

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1140 OF 2003

Commnr. of Central Excise, Kanpur

...Appellant(s)

Versus

M/s. New Decent Footwear Industries

...Respondent(s)

ORDER

We agree with the finding recorded by the Tribunal that the Revenue was not right in invoking the extended period of limitation under the proviso to Sec.11A of the Central Excise Act, 1944.

The respondent-assessee firm herein has two units, both located at Resham Katra, Taj Ganj, Agra. The Firm got the central excise licence for Unit No.1. For the second Unit no licence was obtained since no power was being used. It was availing the exemption given under Exemption Notification No.49 of 1986 dated 10.2.1986.

A raid was conducted on 3.9.1993 on the units of the Firm. In Unit No.1 the Revenue allegedly found certain excess footwears which were not accounted for. In Unit

No.2 some irregularities were found and accordingly two separate show cause notices were issued to Unit Nos.1 and 2 on 14.7.1996. The Authority in original confirmed the demand raised in the show cause notices. The demand was raised against the Firm and the partners and the Bata India Limited to whom the shoes were being supplied. The penalty was also levied.

Two sets of appeals were filed before the Tribunal, one by the Firm and the partners-the respondent herein, and the second by the Bata India Ltd. The appeal filed by the Bata India Ltd. was accepted. The composite appeal filed by the Firm and the partners was partly accepted in the case of partners. Against the Firm the demand was confirmed. The Revenue did not file any appeal against the order passed in favour of the Bata India Ltd. and the partners. The respondent-assessee firm filed a writ petition in the High Court of Delhi challenging the order of the Tribunal on merits as well as on the point of limitation which was accepted and the case was remitted back to the Tribunal for a fresh decision.

The Tribunal by the impugned order has held that the Revenue was not right in invoking the extended period of limitation under the proviso to Sec.11A of

the Act. It further held that in the absence of any challenge to the order passed in the appeal of Bata India Ltd. and the partners of the Firm, the appeal filed against the Firm could not be proceeded with.

We agree with the view taken by the Tribunal. As the Revenue had accepted the decision in the case of Bata India Ltd. arising from the same order of the authority in original and there being no change on facts the appeal against the respondent could not be proceeded with. We are also in agreement with the view taken by the Tribunal that Revenue was not justified in invoking the extended period of limitation. The appeal is dismissed.

No costs.

**.....J.
(ASHOK BHAN)**

**.....J.
(V.S. SIRPURKAR)**

**New Delhi,
September 25, 2008.**