

**Collector of C. Ex. Vs. Aromatic Intermediates and**

**Collector of C. Ex. Vs. Aromatic Intermediates and**

**SooperKanoon Citation :** [sooperkanoon.com/5614](http://sooperkanoon.com/5614)

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

**Decided On :** Mar-30-1990

**Reported in :** (1991)LC95Tri(Delhi)

**Appellant :** Collector of C. Ex.

**Respondent :** Aromatic Intermediates and

**Judgement :**

1. The respondents are manufacturers of Synthetic Organic Dyestuff as well as dispersed organic pigment paste falling under Item 14D and Item 14I(4) respectively of the erstwhile Central Excise Tariff. During the year 1981-82 they manufactured and cleared synthetic organic dyestuff without payment of central excise duty due thereon and used the same captively for the manufacture of dispersed organic pigment paste. They filed declaration under Notification No. 111/78-C.E., dated 9-5-1978 and availed of exemption of central excise duty under Notification No.80/80-C.E., dated 19-6-1980, as amended. The clearances of synthetic organic dye-stuff for captive consumption and the clearances of dispersed organic pigment paste taken together, they exceeded the exemption limit prescribed in the Notification No. 80/80-CE. The Department, therefore, issued show cause notices proposing recovery of the duty of Rs. 67,127.45, Rs. 71,884.61, Rs. 70,628.88, Rs. 65,339.53 and Rs. 68,339.69 for the financial year 1981-82 from the respondents at Serial Nos. 1, 2, 3, 4 & 5 respectively. After considering the replies to the show cause notices and giving personal hearing to the respondents, the Additional Collector of Central Excise & Customs,

Ahmedabad, vide his impugned order, dropped the show cause notices. He held that the respondents' synthetic organic dyestuff in the form of wet cake was neither fully manufactured nor it could be classified as 'goods'. Hence, he held that no excise duty could be levied on the wet cake, which was an intermediary product. He also held that the respondents had been submitting declaration to the Department every year in respect of the product and there was no element of fraud, suppression of facts or wilful misstatement on their part. The show cause notices having been issued in April, 1984 to all the respondents, the demand for duty was time-barred under Section 11A of the Central Excises & Salt Act, 1944. The impugned order of the Additional Collector was reviewed by the Central Board of Excise & Customs, New Delhi under Section 35E(1) of the Central Excises & Salt Act and direction was given by the Board to the Additional Collector under that section to file an application to this Tribunal for holding that the Additional Collector's Orders were not correct and proper and hence the same might be set aside and for holding that duty under Tariff Item 14D was payable by the respondents on the S.O. Dyestuff manufactured and captively consumed by them in the manufacture of dispersed organic pigment paste falling under Tariff Item 14I(4). The Board also directed the Additional Collector to apply to the Tribunal for holding that there was suppression of facts on the part of the respondents as they had not declared the aforesaid goods and hence the extended period of limitation under Proviso to Section 11A(1) should apply in the instant cases. Accordingly, the Additional Collector of Central Excise filed the applications which are before us for hearing as appeals. The respondents have filed cross-objections stating their contentions as to why the duty should not be charged on the S.O. dyestuff, which according to them, are not fully manufactured and not "goods" and also stating that the demands were time-barred under Section 11A of the Central Excises & Salt Act.

2. The learned advocate for the respondents filed Misc. Applications in these appeals on 3-5-1989 which were assigned Misc. Application No.E/Misc/218, 222 to 226/89-C by the Registry. In these Misc.

Applications the learned advocate raised the following preliminary objections :- "(1) The applications made to the Hon'ble Tribunal under Section 35E by the learned

Additional Collector Central Excise, Ahmedabad against the order passed by him under Section 11A of the Central Excises & Salt Act, 1944 do not lie with the Tribunal and are also non-maintainable inasmuch as that he under the Act is not a Collector whereas only a Collector could make an application under that Section.

The Additional Collector, Ahmedabad is not a Collector for the purposes of Section 35E as (2) he has only been artificially included in the definition of Collector under the Central Excise Rules by virtue of Rule 2(ii)(B) and that too for the purposes of the Rules alone.

(3) that even for the purposes of Rules he has not been specially authorised by the CBEC or the Collector of Central Excise, Ahmedabad under Rule 4 or 5 as the case may be, in terms of Rule 2(ii)(B)." When these appeals alongwith cross-objections and Misc. Applications came up for hearing, both sides addressed arguments on the preliminary objections raised in the Misc. Applications. The learned advocate argued that in the Central Excises & Salt Act, 1944 there was no definition of 'Collector of Central Excise'. Additional Collector of Central Excise is Collector for the purpose of Central Excise Rules.

Section 35E(1) of the Central Excises & Salt Act provides that the Central Board of Excise & Customs may call for and examine the records of any proceedings in which a Collector of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Since in the present cases the Central Board of Excise and Customs gave direction to the Additional Collector of Central Excise to make an application under Section 35E of the Act to the Tribunal and in pursuance of that direction the Additional Collector of Central Excise, Ahmedabad has filed these appeals, the appeals are not maintainable because of the legal deficiency and the same would deserve to be dismissed outright. In support of his argument, he relied on the judgment of Bombay High Court in the case of Atlas Exporters and Anr.

v. K.V. Imiraya, ACCIE, reported in 1989 (40) ELT 3 (Bom.), in which it was held by the Hon'ble High Court that power of review contemplated by paragraphs 155(2) and 156 of the Hand Book of Import and Export Procedure was exercisable by the Chief Controller of Imports and Exports only and that the impugned order passed by the Additional Chief Controller of Imports and Exports was without jurisdiction and was quashable. Shri Sunder Rajan, for the Revenue, has controverted the argument of the learned advocate. He has drawn our attention to paragraph-4 of this Tribunal's decision in the case of Amce Filters and Anr. v. Collector of Customs, Cochin, reported in (1989) 22 ECC 199, in which it was held that infirmities pointed out by the appellants in that appeal in giving direction to the Assistant Collector by the Collector under Section 129D(2) of the Customs Act, 1962 were technical and not such as to be fatal to the review application. The learned departmental representative has argued that Collector includes Additional Collector of Central Excise. As a result, the direction given to the Additional Collector of Central Excise under Section 35E(1) is clearly according to the provisions of this statute.

3. So far as this preliminary objection is concerned, we observe that the Central Excise Rules, 1944 were framed by the Central Government in exercise of the power conferred by Section 37 of the Central Excises & Salt Act, 1944. The Rules have, therefore, the same statutory force as the provisions of the Act. The term 'Collector' is defined in Rule 2 of the Central Excise Rules. This definition is quoted below :- (B) in relation to salt, the Salt Commissioner (and includes an Additional Collector and) any officer specially authorised under Rule 4 or 5 to exercise throughout any State or any specified area therein all or any of the powers of a Collector under these rules; (a) in relation to an order or decision of an Officer of Central Excise subordinate to the Collector of Central Excise, Bombay-I; Collector of Central Excise, Bombay-II; Collector Customs and Central Excise, Goa; Collector of Central Excise, Pune; Collector of Central Excise, Ahmedabad; (Collector of Central Excise, Baroda;) Development Commissioner, Kandla Free Trade Zone (Collector of Central Excise, Nagpur) the Appellate Collector of Central Excise, Bombay; (b) in relation to an order or decision of an officer of Central Excise subordinate to the Collector of Central Excise, Delhi; Collector of Central Excise, Jaipur; Collector of Central Excise, Chandigarh; Collector of

Central Excise, Allahabad; Collector of Central Excise, Kanpur; (Collector of Central Excise, North Uttar Pradesh); Collector of Central Excise, Madhya Pradesh having his headquarters for the time being at Nagpur, the Appellate Collector of Central Excise, Delhi; (c) in relation to an order or decision of an officer of Central Excise subordinate to the Collector of Central Excise, Calcutta; Collector of Central Excise, West Bengal, Calcutta; Collector of Central Excise, Bhubaneswar; Collector of Central Excise, Shillong and Collector of Central Excise, Patna, the Appellate Collector of Central Excise, Calcutta; (d) in relation to an order or decision of an officer of Central Excise subordinate to the Collector of Central Excise, Madras; the Collector of Central Excise, Mysore; Collector of Central Excise, Madurai (Collector of Central Excise Hyderabad; Collector of Central Excise Guntur) and Collector of Customs and Central Excise, Cochin, the Appellate Collector of Central Excise, Madras;" The above Clause (ii)(B) was substituted by Notification No.110/81-C.E., dated 29-4-1981 which is reproduced below :- "In exercise of the powers conferred by Section 37 of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely :- 1. (1) These rules may be called the Central Excise (14th Amendment) Rules, 1981.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. For Clause (ii)(B) of Rule 2 of the Central Excise Rules, 1944, the following shall be substituted, namely :- "(B) in relation to salt, the Salt Commissioner, and includes an Additional Collector and any officer specially authorised under Rule 4 or 5 to exercise throughout any State or any specified area therein all or any of the powers of a Collector under these rules;".

By virtue of this amendment, 'Collector' includes 'Additional Collector' of Central Excise. This notification was issued by the Central Government in exercise of the power conferred by Section 37 of the Central Excises & Salt Act, 1944. This amended Clause (ii)(B) of Rule 2 of the Central Excise Rules has, therefore, the statutory backing of the Central Excises & Salt Act, and accordingly, it has got the same force as any provision of the Central Excises and Salt Act has. Therefore,

giving direction to the Additional Collector of Central Excise under Section 35E(1) to file an application before this Tribunal is quite in conformity of the provision of that section. Further, in the present cases, the adjudication order was passed by the Additional Collector of Central Excise. Under Sub-section (1) of Section 35E, the Board is to give direction to the Collector of Central Excise who has passed the order as an adjudicating authority. From this point of view also, the direction given by the Board to the Additional Collector is in accordance with the provision of this Section. In the circumstances, we do not find any force in the preliminary objection raised by the learned advocate. The Misc. Applications filed by the respondents containing the preliminary objections are, therefore, dismissed.

4. The learned Departmental Representative has argued that on merits the cases are fully covered against the respondents by the judgments of Bombay High Court in the cases of (i) Sandoz India Limited v. Union of India and Ors., reported in 1980 (6) ELT 696 (Bom.) (paragraph 16) and (ii) Amur Dychem Ltd. v. Union of India and Ors. in Special Civil Application No. 2070 of 1963, decided on 22-11-1973 and reported in 1990 Cen-Cus 242D, and this Tribunal's decision in the case of Collector of Central Excise, Bombay v. Sandoz India Limited, reported in 1985 (21) ELT 216 (Tribunal). The learned advocate has argued that the wet cake of S.O. Dyestuff is not capable of dyeing textile and hence they are not chargeable to central excise duty under Tariff Item 14D. In support of this argument, he has relied on Delhi High Court judgment in the case of Modi Prints and Varnish Works, Modinagar v. Union of India and Ors., reported in 1985 (21) ELT 35 (Delhi) (paragraph-5) and in the case of Alkali and Chemical Corporation of India Ltd. v. Union of India and Ors., reported in 1981 (8) ELT 22 (Delhi). In paragraph 5 of the first mentioned judgment, it was stated that the Tariff description under Item 14D was "synthetic organic dyestuff (including pigment dyestuff) and synthetic organic derivatives used in any dyeing processes". As the Appellate Collector found in the said case that the disputed product was not used for dyeing purposes, the Hon'ble High Court held that it was not classifiable under Tariff Item 14D. In Alkali and Chemical Corporation's case, the product was Betanaphthol. It was held in that case that Betanaphthol was a dye intermediate and not a substance used in dyeing process itself and hence it fell outside the ambit of Item 14D. The learned advocate then argued that the respondents' wet cake was in unfinished form and

not fully manufactured. No central excise duty could, therefore, be charged thereon in view of the ratio of the judgments reported in (i) 1987 (13) ECR 921 (Bombay) in the case of Gokalchand Rattanchand Woollen Mills Private Limited and Anr. v. Union of India and Ors., (ii) 1988 (33) ELT 750 (Tribunal) in the case of Shaparia Dock & Steel Co. Pvt. Ltd. v. Collector of Central Excise, Bombay, (iii) 1985 (21) ELT 646 (Allahabad) in the case of Diamond Rubber Mills v. Supdt. of Central Excise, Lucknow range, Aligarh and Ors., (iv) 1988 (12) ETR 196 (Tribunal) in the case of Collector of Central Excise, Bom-bay-II v. Naz Enterprises and Anr., Bombay and (v) 1989 (1) Supreme Court-450 (Judgements Today) in the case of Bhor Industries Ltd. v. Collector of Central Excise, Bombay reported in 1989 (40) ELT 280 (SC). He has also argued that wet cake is a common intermediate product for the manufacture of synthetic organic dyestuff and dispersed organic pigment paste. His contention is that the nature and character of a product is determinable at the final stage and not at the intermediate stage. For this contention, he has relied on the following judgments :-Union of India and Ors. v. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills), Ahmedabad (ii) 1987 (32) ELT 451 (Raj.)(paragraph 9) - Union of India and Ors.

v. Raish Plastics; Union of India v. Shakti Industries Pvt. Ltd. (iv) Order No. 96/86-B1 dated 18-2-1986 in Appeal No./ ED/SB/T/830/80-B1 -M/s. Vidarbha Mettalica, Nagpur v. Collector of Central Excise, Nagpur.

The learned advocate has further argued that the wet cake was not marketable because of moisture, impurity, non-packing and non-grading.

Moisture content was 65% to 70%. He has stated that it was not a commercial grade dyestuff; S.O. Dyestuff of commercial grade is always dry and pulverised. In this connection, he has relied on the Circular letter Nos. 19/2/67-CX-VI dated 13-9-1968 and No. 100/4/75-CX-3 dated 13-4-1976. In circular dated 13-9-1968, it was stated that S.O. Dyestuff should be considered as fully manufactured when they were packed in containers for consumption and sale and should at that stage be accounted for in R.G. 1 and E.B. 4 except in case where those were to be cleared in loose condition when the packing should be taken to be packing in drums or any other similar containers. In the Circular letter dated 13-4-1976, the Central Board

of Excise & Customs stated that the scope of Item 14D for levy of central excise duty under Tariff Item 14D could be sustained only when such products (other than pigment dyestuff) were commercially recognised and used in India in dyeing. The learned advocate has contended that the Board's circular is binding on the departmental adjudicating authority in view of the judgments of Gujarat High Court in the cases of *Nav Gujarat Paper Industries v. Superintendent of Central Excise and Ors.*, reported in 1977 (1) ELT J-67 (Gujarat) and *Balkrishna Rechhodlal Shah and Ors. v. Assistant Collector of Central Excise, Ahmedabad and Ors.*, reported in 1979 (4) ELT J-377.

5. On merits, therefore, the learned advocate's contentions are that the respondents' wet cake is not capable of dyeing textile, it is not fully manufactured and not marketable and hence not liable to central excise duty and also that the nature and character of a product is determinable at the final stage. The learned Departmental Representative's argument is that the wet cake attained the nature and character of synthetic organic dyestuff and hence such goods which were captively consumed were liable to excise duty under Tariff Item 14D at the wet stage. If the said S.O. Dyestuff was not entirely consumed captively in the respondent's factory itself for manufacture of dispersed organic pigment paste, what was required to be done to the wet cake was drying, pulverising, blending and standardising. In the case of *Amar Dychem Ltd. v. Union of India and Ors.*, reported in 1980 Cen-Cus 242D (Bombay), the Hon'ble Bombay High Court held that the process of blending and/or pulverising was not necessary to complete the manufacture of dyes. In paragraph-21 of the said judgment the Hon'ble High Court held, inter alia, as follows :- "It could not, therefore, be said that the process of blending and/or pulverising was necessary to complete the manufacture of the said four varieties. In our view, the said varieties were manufactured before the midnight of 28-2-1961." In the said case, some of the products of the assesseees were manufactured before the midnight of 28-2-1961. The process of blending and/or pulverising was done after 28-2-1961. Central Excise duty on synthetic organic dyestuff was introduced in the Budget for 1961-62 by inserting Item 14D of the Central Excise Tariff. The question arose whether the goods which were in stock on 28-2-1961, and which were blended and/or pulverised after 28-2-1961, were chargeable to excise duty under Tariff Item 14D. While deciding the issue,

the Hon'ble Bombay High Court held that the goods were fully manufactured prior to 28-2-1961 and that the process of blending and/or pulverising was not necessary to complete the manufacture of S.O. Dyestuff. Drying, pulverising and blending resulted in physical change of a product. In the case of Sandoz India Ltd. v. Union of India and Ors., (supra), the Bombay High Court held that change in physical form did not amount to manufacture under Section 2(f) of the Central Excises & Salt Act. In that case, the formulation of Foron pigment changed its physical form from solid state to liquid state without bringing any change in its chemical composition nor did it result in any chemical reaction. The Hon'ble High Court held that the resultant article could not be said to be a manufacture of new commodity because the Foron liquid did not cease to be Foron dyestuff or pigment even after its conversion from solid state to liquid state. In the case of Collector of C. Ex., Bombay v. Sandoz India Ltd., (supra), this Tribunal held that non-marketing of the goods at a point of time did not detract from their marketability and excisability. It was observed by the Tribunal that from the classification list classifying Sandoz NH concentrate under Tariff Item 15AA it was clear that the product was being marketed. The learned advocate has cited five judgments in support of his argument that unfinished goods not fully manufactured, are not liable to excise duty.

He has also relied on four judgments in support of the argument that the nature and character of a product is determinable at the final stage. There is no doubt about the ratio laid down in these judgments, but those ratio can be applied where the product in the intermediate stage has not attained the nature and character of a product falling clearly under a Tariff Item.

For the purpose of marketing, what is required to be done to the respondents' S.O. Dye-stuff is to dry the wet cake, and to pulverise and blend it. We have already stated that Hon'ble Bombay High Court has held that the blending and/or pulverising is not a process of manufacture, but the manufacture of S.O. Dyestuff falling under Item 14D is complete even before the stage of blending and pulverising. In this view of the matter, the respondents' wet cake should be considered to be fully manufactured S.O. Dyestuff and hence the five judgments relied on by the learned advocate are not applicable to the facts of the present

cases. The lower authority has held that the wet cake of the respondents attained the nature and character of S.O. Dyestuff.

This being the position, the product wet cake was independently excisable under Tariff Item 14D and its chargeability to central excise duty under that Tariff Item should not be postponed till the stage of drying, blending and pulverising. The learned advocate has relied on Supreme Court judgment (*supra*), in which the Hon'ble Supreme Court has held that the character of goods at the intermediate stage of production cannot be taken into account for determining the classification under Central Excises & Salt Act, 1944 unless a contrary intention appears from the statute (emphasis supplied by us). In paragraph-4 of the judgment, Supreme Court held, *inter alia*, that "the process involved in the instant case after the intermediate stage referred to above formed an integral part of the manufacture of the product in question and the classification of the manufactured product for purposes of excise duty should depend upon its nature and character at its final stage of production unless a contrary intention appears from the statute. It is seen from Clause (vii) of Section 2(f) of the Act which is, no doubt, introduced subsequently that bleaching, heat setting, etc., are incidental and ancillary processes necessary for the completion of the manufactured product falling under Item No. 22." The facts are different in the present cases before us. In view of the Bombay High Court judgment referred to *supra*, we have already held that the manufacture of S.O. Dyestuff falling under Item 14D was already complete at the stage of wet cake of the respondents. The statute provided that S.O. Dyestuff should be charged to duty under Tariff Item 14D. Therefore, since the manufacture of S.O. Dyestuff was complete, unlike the product in dispute before the Hon'ble Supreme Court in the case of *Calico Mills (Supra)*, it became independently excisable under Tariff Item 14D. The learned advocate has cited the ratio of the judgment of Rajasthan High Court in the case of *Raish Plastics*, reported in 1986 (9) ECR 113, in which it was held that classification for excise purposes depends on character of final product, and not intermediate product. Acrylic sheets and tubes being intermediate products for manufacture of plastic bangles, no duty is attracted under Tariff Item 15A(2). In the case of *Shakti Industries Pvt. Ltd. (Supra)*, it was held by Bombay High Court that to become 'goods' an article must be something which can ordinarily come to the market to be bought and sold and

that articles at intermediate stage in the process of manufacture of final product are not liable to central excise duty. The ratio of these two judgments is also not applicable to the present cases of the respondents as their wet cake was fully manufactured S.O.Dyes, clearly falling under Tariff Item 14D. The respondents used the entire wet cake captively in their own factories for the manufacture of dispersed pigment paste falling under Tariff Item 14I(4). Nothing prevented them from marketing the S.O. Dyestuff after drying, blending and pulverising the product which was used by them at the stage of wet cake. In our view, the wet cake is not an intermediate product, but is a final product independently falling under Tariff Item 14D.6. The other argument of the learned advocate is that the wet cake was not marketable as it was not of commercial grade. His contention is that commercial grade is always dried and pulverised. This contention is also not acceptable to us. The marketability of their product in the form of wet cake is clearly established by the fact that they themselves have used it in the manufacture of dispersed organic pigment paste. The fact that they did not actually sell the goods to the market does not make the product unmarketable. The learned advocate has relied on two judgments of Delhi High Court viz., 1985 (21) ELT 35 and 1981 (8) ELT 22 in support of the contention that for the purpose of classification under Tariff Item 14D, the product should be capable of dyeing textile. The lower authority has given specific finding (vide third paragraph of findings) that the respondents' wet cake attained the characteristics of S.O. Dyestuff falling under Tariff Item 14D. This finding of the lower authority has not been rebutted by the respondents with supporting materials. In the circumstances, we are unable to apply the ratio of these two judgments to the product of the respondents. For the same reason, we hold that the Board's circular dated 13-4-1976 is not relevant to the present cases. So far as the Board's circular dated 13-9-1968 is concerned, it lays down the stage at which S.O. Dyestuff should be entered in the R.G. 1 and E.B. 4 registers. In the said circular dated 13-9-1968, R.G. 1 and E.B. 4 stage has been fixed at the stage of packing. Packing is not involved in the respondents' product, which is entirely used for captive consumption. Therefore, the said instruction is also of no relevance here.

7. In view of the above discussions, we hold that respondents' wet cake was correctly chargeable to Central Excise duty under Tariff Item 1.4D as Synthetic

Organic Dyestuff.

8. The next point argued before us relates to limitation under Section 11A of the Central Excises & Salt Act. Duty has been demanded from the respondents by the Additional Collector's order for the year 1981-82.

The show cause notices demanding duty were issued in April, 1984..

These are clearly outside the normal time limit of six months prescribed under the aforesaid section of the Act. The Additional Collector has held that there was no suppression or mis-statement of facts on the part of the respondents herein and hence the longer time limit of five years was not applicable. In the application filed before us under Section 35E, the Revenue has stated that there was suppression of facts by the respondents. The learned DR has argued that in the declaration filed for the final product, there was no mention of S.O.Dyes in wet cakes. The declaration was filed for availing exemption under Notification No. 80/80-C.E., dated 19-6-1980 in respect of clearances upto Rs. 7.5 lakhs. It has been argued on behalf of the Revenue that if the value of clearances of wet cake is added to the value of dispersed organic pigment paste falling under 141(4), the exemption limit of Rs. 7.5 lakhs was exceeded and duty was correctly chargeable on the value of clearances over Rs. 7.5 lakhs. The learned advocate has argued that without wet cake the dispersed organic pigment paste falling under Tariff Item 141(4) cannot be manufactured. This is a technical fact and such a fact could not be suppressed by the manufacturer. He has also filed a copy of order-in-original No.D-87/MP/213/84/DA dated 10-12-1984 passed by the Assistant Collector of Central Excise, Division IV, Ahmedabad. In that case, proceedings were initiated against the present respondents demanding duty for 1978-79 in respect of S.O. Dyes falling under Tariff Item 14-D because the respondents herein did not include the value of S.O. Dyes while availing the benefit of exemption under Notification No. 71/78-C.E. and they filed declaration under Notification No. 111/78-C.E. Those demand show cause notices were issued to the respondents under similar facts and circumstances. The Assistant Collector, vide paragraph-6 of the said order, held that there was no fraud, collusion, wilful misstatement or suppression of facts on the part of the respondents and hence the longer time limit of five years could

not be invoked for demanding duty on the product falling under Tariff Item 14D. We, therefore, observe that the fact of manufacture of S.O. Dyes falling under Tariff Item 14D by the respondents was otherwise known to the Department, apart from the fact that dispersed organic pigment paste cannot be manufactured without wet cake. In paragraph-9 of the judgment reported in 1989 (1) Supreme Court 417 (Judgments Today), in the case of Collector of Central Excise, Hyderabad v. Chemphar Drugs and Liniments, Hyderabad, reported in 1989 (40) ELT 276 (SC) the Hon'ble Supreme Court has held that for the purpose of invoking five years' limitation under proviso to Section 11A(1) of the Central Excises and Salt Act, something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, beyond the period of six months. In the present cases, no materials have been specifically brought to our notice to indicate any positive instance of conscious or deliberate withholding of information within the knowledge of the respondents. We observe that in the cases adjudicated by the Assistant Collector of Central Excise, Division IV, Ahmedabad by his adjudication order dated 10-12-1984, show cause notices were issued to the respondents herein in December, 1981. In the present cases, the demand show cause notices were issued in April, 1984. Nothing should have prevented the Department from issuing notice in 1981 itself or even in 1982. Having failed to do so, the Department cannot now invoke the limitation of five years for demanding duty. In the circumstances, we hold that the duty demanded from the respondents is not sustainable as the demands are time-barred under Section 11A of the Central Excises and Salt Act.

9. The question of valuation of the S.O. Dyestuff has been raised before us. The entire product of S.O. Dyes has been used by the respondents captively. The price of pigment paste cannot be applied to determine the assessable value of S.O. Dyes falling under Tariff Item 14D in these cases. The value, should be determined in accordance with the provisions of the Central Excise Valuation Rules read with Section 4 of the Central Excises and Salt Act.