

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4992 OF 2019**

Shree Pushkar Chemical &
Fertilizers Ltd. .. Petitioner

vs.

The Union of India and ors. .. Respondents.

Mr. Prakash Shah i/b PDS Legal for the Petitioner.

Mr. Pradeep S. Jetly a/w. Mr. J.B. Mishra for the
Respondents.

**CORAM: M.S. SANKLECHA &
M.S.SONAK, J.J.**

DATE : 10 JULY 2019.

P.C.:

1] The petition under Article 226 of the Constitution of India challenges the orders dated 31st October 2013 and 23rd March 2015 passed by the Assistant Commissioner of Central Excise under the Central Excise Act, 1944 (Act). The impugned orders together confirms the demand for a period of November 2011 to January 2014 consequent to reclassification of Di-Calcium Phosphate under Chapter 28 Heading No.2835 25 00 instead of Chapter 23 Heading No.2309 90 90 of the Central Excise Tariff Act, 1985 as claimed by the petitioner.

2] The petitioner had challenged both the orders-in-original in appeals before the Commissioner of Central Excise (Appeals). However, the same were dismissed as being beyond the period of limitation by following the decision of the Supreme Court in ***Commissioner of Central Excise vs. Singh Enterprises - 221 ELT page 163.***

3] The challenge to the aforesaid two impugned orders-in-original have been made, as consequent to the impugned orders, the Central Government under Section 11C of the Act has issued notification No. 4 of 2016 -C.E. (N.T.) dated 12th February 2016. The above notification declared that Di-Calcium Phosphate which falls under Chapter 28, Heading 2835 of the First Schedule to the Central Excise Tariff Act, 1985 would not be charged to excise duty for the period 1st February 2008 to 1st February 2014. This for the reason that as a matter of general practice, no duty was being levied on the Di-Calcium Phosphate during the aforesaid period.

4] Indisputably, no fault can be found with the impugned orders passed by the Assistant Commissioner or orders of the Commissioner (Appeals) dismissing the petitioner's appeals. However, the fact that notification has been issued under Section 11C of the Act directing the Officers of the department not to recover the duty on Di-Calcium Phosphate for the period 1st February 2008 to 1st February 2014 which would include the period for which the duty has been confirmed by the two impugned orders.

5] *Prima facie* , we are of the view in the face of notification No. 4 of 2016- C.E. (N.T.) dated 12th February 2016, the Revenue cannot recover the amounts which have been confirmed by the two impugned orders. However, as yet no recovery proceedings have been taken against the respondent consequent to the two impugned orders and therefore, at this stage, the present petition is premature. In case, the Revenue

seeks to recover demands confirmed by the two impugned orders of the Assistant Commissioner of Central Excise, in the face of notification No.4 of 2016-C.E. (N.T.) dated 12th February 2016 issued under Section 11C of the Act that it would be open to the petitioner to challenge the same. At this stage, the petition is not justified as there is no action is taken by the Revenue in the face of notification issued under Section 11C of the Act. It is clarified that at this stage, we have not expressed any opinion on the merits of recovery notice in the face of Section 11C Notification. This for the reason, it does not arise in the present facts.

6] The petition is disposed of with the aforesaid liberty.

(M. S. SONAK, J.)

(M. S. SANKLECHA, J.)