

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 2774 OF 2001

Commissioner of Central Excise,
Bhubneswar

Appellant(s)

Versus

M/s Paradeep Phosphates Ltd.
(With office report)

Respondent(s)

Date: 18/07/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. T.S. Doabia, Sr. Adv.
Mr. Arijit Prasad, Adv.
Mr. B.K. Prasad, Adv.

For Respondent(s) Mr. Joseph Vellapally, Sr. Adv.

Mr. Ashok Sagar, Adv.
Mr. Dinesh Mathur, Adv.
Ms. Padmini Kumari, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed leaving the parties to bear their own costs.

(J.S. Rawat)
AR-cum-PS

(Kanwal Singh)
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2774 OF 2001

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M/s Paradeep Phosphates Ltd.

Respondent(s)

O R D E R

Respondent-M/s. Paradeep Phosphates Ltd. imported "Mobile Continuous Ship Unloader" which was required for the initial setting up of a fertilizer plant at Paradeep Port.

Respondent-assessee claimed that the duty was assessable under heading 98.01 whereas, according to the appellant, the duty was imposable under Chapter heading 8428.39. The Customs Excise & Gold (Control) Appellate Tribunal, New Delhi [for short "the Tribunal"] in its detailed order dated 16th June , 2000 has held that it would be appropriately covered by the expression "auxiliary equipment" of the industrial plant (fertilizer plant) mentioned under heading 98.01.

After perusal of the relevant entries and the order passed by the Tribunal, we find ourselves in agreement with the findings recorded by the Tribunal that the Mobile Continuous Ship Unloader imported by the assessee would be covered by the expression "auxiliary equipment" of the industrial plant (fertilizer plant) mentioned under heading 98.01.

It may be mentioned that subsequent to the order passed by the Tribunal in the present case, Government of India, Ministry of Chemical and Fertilizers took a decision to reimburse 90% of the customs duty paid on the capital equipments imported by new fertilizer plants.

In pursuance to the said decision, the respondent-assessee, during the

pendency of this case, has already been reimbursed 90% of the customs duty paid by it on the import of the fertilizer plant, including the 'Mobile Continuous Ship Unloader' . From this also, it is clear that the Mobile Continuous Ship Unloader imported by the respondent was an equipment auxiliary to the main fertilizer plant.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same leaving the parties to bear their own costs.

.....J.

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(ASHOK BHAN)

New Delhi;
.....J.
July 18, 2006.

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(MARKANDEY KATJU)