

**Bata India Ltd. Vs. Suptd. of Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/879778](http://sooperkanoon.com/879778)

**Court :** Kolkata

**Decided On :** Dec-24-1996

**Reported in :** 1997(94)ELT45(Cal)

**Judge :** Surya Kumar Tiwari, J.

**Acts :** [Central Excise Act, 1944](#) - Section 9 and 9(1)

**Appeal No. :** Crl. Revision 1082 to 87 of 1996

**Appellant :** Bata India Ltd.

**Respondent :** Suptd. of Central Excise

**Advocate for Def. :** Amit Talukdar, Adv.

**Advocate for Pet/Ap. :** Dilip Kr. Dutta, Sr. Adv., ;S.N. De, ;S.K. Deb and ;S.B. Sinha, Advs.

**Judgement :**

**Surya Kumar Tiwari, J.**

1. This order shall also govern the disposal of Criminal Revision Nos. 1083/96, 1084 of 1996, 1085 of 1996, 1086 of 1996 and 1087 of 1996.

2. The petitioner M/s. Bata India Ltd., is being prosecuted under Section 9 of the Central Excises & Salt Act for evasion of Central Excise Duty between 1-1-1980

and 31-12-1979. The following complaint cases have been launched against the present petitioner :-

Complaint No.	SI.	Details	Period covered
Complaint in case No. C-3380/87	(i)	1-1-1980 to 31-12-1980	
No. C-3380(A)/87	(ii)	1-1-1981 to 18-5-1981	
Complaint in case No. C-3381/87	(iii)	1-1-1979 to 31-12-1979	
Complaint in case No. C-3382/87	(iv)	1-1-1978 to 31-12-1978	
Complaint in case No. C-3383/87	(v)	1-1-1977 to 31-12-1977	
Complaint in case No. C-3384/87	(vi)	30-8-1976 to 31-12-1976	

3. The Collector of Customs came to a conclusion that the total Excise duty to the tune of Rs. 7.70 lacs had been evaded in all the six cases. He also imposed consultative penalty of Rs. 1 lac and passed final adjudication order on 24-4-1984.

4. The petitioner preferred an appeal, being No. E/2841 of 1984/B-1 before the Customs (Central) Appellate Tribunal, vide order dated 27th July, 1990, the appellate Tribunal allowed the appeal and set aside the penalty and remanded the case back to the Collector of Customs for 'de novo' assessment.

5. Pursuant to Appellant Tribunal's order dated 27-7-1990, the Collector of Customs re-assessed the total duty and reduced it to 2.25 lacs from 7.70 lacs and imposed a fresh penalty to the tune of Rs. 40,000/-.

6. The petitioner has again gone up in appeal before the Appellate Tribunal and a Stay of further proceedings has been obtained (Appeal No. E-603 of 1992).

7. In light of the changed circumstances, the petitioner filed an application in the trial court and prayed that prosecution be dropped and the petitioner be discharged. According to petitioner, since the old assessment order dated 24-4-1984 has been set aside by the tribunal the very basis of the prosecution has disappeared. Hence the complaint has no legs to stand on. The Ld. Magistrate rejected the prayer and dismissed the application. Hence this petition.

8. The Ld. Counsel for the petitioner has only urged that the trial in the Court below deserve to be stayed till the matter is finally decided by the Customs Appellate Tribunal. He has urged that if the prosecution continues and a judgment is delivered by the trial Court and if thereafter the assessment order is set aside, there would be an unjust conviction. It may also be noted that under Section 9(1)(i) of the Central Excises & Salt Act, if the excise duty evaded exceeds 1 lac, the imprisonment may extend to 7 years and with fine. Unless, the actual excise duty evaded is finally determined, the trial Court can not pass a sentence according to law.

9. I am told that only an witness have already been examined. It would, therefore, not be just and proper to stay the trial of the entire case. I, therefore, direct the Ld. Magistrate to examine all the witnesses for prosecution and after the prosecution closes its evidence, the further proceedings in the trial Court shall remain stayed till the disposal of the appeal by the Appellate Tribunal.

10. After the appellate tribunal's judgment is delivered, the Magistrate shall also take it into consideration and proceed with the case and dispose of the same in accordance with law.

11. With these directions, all the petitions are disposed of. The records of the trial Court be sent back forthwith through special messenger at the State expense within seven days.