IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CENTRAL EXCISE APPEAL NO. 3/2014

M/s. Mahatma Sugar and Power Ltd. Nagpur .Vs. CESTAT Mumbai and anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. Anand Jaiswal, Senior Advocate assisted by Mr. A. S. Kapoor, Advocate for appellant.
Mr. S. N. Bhattad, Advocate for respondents..

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE : DECEMBER 5, 2025.

On 21.11.2025, following order was passed.

"Heard.

The appeal has been admitted on following substantial question of law.

> *"Whether Section 11D added to the Central Excise Act, 1944 with effect from 20-9-1991 requires the assessee to pay back the portion of excise duty which he was permitted to retain on additional duty free quota of sugar between 1987 and 20-9-1991."*

The petitioner is running a sugar factory. It collected excise duty as permissible in the scheme floated by the Central Government, published on 4-11-1987. Under the scheme, following concession was given on excise duty.

> *"Excise Duty Concession:-*
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> *(v) In addition to the higher free sale quota mentioned above, the New factories and Expansion Projects which become entitled to incentives under the 1987 Scheme will be allowed.*
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> *(a) to pay excise duty as applicable to levy sugar ; and*
>
> *(b) to retain the difference in excise duty as between levy and free sale sugar,*
>
> *in respect of the incentive free sale quota in excess of the normal free sale quota.*
>
> *(vi) In regard to the excise duty concession under this Scheme, necessary notification would be issued by the Ministry of Finance (Department of Revenue) separately."*

Thus, the scheme permitted the factories which are entitled to incentives to retain the difference in excise duty as between levy and free sale sugar, in respect of the incentive *free sale quota in excess of the normal free sale quota. Accordingly, the petitioner retained the difference in the excise duty.*

On 20-9-1991, Section 11D was added to the Central Excise Act, 1944 which reads as under :-

> *"11D. (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who has collected any amount from the buyer of any goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.*
>
> *(2) The amount paid to the credit of the Central Government under sub-section (1) shall be adjusted against the duty of excise payable by the person on finalisation of assessment and where any surplus is left after such adjustment, the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and the relevant date for making an application under that section in such cases shall be the date of the public notice to be issued by the Assistant Collector of Central Excise."*

As could be seen, sub-section (1) of Section 11D commences with non obstante clause and provides that every person who has collected any amount from the buyer of any goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

The argument of the revenue is that since the word 'collected' is used, it would mean that the amount collected prior to coming into force, Section 11D. Respondent no. 2 – Commissioner, while passing impugned order, observed that Section 11D was in force at the time of issuance of show cause notice dated 29-3-1994 to the petitioner and, therefore, the provisions thereof were existing at the time of issuance of show cause notice and, therefore, will be applicable.

This order was challenged by the petitioner before the respondent no. 1 – appellate tribunal. The appellate *tribunal relied upon the judgment in the case of* ***<u>Kisan Sahkari Chini Mills Ltd. Vs. Collector of Central Excise, Allahabad [2005 (182) E.L.T. 26 (S.C.)]</u>*** *and upheld finding of respondent no. 2 saying that show cause notice was issued after introduction of Section 11D of the Central Excise Act. Accordingly, the Tribunal dismissed the appeal.*

Mr. Anand Jaiswal, learned Senior Counsel has invited our attention to the findings of the Supreme Court in Kisan's case (supra). The show cause notice was issued on 1-8-1994 calling upon the petitioners therein to deposit the amounts collected by them during the period from January, 1994 to February, 1994. He submits and rightly so, that the period of collecting amount in the case before the Supreme Court was subsequent to Section 11D coming into force and accordingly, the observations were made that the show cause notice was issued after introduction of Section 11D. Thus what is relevant is the period of collecting excise duty and not the date of show cause notice.

The question before the respondent which is now raised before us is whether the Revenue could have called upon petitioner to deposit the amount collected by it prior to coming into force Section 11D i.e. prior to 20-9-1991. In other words, the question is whether Section 11D will have retrospective effect. As stated earlier, the argument of Revenue is that since the word 'collected' is used, it would mean that it has retrospective effect.

We do not find merit in the aforesaid submission. The provision as has been made will be worded in the manner it is so worded, in the sense, one cannot expect legislature to put in words, like "a person who will in future collect any amount ……". The word 'collected' will have to be read in tune with what the intent is. Section 11D requires every person, who has collected any amount from the buyer of any goods towards excise duty, to pay the amount so collected to the credit of the Central Government. The plain meaning of it would be that the amount collected after 20-9-1991 towards excise duty will have to be paid by the persons like the petitioner to the credit of Central Government.

The finding of the respondents that since on the date of issuance of show cause notice, Section 11D was in force and, therefore, petitioner is liable to pay excise duty, which *was collected prior to September, 1991 is apparently erroneous.*

Section 11D requires a person to deposit the excise duty which is collected after 20-9-1991. Prior thereto was in place the scheme of Central Government that permitted the sugar factories to retain the amount so collected. It would thus mean that Section 11D will have prospective effect. Even otherwise, whenever the consequences of the provisions are penal in nature or has penal character, it will take effect prospectively.

At this stage, learned counsel for the respondents seeks time to have research on the point. Time granted.

List the appeal on 5-12-2025.

2. Thus, we were of the view that Section 11D will have prospective effect.

3. Mr. S. N. Bhattad, learned counsel for the respondents, has invited our attention to judgment passed by this Court in ***Jalna Sahakari Sakhar Karkhana Ltd. Vs. C.C.E. and C., Aurangabad [First Appeal No.646/2006, decided on 08.09.2017]***, wherein the Division Bench held that Section 11D of the Central Excise Act, 1944 will prevail over the provisions of the Essential Commodities Act, 1955 because Section 11D commences with non obstante clause.

4. There cannot be different views on this point. It is well settled that where a provision commences with non obstante clause, it will prevail over the other provisions, of course, if it is not otherwise worded.

5. The question here is whether the provisions under Section 11D will have prospective effect, considering the fact that it provides for consequence which are penal in character.

6. Mr. Anand Jaiswal, learned Senior Counsel for appellant has invited our attention to the judgment in ***Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi I [(2007) 9 SCC 665],*** wherein, the Supreme Court, while examining amended provisions

of the Income Tax Act, 1961, particularly, Section 271 thereof, held as under:

> *"52. In the present case, it is only in the Notes on Clauses relating to the 2002 Amendment that it has been stated that the said amendment is clarificatory. There is no such mention of the said amendment being clarificatory, anywhere in the statute itself. Such a statement in the Notes on Clauses cannot possibly bind the Court when even a statement in the statute itself is not regarded as binding or conclusive. In the present case, the statute expressly states that the amendment would take effect only from 1-4-2003. Consequently, this amendment cannot possibly be applied to or in respect of any period prior to 1-4-2003.*
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> *53. Otherwise also, it has been consistently held that a provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision, a greater retrospectivity than is expressly mentioned. It is settled law that a taxing provision imposing liability is governed by the normal presumption that is not retrospective. Reference made to the decisions in:*
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> *(i) S.S. Gadgil v. Lal & Co., (1964) 53 ITR 231 (SC)*
> *(ii) K.M. Sharma v. ITO, (2002) 254 ITR 772*
> *(iii) Gem Granites v.CIT, (2004)271 ITR 322*
> *(iv) Sedco Forex International Drill Inc. v.CIT., (2005) 279 ITR 310*
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> *54. There is nothing in the language of Section 271(1)(c) as amended by the Finance Act, 2002 w.e.f. 1-4-2003 to suggest that the amendment is retrospective. The amendment in sub-clause (iii) and simultaneously in Explanation 4(a) carried out enlarges the scope of penalty under Section 271(1)(c) to include even cases where assessment has been completed at loss. The same being in the nature of a substantive amendment would be prospective, in the absence of any indication to the contrary."*

7. Thus, the Supreme Court noted that the provisions would enlarge the scope of penalty under Section 271 (1)(c) and it being substantive in the nature, amendment would be prospective in the absence of any indication to the contrary.

8. Similar is the case before us. As discussed at length in order dated 21.11.2025, Section 11D has a penal characteristic

and, therefore, it will have a prospective effect since nothing contrary is indicated in the said provision.

9. That being so and for the reasons stated in the order dated 21.11.2025, the substantial question is answered in the negative. Accordingly, the appeal is allowed. Impugned order dated 06.03.2013 passed by respondent No.1 in Appeal No. 3107/2001 is quashed and set aside.

10. The appeal is disposed of in the above terms.

(JUDGE) **(JUDGE)**

Kahale