

**SUPREME COURT**

Civil Appeal No. 7230 of 1999 with C.A. No. 1163 of 2000, Date of Decision: 24-10-2002

**M/s. Escorts JCB Ltd.** Appellants

**Vs.**

**Commissioner of Central Excise, Delhi-II** Respondent

**JUDGMENT**

**BRIJESH KUMAR, J. :-**The appeals indicated above, arise out of judgment and order dated 24-8-1999 passed by the Customs Excise and Gold (Control) Appellate Tribunal (for short 'CEGAT'), operative part of which reads asunder :

"In the result we dispose of this appeal by confirming the order of the Commissioner imposing a duty of Rs.29,65,532/- under R.9(2) of the Central Excise Rules, 1944 read with S. 11-A of the Act, set aside that part of the order which imposed duty amount to Rs. 98,219/- and reduce the penalty to Rs. 10 lakhs under S. 11-AC of the Act."

Escorts JCB Ltd., the appellant in Civil Appeal No. 7230/99 and respondent in Civil Appeal No. 1163/2000 (hereinafter to be referred to as 'the assessee') is aggrieved by the order confirming imposition of duty and levy of penalty. The Commissioner of Central Excise, appellant in Civil Appeal No. 1163/2000 and respondent in Civil Appeal No. 7230/99 (hereinafter to be referred to as 'The Revenue') is aggrieved by the order reducing the amount of penalty to Rs. 10 lakhs as imposed under S. 11-AC of the Central Excise Act.

2. The Central Excise Officers of Anti-Evasion Branch, Faridabad on visit to the premises of the assessee found that the amount of "transit insurance" charges was not added to the value of the goods sold, hence issued a show cause notice dated 24-3-1998 to the assessee saying that an open policy for transit risks in the name of M/s. Escorts JCB Ltd. and their bankers appear in the column for the name of assured but there is no mention of the buyer or its name in the column for "insured." Notice also indicates that 'freight' and "transit insurance" were charged from the buyers but no central excise duty was paid on these two elements, and by not including above noted elements in the normal price as per S. 4 of the Central Excise Act, 1944 and by misdeclaring the place of removal as factory gate instead of buyer's place where the goods were to be sold after their clearance from the factory as described in sub-clause (iii) and Cl. (b) of sub-section (4) of the Central Excise Act, 1944, the assessee has suppressed the necessary facts. It also said that S. 11-A of the Act is attracted for extending the period up to 5 years for demanding the central excise duty. The assessee was also noticed as to why penalty under S. 11-AC be not imposed upon it.