

**Commissioner of C. Excise Vs. Inga Laboratories Pvt. Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Mar-01-1997

**Reported in :** (1997)(93)ELT209Tri(Mum.)bai

**Appellant :** Commissioner of C. Excise

**Respondent :** Inga Laboratories Pvt. Ltd.

**Judgement :**

1. This appeal is against the order of the Collector (Appeals). By that order, he has held that while, by virtue of the provisions of Section 35B of the Act, order of the Assistant Collector has been appealed no notice demanding duty has been issued under Section 11 A. Therefore, the Collector (Appeals) has held that the demand was barred by limitation.

2. The Departmental Representative contends that this finding of the Collector (Appeals) is not acceptable in view of the decision of this Tribunal in Orissa Cement Ltd. v. CCE, Bhubaneswar - 1996 (81) E.L.T.154 (Tribunal). In the case before that Bench of the Tribunal, notice had been issued under Section 11A for recovery of refund on the ground it has been wrongly sanctioned but provisions of Section 35E had not been resorted to. The Bench held, following the decision of the Calcutta High Court in ITC Ltd. v. Union of India - 1988 (34) E.L.T.472 (Cal.) that Section 11A and 11B are independent provisions and their effect cannot be taken away by resorting to Section 35A or 35E. Following the decision of this Tribunal in CC v. Ferro Alloys Corporation Ltd. -1992 (59) E.L.T. 633 it was held in the decision that Section 28 of the Customs Act is independent of Section 129D

and the revenue cannot take advantage of the limitation available under Section 129D of the Act on failure to comply with the provision of Section 28.

3. What emerges from the study of the decisions is that to recover refund wrongly sanctioned, demand has to be made under Section 11A of the Central Excise Act or Section 28 of the Customs Act, as the case may be. The Collector (Appeals) has allowed the appeal on the ground that demand had not been issued under Section 11 A. His view is confirmed by the decisions relied upon by the Departmental Representative. Thus so far as the appeal is concerned, it fails.

4. The Departmental Representative sought to make the point that by virtue of amendment in 1991 Section 11B and the interpretation of this amendment given by the Supreme Court is S.S. Jain v. Union of India provisions of Section 11B as amended become retrospective in operation.

I do not think it possible to say that the Supreme Court said that the provisions become retrospective in operation. What it said was that to the extent that the claim is pending, Section 11B as amended, and to that extent it would be retrospective. The net effect would be that if the respondent is not able to show that the incidence of duty has been passed on to the customers, refund if sanctioned would go to the Consumer Welfare Fund and not to the respondent. But that would be a consequence not of this appeal but because of subsequent changes in the law.

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