

**Commissioner of Central Excise Vs. M/S. Diapers (i) Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/23916](http://sooperkanoon.com/23916)

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

**Decided On :** Jun-20-2001

**Appellant :** Commissioner of Central Excise

**Respondent :** M/S. Diapers (i) Ltd.

**Judgement :**

1. Notice under Section 11A of the Act was issued to the manufacturer, the respondent to the appeal, demanding duty for a period beyond six months from the relevant date. The notice alleged that the assessee had suppressed from the department an agreement which showed the existence of a relationship between the manufacturer and its buyer, which was material in determining the assessable value of the goods under assessment manufactured by the appellant. Adjudicating upon this notice, the Commissioner found that the copy of the agreement had been submitted by the manufacturer with its letter of 26.6.91 and that any failure by the department while in possession of the agreement to establish the relationship between the manufacturer and the buyer would not be as a result of suppression by the manufacturer. He therefore dropped the demand. The appeal is by the department to set aside that order.

2. The ground in the appeal is that while the Commissioner may be right in his conclusion as beyond limitation for the period subsequent to the receipt by the department of the agreement, that conclusion would not be acceptable for the earlier period covered by the notice. The manufacturer would be guilty of suppression up to the date on which it tendered the copy of the agreement to the

jurisdictional officer. The departmental representative reiterates this contention.

3. The answer by the counsel for the respondent is that the notice has not alleged wilful suppression of fact with an intend to evade duty. It only says that "assessee suppressed all these facts from the knowledge of the department..." He relies upon the judgement of the Supreme Court in Cosmic Dye Chemicals vs. CCE 4. In paragraph 6 of this judgement, the Supreme Court after analysing the structure of the proviso under sub-section (1) of Section 11 of the Act concluded that "It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful." In the face of this judgement, the contention of the departmental representative that the use of the term "suppression" in the notice itself implies the knowledge on the part of the manufacturer of what he suppressed is not acceptable. Further the fact that the notice did not even refer to the availability of the extended period contained in the proviso under Section 11A of the Act also goes against the department.

In these circumstances, we do not find any ground for interference.

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