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C.A.No. 1499 OF 2000

ITEM No.103

Court No.5

SECTION III

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.1499/2000

COMNR. OF CUSTOMS & EXCISE, BANGALORE Appellant (s)

VERSUS

M/S. SUJATA TEXTILE MILLS LTD. Respondent (s)

(With office report)

With C.A. No.2677/2000 (with office report),

C.A. Nos.5003-5004/2001 (with appln.(s) for ex-parte stay and with office report),

C.A. No.196/2002 (with appln.(s) for ex-parte stay and with office report),

C.A. No.4320/2003 (with appln.(s) for ex-parte stay and with office report),

C.A. No.4686/2004 (with appln.(s) for stay and appln. for amendment of cause title and with office report),

C.A. No.617/2005 (with appln.(s) for stay and with office report)

Date : 03/03/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE DR. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s) Mr. K. Swami, Adv.

Mr. Rupesh Kumar, Adv.

Mr. T.A. Khan, Adv.

Mr. P. Parmeswaran, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. V. Balachandran, Adv.

Mr. Alok Yadav, Adv.

Mr. Rajesh Kumar, Adv.

Mr. Nikhil Nayyar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals stand disposed of in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)

Court Master

(Jasbir Singh)

Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1499 OF 2000

COMNR. OF CUSTOMS & EXCISE, BANGALORE Appellant (s)

VERSUS

M/S. SUJATA TEXTILE MILLS LTD. Respondent (s)

WITH
CIVIL APPEAL NO.2677 OF 2000
WITH
CIVIL APPEAL NOS.5003-5004 OF 2001
WITH
CIVIL APPEAL NO.196 OF 2002
WITH
CIVIL APPEAL NO.4320 OF 2003
WITH
CIVIL APPEAL NO.4686 OF 2004
WITH
CIVIL APPEAL NO.617 OF 2005

O R D E R

Application for amendment of cause title in Civil Appeal No.4686 of 2004 is allowed. Amendment to be carried out forthwith.

All these Appeals raise a common question and therefore are being disposed of by this common order. Under Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, the value is not to include the amount of duty of excise, sales tax and other taxes if any payable on goods. Under Section 18 of the Karnataka Sales Tax Act, 1957 a registered dealer has to pay a tax known as 'turnover tax' and by virtue of sub-section 3 of Section 18 he is not permitted to pass on that tax to the customer. The question is whether at the time of working out valuation of the goods, under the Central Excises and Salt Act, 1944, the turnover tax can be deducted. To be remembered that at this stage it will not have been actually paid.

The Tribunal has, in all these cases, held that so long as the tax is payable it can be deducted. We see no infirmity in this reasoning.

However, a clarification is sought from this Court as to whether ultimately the Department can ask for proof that the tax is actually paid. There is no dispute that the Department can always call for proof that the amount is actually paid. If it is later on found that the amount is not actually paid the Department can, after following the procedure prescribed, revalue the goods.

In some of the matters the Department has sought to disallow on the ground that the invoice did not show the element of turnover tax. In our view, this action on the part of the Department is not sustainable. The invoice would never show the element of turnover tax, since the same cannot be recovered from the customers.

All these Appeals stand disposed of with the above clarifications. There will be no order as to costs.

.....J.
[S.N. VARIAVA]

.....J.
[Dr. AR. LAKSHMANAN]

.....J.
[S.H. KAPADIA]
New Delhi.

March 03, 2005.

ITEM No.103 Court No.5 SECTION III
S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.3792-3803 of 2000

COMNR. OF CENTRAL EXCISE, BELGAUM Appellant (s)

VERSUS

M/S. AKAY COSMETIS PVT. LTD., STATION ROAD HUBLI Respondent (s)

(with appln.(s) for permission to place addl. documents on record
and with office report),

WITH

C.A. No.336/2001 (with appln.(s) for stay and permission to place addl. Documents on record a
nd with office report),

Date : 03/03/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE DR. JUSTICE AR. LAKSHMANAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s) Mr. K. Swami, Adv.
Mr. Rupesh Kumar, Adv.
Mr. T.A. Khan, Adv.
Mr. P. Parmeswaran, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. Rajesh Kumar, Adv.

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

Not to be called out today.

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master