

IN THE HIGH COURT OF ORISSA AT CUTTACK

CUSREF No.01 of 2002

M/s. Hope Cardamom Estate Limited, Appellant
Hooghly

Mr. Jagabandhu Sahoo, Senior Advocate
-versus-

Commissioner of Central Excise and Respondent
Customs, Bhubaneswar-1

Mr. Radheshyam Chimanka, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

ORDER
16.08.2022

Order No.

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1. This is a customs reference application under Section 130-A of the Customs Act, 1962 for a direction to the Appellate Tribunal to state the case arising out of an order dated 9th January, 2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, East Zonal Bench, Kolkata (CEGAT) in Appeal No.C/V-137/2000.

2. In the present appeal, the Court had framed the following question for consideration by its order dated 13th February, 2006:

“(3) Whether in the facts and circumstances of the case the determination of impugned short levy of duty is saved by limitation under the Act?”

3. The brief background facts are that on 11th March 1993, the Customs Department (Department) issued a Demand-cum-Show Cause Notice asking the Appellant to show cause why the short levy of customs duty amounting to Rs.28,192/- should not be collected from it.

4. The Appellant filed a reply to the said Show-Cause Notice (SCN) on 5th January, 1994.

5. For a period of six years thereafter nothing happened. While the Petitioner was under the impression that the proceedings had been dropped, a 'corrigendum' Show-Cause-cum-Demand notice dated 19th January, 2000 was issued whereby the demanded amount itself was enhanced from Rs.28,192/- to Rs.1, 15, 655/-. Further, the so called 'corrigendum' adverted to matters not mentioned in the original SCN.

6. The Petitioner replied to the corrigendum notice on 17th February, 2000 *inter alia* pointing out that such a demand in the garb of corrigendum was not legally tenable and was anyway barred by limitation. In other words, issuance of a corrigendum after expiry of seven years of the issuance of the original SCN pertaining to matters not included in the original SCN was certainly not permissible in law.

7. After the Commissioner of Central Excise and Customs adjudicated the corrigendum SCN by an order dated 29th February, 2000 confirming the enhanced demand and penalty, the Appellant went in appeal before the CEGAT, which had confirmed the demand of duty of Rs.1,02,528/-. The only ground

on which the limitation plea has been rejected is that the original assessments were ‘provisional’.

8. The CEGAT itself has in ***Wipro Information Technology v. Commissioner of Central Excise, Bangalore, 1999 (107) ELT 467 (Tribunal)*** held that an addendum to an original SCN making material changes was equivalent to a fresh SCN and cannot be therefore treated as merely an extension of the original SCN. This Judgment of the CEGAT has been referred to with approval by the Supreme Court in its order in ***2006 (197) ELT 465 (SC)***.

9. In ***Commissioner of Central Excise v. Gas Authority of India Ltd., 2008 (232) ELT 7 (SC)***, it was explained how the SCN is a foundation of the demand under the Central Excise Act and that an addendum cannot seek to bring in purview new matters, which were not mentioned in the original SCN. Recently, this Court in its judgment dated 24th June, 2021 in Writ Petition (Civil) No.2845 of 2018 (***M/s. Maxcare Laboratories Ltd. v. Joint Commissioner, CGST, Central Excise and Customs***) has quashed a similar corrigendum notice under Section 11-A of the Central Excise Act, which was barred by limitation by 18 years.

10. Having perused both the original SCN and the ‘corrigendum’ issued six years later on 19th January 2000, this Court has no hesitation in concluding that the so-called corrigendum is in fact a fresh SCN since it materially alters the original SCN both in terms of the demand raised as well as the grounds on which the demand was raised.

11. For the aforementioned reasons, the question framed for consideration by this Court is answered in the negative i.e. in favour of the Appellant-Assessee and against the Department. The impugned order dated 29th February, 2000 of the Commissioner of Customs and the order dated 9th January, 2002 of the CEGAT are hereby set aside.

12. The petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda

