

Wipro Information Technology Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-1994

Reported in : (1995)(76)ELT222TriDel

Appellant : Wipro Information Technology

Respondent : Collr. of C. Ex.

Judgement :

1. This is an application for dispensing with pre-deposit of duty of Rs. 63,65,256.27 and also a penalty of Rs. 10 lakh imposed on the applicants, herein, by the Collector of Central Excise, Bangalore in his impugned order dated 30-12-1988 on the ground that the assessable value of the computers manufactured by the applicants, herein, falling under erstwhile Central Excise Tariff Item 33DD is to be determined correctly by adding the value of peripherals.

2. Shri Dushyant Dave, Id. Counsel with Ms. Amrita Mitra, Id. Counsel appeared for the applicants. It was submitted that to begin with, after they commenced manufacture of computers, the applicants had declared the value of the computers including therein the value of bought out peripherals. In June, 1984, by letter dated 28-1-1984, the applicants told the Superintendent of Central Excise that they had included the value of peripherals by mistake and filed a fresh classification list and also sought clarification in the matter. They wanted to show the value of computers comprising only of the essential and integral parts.

The Superintendent (Central Excise) on 31-1-1984 replied stating that his office had not advised about the payment of duty. On 3-3-1984, they filed the price list for computers excluding the cost of bought out peripherals which was duly approved on 14-3-1984 without modification.

On 10-7-1984, the Superintendent issued a show cause notice under Section 11A demanding Rs. 6,45,899.00 on the peripherals cleared without following the Central Excise procedures and payment of duty for the period 1-3-1984 to 18-5-1984. On 13-12-1984 another show cause notice was issued demanding duty on peripherals for the period 13-5-1984 to 30-11-1984. On 7-3-1985 an addendum was issued seeking to amend show cause notice of 10-7-1984 and the Id. Counsel contended that by this addendum a whole new case was sought to be set up against the applicants saying that they had manufactured and cleared computers alongwith peripherals as add on's without including the value of the peripherals in that of the computers. On 13-3-1985, similar addendum was issued for the show cause notice dated 13-12-1984. On 22-5-1985, show cause notice was issued to the applicants for the period December, 1984 to 17-3-1985. The Id. Counsel argued that the department has changed its ground in the addendum to the show cause notice and in the 3rd show cause notice of May, 1985, saying that the peripherals increased the functional advantage of the computers. But since a new case was set up by the issue of the addendum, the limitation will start from the date of the addendum which should be treated as show cause notice for the purpose of demanding duty for which case the demand is beyond six months period and is time-barred. No suppression has been alleged. There was also, the Id. Counsel pointed out, a clarification by the Central Board of Excise & Customs dated 10-5-1985 Circular No.9/85 in which it has been clarified that where no manufacturing process is carried on the peripheral devices purchased from the market where the price of the same is shown separately in invoices, the question of including the value of peripheral devices once again may not arise.

This clarification, the Id. Counsel contended, is in favour of the applicants. There was also no ground for the department, it was argued, to invoke the longer period because the price list has been approved and the applicants have not held back any information from the department. The show cause notices also had not

invoked the proviso to Section 11A and there is no allegation of suppression. The Id. Counsel also contended that the adjudication of the case by the Collector is without jurisdiction because in the case the show cause notice has not alleged suppression of facts and therefore, under Section 11A(2), only the Assistant Collector is competent to adjudicate the case and for the same reason, the Id. Counsel urged that the cases will not be covered by Section 8 of the Central Excises & Salt (Amendment) Act, 1985 relating to transfer of pending proceedings under proviso to Section 11A before the Assistant Collector to the Collector. It was also argued that merely because the Collector is a superior officer to the Assistant Collector, he cannot assume jurisdiction. The Id. Counsel cited the case of S. Kannan and Ors. v. Secretary, K.S.R.T. Authority - AIR 1993 S.C. 1065. Therefore, it was argued that all the show cause notices and the two addenda are beyond limitation and the demand is illegal. The Id. Counsel cited the Supreme Court decision in the case of Padmini Products v. Collector of Central Excise - 1989 (43) E.L.T.195 (S.C.) and urged that the assessee cannot be charged with suppression where there is doubt and the longer period cannot be invoked to demand duty. The Id. Counsel also relied upon the Stay Order No. 142 & 143/92-D, dated 20-7-1992 in the case of J.K. Synthetics v. Collector of Central Excise where the Tribunal had followed the Chemphar Drugs & Liniments decision of the Supreme Court reported in 1989 (40) E.L.T. 276 to grant stay. The Id. Counsel submitted that the peripherals are supplied only at the request of customers and they are only tested peripherals before the supply because these peripherals are already compatibles with their computers. Therefore, there was no justification in demanding duty from the applicants on these peripherals. Another argument put forth by the Id. Counsel was with reference to Section 3 of the Central Excises & Salt Act on levy of duty on goods manufactured since the peripherals are not manufactured by the applicants, there cannot be any duty payable by them on these peripherals. Section 4 of the Central Excises & Salt Act, 1944 was also referred to by the Id. Counsel to say that excisable goods manufactured by them, namely, computers, have been subjected to duty, on the manufacturing cost incurred by them on the computers. Peripherals are bought out items and not manufactured and hence not covered by Section 4 provisions.

3. Shri Prabhat Kumar, Id. SDR contended that it was wrong to say that peripherals are not excisable goods. A reading of the Tariff Item 33DD would itself make it clear that item covers computers (including central processing units and peripheral devices) all sorts. It is an inclusive Tariff Heading. It is well settled, the Id. D.R. pointed out, that such inclusive description expands the meaning of the term used in the statute. He relied upon the case law reported in 1988 (36) E.L.T.201 (S.C.) in the case of Doypack Systems (Pvt.) Ltd. v. Union of India. Id. D.R. argued that it is not material for the case of the department that the peripherals are bought out items. What is ultimately produced and cleared by the applicants has to be seen and that is the computer which is to be assessed to duty by determining the correct assessable value under Section 4 of Central Excises & Salt Act.

The putting together of several parts to manufacture a new article even if bought out item, would come within the purview of manufacture for the purpose of Central Excise for which the Id. D.R. relied upon the Supreme Court decision in the case of Name Tulaman Manufacturers Pvt.

Ltd. v. Collector of Central Excise, reported in 1988 (38) E.L.T 566 (S.C). Regarding the show cause notices issued in this case, the Id.D.R. pointed out, that except for one show cause notice which in only 12 days beyond six months, the others are within time. The addendum to the show cause notice, the Id. D.R contended, had to be considered in the light of the fact that what the applicants are manufacturing, the computers and what the addendum sought to bring was the correct assessable value of the computers. The addendum merely revised the value given in the first show cause notice. As for the jurisdiction of the Collector, the Id. D.R. contended that the Collector is empowered as a superior officer to adjudicate the matter even it falls within the Assistant Collector's powers for which he relied upon the case law reported in 1989 (40) E.L.T. 401 (Tribunal) in the case of ORG. Systems v. Collector of Central Excise, Baroda and Anr. decision of the Tribunal in the case of D.C.W. Limited v. Collector of Central Excise, Madurai - 1988 (35) E.L.T. 167 (T). This is made possible by the provisions of Rule 6 of the Central Excise Rules which gives the power to the Collector to discharge the function of officers subordinate to him. The Id. D.R. also argued that the legal

provisions and the facts of the present case, as above, are totally different and distinguishable from the case of K.S.R.T. Authority cited by the applicants. There is also a finding by the Collector in para 11 of his order that the customers had placed orders for complete computer system on the applicants, which was supplied. The Id. D.R. also submitted that the onus of giving the correct declaration in the price list is on the assessee and non-disclosure of all the particulars can be held against the assessee in which he relied upon the Supreme Court decision in the case of Jaishree Engineering Co. (P) Ltd. v. Collector of Central Excise -1989 (40) E.L.T. 214 (S.C). The Stay Order in the case of J.K.Synthetics cited by the applicants is also not in favour of the applicants, the Id. D.R. pointed out because factually the case decided by the previous order was in respect of assessee, who were under physical control of the department even otherwise. The Id. D.R. relied upon the case law reported in 1993 (63) E.L.T. 257 (Tribunal) in the case of Nissan Rubber v. Collector of Central Excise where the Tribunal had followed the Supreme Court decision in the case of Empire Industries Ltd. v Union of India - 1985 (20) E.L.T. 179 (SC) to say that interim orders passed by a particular Court on certain considerations are not precedent for other cases, may be on similar facts, and also the other bench hearing the matter on the facts and circumstances of the case should have a right to grant interim orders on such terms and is considered fit and proper.

4. The submissions made by both the sides, have been carefully considered.

5. It is noted that in this case the appeal was presented in the South Regional Bench Registry of the Tribunal at Madras on 31-5-1989. No stay application was filed there. It appears that applicants had simultaneously filed a Writ Petition in the Karnataka High Court, being Writ Petition No. 7457 of 1989. This was disposed of by the Single Judge order dated 1-12-1993 dismissing the Writ Petition subject to the observation that since the applicants had filed an appeal before the Tribunal, the Court would decline to entertain the Writ Petition. A Writ appeal was then filed against this order of the Id. Single Judge which came to be disposed of by the Division Bench in Writ Petition No.201 of 1994 by the order of the Hon'ble High Court dated 19-1-1994. The Division Bench upheld the order of the Single Judge and granted further time for the applicants to pursue their appeal before the

Tribunal. The Division Bench extended the time for disposal of the appeal by another two months from 19-1-1994 and in the meantime, it was directed that the question of pre-deposit shall be considered at the earliest after hearing the parties. The applicants filed this stay application along with the Court order in the Registry of Tribunal on 29-12-1993. Notices of hearing on 18-1-1994 were issued listing the matter for 3-2-1994. On mentioning the matter on 3rd February, 1994, on the request of the Id.Advocate, Sh. Jitender Singh, the matter was listed on 4-2-1994. On 4-2-1994, the matter was transferred to Special Bench 'A', the issue in appeal being only of classification. Notices of hearing were issued listing the matter for 21-3-1994. The applicants made a miscellaneous application before the Tribunal dated 1-3-1994 saying that there is a High Court direction to dispose of the matter within two months and for early hearing of the stay application. Accordingly, the Bench passed an order dated 2-3-1994 ordering the listing of the stay application on 9-3-1994 instead of 21-3-1994. On 9-3-1994, the new counsel came on record, namely, Ms. Amrita Mitra, who made an application on that day before the Bench saying that sometime will be required since the Counsel was engaged in the matter only on that day and also undertaking to get extension of time from the High Court for disposal of the appeal. Accordingly the matter was adjourned to 11-3-1994.

6. On the question whether the cost of peripherals is includible or not in the assessable value of computers, there are already decisions of the Tribunal in the case of present applicants themselves in Appeal No.E /2231 / 86-A in Order No. 465/88-A, dated 25-8-1988 [reported in 1989 (39) E.L.T. 113 (Tribunal)] in which a precedent Tribunal decision in the case of Collector of Central Excise v. Sunray Computers - 1988 (33) E.L.T. 787 was followed and it was held that hardware, software and peripherals together make a workable computer and valuation for assessment should include all these items. The applicants had said so in their Writ Petition before the Karnatake High Court. Para 24 of the Writ Petition is as follows "Petitioner submit and state that there is no other equally efficacious alternate remedy available in law in as much as the Appellate Authority i.e. Customs Excise and Gold (Control) Appellate Tribunal, in the case of Sunray Computers Pvt. Ltd., has taken the view that a computer is only a 'dumb box' with a bunch of electronics in it and of no use at all to a customer and that hardware, software and

peripherals, together make a workable computer. The decision of the Appellate Tribunal in the case of Sunray Computers Pvt. Ltd. [1988 (33) E.L.T. 787] and also the judgment in the case of the petitioners in Appeal No. E/2231/86-A, being the matter sub judice before the Hon'ble Supreme Court of India, the alternate remedy in this case is no remedy at all. Even otherwise petitioner has approached this Hon'ble Court for enforcement of their rights under Part III of the Constitution of India on the ground that the order passed by Respondent No. 1 is wholly without jurisdiction and ab initio void." 7. The Hon'ble Single Judge has also dealt with this submission as follows in para 2 of the High Court order dated 1-12-1993 in Writ Petition 7457 of 1989 : "In the instant case, the petitioner also filed an Appeal before the Appellate Tribunal which is pending. Learned Counsel for the petitioner submits that the Appellate Tribunal in Sunray's case [1988 (33) E.L.T. 787], has already expressed its views on the question involved which is against the contention raised by the petitioner and, therefore, the remedy of appeal to the Appellate Tribunal is not efficacious. I do not think that because the remedy of approaching the Supreme Court is not immediately available to the petitioner under the Act it cannot be said by anyone that the remedy of the Appeal to the Supreme Court is not efficacious. It was also brought to my notice that the decision rendered by the Appellate Tribunal in Sunray's case is pending before the Supreme Court." It is, therefore, clear that on merits on the question of valuation the prima-facie case is in favour of revenue and not the applicants.

8. It has also been argued that the Addenda issued to the two show cause notices seek to set up a new case different from that set out in original show cause notices. It is submitted that the show cause notices issued sought to recover duty on peripherals whereas the Addenda to the show cause notices show to include the cost of peripherals in the assessable value of computers. We find that the applicants had been licensed as manufacturers of computers and not of peripherals. The applicants were themselves including the value of peripherals in the assessable value declared for computers in their price list at one stage. The Addenda to the show cause notice prima facie make the case of the Department explicit that it relates to determination of assessable value under Section 4 of Central Excises & Salt Act, 1944 in respect of computers classifiable under Item 33DD C.E.T. for which the applicants had been issued with Central Excise

License. This argument is, therefore, *prima facie*, unacceptable.

9. A further contention of the applicants is that in this case the Collector had no jurisdiction to adjudicate the case as only the Assistant Collector was competent under Section 11A of Central Excises & Salt Act where no suppression is alleged. However, it is seen that there are precedent decisions on this issue setting out the well-settled principle that a superior officer can exercise the power and discharge the function of a subordinate officer. According to Rule 6(1) of Central Excise Rules, the Collector may perform all or any of the duties, or exercise all or any of the powers assigned to an officer under the Rules. Central Excise Rules framed under the Central Excises & Salt Act, 1944 have the same force, it has been held, as the provisions of the Act and that, therefore, the demand for duty confirmed by Collector for a period of six months prior to the issue of show cause notice had been held to be valid. See *SAIL v. Collector of Central Excise*, reported in 1988 (38) E.L.T. 488 (Tribunal). Again in *Priya Pharmaceutical Works v. Collector of Central Excise*, 1985 (19) E.L.T. 272 (Tribunal) wherein show cause notice was issued by the Assistant Collector under Section 11A to its amendment and the case subsequently adjudicated by the Collector, the Tribunal rejected the plea of the assessee that the adjudication by Collector was without jurisdiction. As such the present case is also distinguishable from the *KSRTA* case cited (*supra*) by the applicants. Further, the reasoning given by the Collector in para 12 in this regard in his order that the Assistant Collector's powers of adjudication are also limited, will also be relevant. One of the show cause notices in this case does cover a period beyond six months and such cases pending before Assistant Collector when Section 11A was amended would be covered by the Section 8 of the Amending Act and in such a situation the Collector for the reasons aforesaid also taking up all the connected cases *prima facie* does not amount to any infirmity.

10. In the result, the appellants have not made out a *prima facie* case in their favour so as to dispense with the pre-deposit. They have not pleaded financial hardship in making the pre-deposit. In the circumstances, we hold that for the purpose of hearing the appeal on merits, the balance of convenience will be to direct that on condition of the applicants herein depositing Rs. 30 lakh (Rupees thirty lakh) only in cash on or before 30-4-1994, the pre-deposit of balance of duty

and penalty is dispensed with and its recovery stayed. We also note that Hon'ble High Court had directed the disposal of the appeal within a time frame which due to circumstances in this case subsequent to the Court's order, it does not appear to be possible of being achieved. As has been held by the Supreme Court in the case of Vijay Prakash D.Mehta v. Collector of Customs -1989 (39) E.L.T. 178 (SC) the right to appeal is neither an absolute right nor an ingredient of natural justice. It must be conferred by the statute and can be exercised only as permitted by the statute. It is, the Supreme Court held, a conditional right governed by the condition of predeposit before it can be heard. The applicants have also undertaken to seek extension of time from the Hon'ble High Court. However, we may observe that as soon as the applicants report compliance with this order even before 30-4-1994, the appeal can be listed for hearing at the earliest possible date.

Matter to come up for ascertaining compliance on 3-5-1994.

Sd/- 11. I have gone through the proposed stay order written by my learned brother Shri K.S. Venkataramani, Member (Technical). With respect I am unable to agree with his conclusion therein. Hence this order.

12. I am also of the view that prima facie case is not in favour of the party either on merits or on jurisdiction. But it cannot be said same thing on point of limitation. Since an addendum was issued for the recovery of duty on computers including value of peripherals as against only on peripherals in the earlier notices it is not free from doubt whether an addendum is in continuation of earlier show cause notice or altogether a different show cause notice. Giving credence to the submissions made on behalf of the party that original demand was in respect of peripherals, but subsequent notice/addendum dated 7-3-1985 proposes to demand duty on computers and in the absence of allegation of suppression of facts and without mentioning of relevant provisions therein, I am of the view that benefit is to be given to the party at this stage on prima facie case. Further Hon'ble Karnataka High Court has given a direction that appeal should be disposed of within two months. According to Section 35F of the Central Excises and Salt Act, 1944, appeal cannot be heard unless duty demanded is paid or dispensed with or condition, if any, is fulfilled. Any further extension of time even to make partial

deposit of Rs. 30 lakhs in the instant case would not only cause hardship, but it would be in conflict with the direction given by the Karnataka High Court. While upholding the order of the learned Single Judge, the Divisional Bench of Karnataka High Court directed the Tribunal to dispose of the appeal within two months as per its Order dated 19-1-1994. In the facts and circumstances of the case particularly in view of the direction given by the High Court, I propose to hear the appeal at the earliest possible date without insisting on pre-deposit.

Since there is difference of opinion in between two Members of the Bench, the matter is placed before the President to refer it to a third Member to resolve the issue in accordance with law.

"In the facts and circumstances of the case whether applicants are required to deposit Rs. 30 lakh for the purpose of hearing the appeal as directed by Member (Technical) or to hear the appeal at the earliest possible date without insisting pre-deposit as proposed by the Member (Judicial).

13. I have perused the orders written by learned brothers, Shri K.S.Venkataramani, Member Technical and Shri G.A. Brahma Deva, Member Judicial. The following point of difference has been referred to me :- "In the facts and circumstances of the case whether applicants are required to deposit Rs. 30 lakhs for the purpose of hearing the appeal as directed by Member (Technical) or to hear the appeal at the earliest possible date without insisting pre-deposit as proposed by the Member Judicial." 14. Miss Amrita Mitra, the learned advocate is present on behalf of the appellant. She relies on the order passed by the Member Judicial and argued that in view of the direction of the Hon'ble High Court of Karnataka, the appeal should be heard without any pre-deposit. She argued that the demand is hit by limitation. She argued that the appellant's activity was known to the department and, as such, larger period of limitation cannot be invoked. In support of her argument, she relied on Order No. 142 and 143/92-D, dated 14th July, 1992, in the case of J.K. Synthetics Ltd. v. Collector of Central Excise, Jaipur.

She pleaded that at the most, six months period can be invoked. She drew the attention of the Bench to the show cause notice and argued that there is no allegation of suppression. She also referred to the addendum dated 7th March,

1985. She further argued that the Member Technical has ordered to dispense with the pre-deposit of the duty amount of Rs. 63,65,256.27 and penalty amount of Rs. 10 lakhs (Rs. ten lakhs only) on the condition of the appellant's depositing Rs. 30 lakhs (Rs. thirty lakhs only) in cash. She argued that the amount as ordered by the Member Technical to deposit rupees thirty lakhs is in conflict with the judgment of the High Court. The High Court had directed the Tribunal to dispose of the appeal within two months from the date of the order passed by the single Judge and the Division Bench had further extended the time by two months. She pleaded that the order passed by the Member Technical is correct and the same should be accepted.

15. Mrs. C.G. Lal, the learned Senior Departmental Representative who is present on behalf of the respondent, pleaded that the period involved is 1st March, 1984 to 18th May, 1984. The show cause notice is dated 10th July, 1984 and the second show cause notice is dated 13th December, 1984, and the period involved is 30th May, 1984 to 30th November, 1984 and the third show cause notice is dated 22nd May, 1985 and the period involved is December, 1984 to 17th March, 1985. She referred to the addendum and also referred to the order-in-original.

She argued that the appellant was licensed as a manufacturer of computers and not peripherals and, as such, there was suppression. She further argued that up to the year 1983 the value of peripheral had been included by the appellant. She referred to para 9 of the order-in-original where details of peripherals have been given as under :- She pleaded that the matter is fully covered by earlier decisions of the Tribunal against the appellant. In support of her argument, she cited the following decisions :-O.R.G. Systems v. Collector of Central Excise, Vadodara (2) 1994 (73) E.L.T. 96 (Tribunal) - Tata Unisys Ltd. v. C.C.E., Bombay 16. In reply, Miss Amrita Mitra, the learned, advocate pleaded that in the addendum the basis of charge cannot be changed. Shri Dushyant Dave, the learned advocate pleaded that the first show cause notice appears on page 170 of the paper book and the addendum to the show cause notice appears on page 187 of the paper book. The second show cause notice dated 13th December, 1984 appears on page 180 of the paper book and addendum appears on page 205 of the paper book. The third show cause notice dated 22nd May, 1985 appears on page 222 of the paper book

and no larger period has been invoked. He referred to the letter dated 7th October, 1987 written by the Collector which appears on page 231 of the paper book wherein it has been mentioned that in view of the amendment of Section 11A of the Central Excises and Salt Act, 1944, the proceedings can be transferred to him and the appellant was desired to show cause within 15 days from receipt of the letter dated 7th October, 1987. He referred to the order-in-original internal page 11 which appears on page 253 where the Collector has observed that the utility of a computer without the desired peripherals is not complete and the computer is useless without these peripherals and other softwares also.

Therefore, in view of the above, the proviso to Section 11A was attracted to demand duty for the enlarged period. Accordingly, the addendum is covered by the proviso to Section 11A. Since there was evasion of duty, penal provisions are necessarily attracted and since the duty to be demanded was huge, the Assistant Collector's powers were limited in the matter of adjudication and, therefore, the transfer of the case from the Assistant Collector to the Collector was well within the ambit of law. He further argued that the appellant had contended that by taking the file from the Assistant Collector, the appellant has lost one forum of appeal. He referred to a judgment of the Tribunal in the case of Safari Industries (I) Pvt. Ltd. v. Collector of C. Excise, reported in 1991 (54) E.L.T. 308 (Tri.) and referred to para 7. He pleaded that the second show cause notice is not in continuation of the show cause notice. He argued that addendum cannot take place of the first show cause notice and addendum is different to corrigendum. He relied on the order passed by the Member Judicial and pleaded that, that is the correct order.

17. Mrs, C.G. Lal, the learned SDR relied on the order passed by the Member Technical. She pleaded that the earlier show cause notice and the addendum have to be read together. In support of her argument, she relied on the decision of the Tribunal in the case of Collector of Central Excise, Meerut v. Star Paper Mills Limited, reported in 1986 (26) E.L.T. 81 (Tri.) where the first show cause notice was issued within six months and the subsequent show cause notice, though by itself, beyond the period of six months, referring to previous show cause notice, subsequent show cause notice not hit by limitation being in continuation of previous one and she further argued that the show cause notice is not invalid

merely by citation of incorrect rule. She referred to another decision in the case of Collector of C. Excise v. Uma Laminated Products (P) Ltd., reported in 1984 (17) E.L.T. 187 (Tri.) wherein it was held as under : "The corrigendum was meant to correct the name of the respondent wrongly shown as 'Uma Laminated Jute Products' instead of 'Uma Laminated Products'. Address, however in either of them was correct.

Corrections were also sought in other minor mistakes as well but which did not materially alter the particular set out in the show cause notice. These errors were avoidable ones but they are not such as to vitiate the very validity and legality of the show cause notice. For the same reason, proceedings too were not vitiated as the issue of the show cause notice is the starting point for initiating the same. Accordingly, the show cause notice and proceedings were valid and within time irrespective of the corrigendum having been issued much later than the period of limitation."Western Bengal Coal Fields Ltd. v. Collector of Central Excise, Bombay, reported in 1987 (31) E.L.T. 182 (Tribunal) where the Tribunal in para No. 9 of its order had held that the computation of limitation period is from the date of first show cause notice and not from the date of communication by Superintendent. Second notice is merely a corrigendum to the first.

Demand is limited to period of six months preceding the date of first show cause notice and she pleaded that there is no infirmity as addendum was duly issued. She pleaded that the order passed by the Member Technical is the correct order.

18. I have heard both the sides and have gone through the facts and circumstances of the case. The appellants are manufacturers of computers falling under erstwhile Central Excise Tariff Item No. 33DD and had supplied peripherals along with the computers but did not include the value of such peripherals in the assessable value of computers and evaded payment of duty on the value of such peripherals supplied with the computers. Therefore, the following show cause notices were issued by the Superintendent of Central Excise, Range 'A' for recovery of duty from the appellants on the peripherals value of which was not included in the value of components : -1. Show cause notice OC No. 1854/84, dated 10-7- Duty to be 1984 for the period 1-3-1984 to 18-5-1984 for the

demand recovery of duty on peripherals valued Rs. Rs. 6,45,898.96 43,05,993. 00 II, dated 7-3-1985 for recovery of duty short paid on 7,70,757. 04 computers for the revised value of Rs. 52,71,713. 63 was issued by Asstt. Collector, Mysore.

1985 for recovery of duty on peripherals valued Rs. 33,14,079.

27 2,20,93,861. 80 for the period3. Show cause notice OC No. 1503/85, dated 22-5-1985 for recovery of duty on the peripherals valued 22,80,419. 96 Rs. 1,52,02,799. 73 for the period 1-12-1984 to I have gone through all the three show cause notices as well as the addendum which appear on pages 187 and 205 of the paper book. Addendum to the show cause notice dated 10th July, 1984, for the period 1st March, 1984 to 18th May, 1984 and the addendum to the show cause notice dated 13th December, 1984 is dated 13th March, 1985. The details of the show cause notices are given as under:

No. Date of show cause notice Period3.

22nd	May,	1985	1-12-1984	to	17-3-198
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A perusal of the above chart shows that the first show cause notice dated 10th July, 1984 was within limitation. The second show cause notice dated 13th December, 1984 was also within limitation and the third show cause notice dated 22nd May, 1985 was also within limitation and it was not necessary that the same should have been issued by the Collector as proviso was not invoked. Thereafter, the addendums were issued. The main argument of the appellant is on merits as well as on the limitation aspects . I would like to observe that the mater is fully covered against the appellant in the following decisions : The Tribunal had followed its earlier decisions in the case of Collector of Central Excise, Bangalore v. Wipro Information Technology, reported in 1989 (39) E.L.T. 113 and Collector of Central Excise, Bangalore v. Sunray Computers (P) Ltd., 19. Now coming to the appellant's plea on the point of issue of addendum, I would like to observe that the addendum is to be read with the original show cause notice. The Tribunal in the case of Collector of Central Excise, Hyderabad v. Uma Laminated Products (P) Ltd. reported in 1984 (17) E.L.T. 187 (Tribunal) [para 15] had observed as under :-

Collector of Central Excise, Meerut v. Star Paper Mills Limited reported in 1986 (26) E.L.T. 81 (Tribunal) [paras 2, 5, & 6] had held as under :-Western Bengal Coal Fields v. Collector of Central Excise, Bombay, reported in 1987 (31) E.L.T. 182 (Tribunal) in para No. 9 had held as under :- Shri Dushyant Dave, the learned advocate had heavily relied on the decision in the case of Safari Industries (I) Pvt. Ltd. v. Collector of Central Excise reported in 1991 (54) E.L.T. 308 (Tribunal) and Miss Amrita Mitra, the learned advocate had cited the decision in the case of Blue Star Industries v. Collector of Central Excise, reported in 1990 (47) E.L.T. 86 (Tribunal). The judgments cited by the learned advocates, Mr. Dushyant Dave and Miss Amrita Mitra do not help them.

The appellants had challenged the order before the Hon'ble Karnataka High Court in Writ Appeal No. 201 of 1994. Relevant extract from the judgment of the Hon'ble Karnataka High Court is reproduced below : "We may note that the learned Judge has already observed that the recovery proceedings shall be postponed for a period of one month, so that the Appellate Tribunal shall consider the question of pre-deposit before hearing the appeal. As requested by the learned counsel for the appellant that one month has already expired and time may be extended, we extend the time by further one month from today, so that, during that time Collector shall postpone the recovery proceedings and it would be open to the appellant to request the Tribunal to consider the question of pre-deposit as expeditiously as possible. It is also clear that the learned Single Judge has already directed the Appellate Tribunal to dispose of the appeal within two months from the date of the order of the learned Single Judge. Therefore, no further directions are required to be passed in this appeal. As that one month is already over we extend that period also by another two months from today to dispose of the appeal finally filed by the appellant. In the meantime, the question of pre-deposit shall be considered at the earliest after hearing the parties, it would be open to the appellant to request the Tribunal for further stay against recovery proceedings if its pre-deposit application is not decided within the time indicated hereinabove and if such request is made by the appellant, the Tribunal shall consider the same after hearing all counsel." A perusal of the order passed by the Hon'ble Karnataka High Court clearly shows that it was left open to the Tribunal to consider the question of predeposit as expeditiously as possible. In view of the above discussion, I agree with the view

expressed by Shri K.S.Venkataramani, Member Technical. Registry is directed to place the matter before the regular Bench for passing the final order in accordance with law and the point of difference is answered accordingly.

In the light of the majority view, the applicants are directed to deposit Rs. 30 lakh in cash on or before 15-1-1995 and on such compliance, the pre-deposit of balance of duty and penalty is dispensed with and its recovery stayed. However, in case the applicants comply with the stay order even earlier, the appeal can be then listed for hearing at the earliest possible date thereafter. Matter to come up for ascertaining compliance on 31-1-1995.

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