Commissioner of Central Excise, Delhi . . . . . Appellant

Versus

M/s Sonia Engineering Works Pvt. Ltd. . . . . Respondent

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C.A. Nos. 660, 3841, 5867-5868/2000, 4082, 4455, 6072,@@  
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8455/2001 and 92/2002@@  
EE

For the reasons stated in our order passed today  
in Civil Appeal No. 3783 of 2000 entitled Commissioner@@  
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of Central Excise, Delhi Vs. M/s Maruti Udyog Ltd.,@@  
EE  
these appeals are dismissed.

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Civil Appeal No. 3913/2001@@  
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After hearing the learned counsel for the  
parties, we see no reason to interfere with the decision  
of the Tribunal. Hence, the civil appeal is dismissed.

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.....J  
(B.N. KIRPAL)

.....J  
(SHIVARAJ V. PATIL)

New Delhi, .....J  
February 27, 2002. (BISHESHWAR PRASAD SINGH)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2749 OF 2001@@  
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Centre for Dev. of Adv. Computing, Pune ..... Appellant

Versus

Commissioner of Central Excise, Pune ..... Respondent

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In the instant case, duty is sought to be levied by the respondent by taking recourse to the extended period of limitation under Section 11A of the Central Excise Act.

The plea of the appellant is that it was established as a research organisation and had even been importing goods from abroad and getting exemption from payment of customs duty on the basis that it was a research organisation. In reply to the show cause notice in paragraph 2.3 it has been specifically stated that the appellant was under a bona fide belief that the goods emerged during the research and experiments were fully exempt from payment of duty and therefore, no further compliance with the provisions of Excise Law was called for. Mr. Lakshmikumaran submits that in view of this explanation, the provisions of Section 11A proviso were not applicable and he further submits that in actual fact

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the products supplied by the appellant emerged out of their research activity and no excise duty was payable.

We are unable to agree with the learned counsel that what was supplied by the appellant would come within the meaning of the expression "that the goods are produced during the carrying out of experiments or research". It is quite obvious that the appellant had a technical expertise to manufacture sophisticated equipment on the orders placed on it even though the appellant is a Research & Development Organisation. As a result of its research it had acquired sufficient acumen to be able to manufacture the equipment tailor-made for the use of the purchaser. The equipment so manufactured in supply cannot be regarded as being a product of research.

We, however, agree with the learned counsel for the appellant that on the facts of the present case, the extended period of limitation would not apply. Our attention has been drawn to the fact that the main object as per the Memorandum of Association whereby the appellant was established, was to carry out research etc. Furthermore, by letter dated 12th July, 1988, the Department of Electronics had recognised the appellant as a research and development unit. A similar recommendation was also made on 7th May, 1991 by

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the Ministry of Science and Technology, Government of India. Such recommendation entitled it to make imports from abroad without payment of customs duty. Under the circumstance, there is no reason to conclude that the appellant would not have believed that the goods manufactured by it and supplied were not liable for payment of excise duty. There does not appear to be any tangible basis for the Department to come to the conclusion that there was wilful suppression for evasion of duty by the appellant. This being so, while duty was

leviable on the goods manufactured by the appellant the Department, however, could not invoke the extended period of limitation of five years under Section 11A of the Act.

For the aforesaid reasons, this appeal is allowed.

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.....J  
(B.N. KIRPAL)

.....J  
(SHIVARAJ V. PATIL)

New Delhi,  
February 27, 2002.

.....J  
(BISHESHWAR PRASAD SINGH)