

**2000-(BO1)-GJX-0167-BOM**

-

**Legend Exports Pvt. Ltd.**

Vs.

Union Of India.

**Court :**

**Decided On :**

April 18, 2000

**Equivalent Citation(s) :**

2000-(120)-ELT-0056-BOM

**Judge(s) :**

S H Kapadia, V C Daga

**Judgment :**

LEGEND EXPORTS PVT. LTD. v. UNION OF INDIA.

Writ Petition No. 832 of 2000, decided on April 18, 2000.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Counsels : S/Shri S. N. Kantawala, V. N. Kantawala, Ms. Suchita S. Deshmukh - Petitioner.

Shri B. M. Chatterjee - Respondents.

[Order]. - Since both the above Writ Petitions deal with common question of law and fact, they are disposed of by this common order.

Rule. Returnable forthwith. Respondents waive service. Since a short point is involved, both the above Petitions are disposed of finally by this common order.

The Additional Commissioner confirmed the demand by invoking the extended time limit of five years under section 11A(1) read with the proviso. By the said order, personal penalty was also

imposed. Being aggrieved by the Order of the Additional Commissioner, Petitioners preferred appeals to the Appellate Authority who dismissed the appeals for non-compliance of section 35F of the Central Excise Act for non-fulfilment of the pre-deposit of 50% of the disputed amounts of duty and penalty as ordered vide Order dated 25-1-1999. Being aggrieved, the Petitioners preferred revision to the Central Government which has also been dismissed vide impugned order (Exhibit-Q to the Writ Petition No. 831 of 2000).

Normally, this Court would not have interfered in the matter. However, an important question of law has been raised by the Petitioners in this case, namely, whether section 11AC of the Central Excise Act could be invoked in cases where offences allegedly took place before the said section 11AC came on the Statute. In this case, it is alleged by the Department that the Petitioners wrongfully obtained the refund by filing forged documents. Petitioners, however, contend that section 11AC applied prospectively and since the refund claims were filed prior to October, 1996 the Department was not entitled to invoke the said provision. Since the above point has been raised, the following order is passed :

#### ORDER

(a) That the impugned Orders passed by the Revisional Authority dated 18th/31st March 1999 is set aside on the condition that the Petitioners will deposit the amounts under Section 35F of the Act as directed by the Appellate Authority vide Order dated 25-1-1999. On such deposit, the Order passed by the Appellate Authority dated 31-3-1999 dismissing the appeals for non-compliance of Section 35F of the Act is also set aside and the appeals filed by the Petitioners before the Appellate Authority are restored to the file of the Appellate Authority. The said appeals will thereafter be disposed of in accordance with law. If the amounts as stated above are not deposited, the Writ Petitions shall stand dismissed automatically.

(b) Although the Petitions are allowed, the Petitioners will pay to the Department Rs. 1,000/- as costs.

(c) Accordingly, both the above Writ Petitions are disposed of.

Parties to act on the ordinary copy of this order duly authenticated by the Associate of this Court.