

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

CIVIL APPEAL Nos. 3409-3411 OF 2001

Commissioner of Central Excise, Pune.

Appellant (s)

Versus

M/s. Ownes Brockway Ltd.  
(With office report)  
With  
C.A. Nos. 4610-4615/2003 (With office report)

Respondent (s)

Date: 26/04/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s) Mr. K. Radhakrishnan, Sr. Adv.  
Mrs. Binu Tamta, Adv. for  
Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. Arshad Hidayatullah, Sr. Adv.  
Mr. Aaroohi Bhalla, Adv.  
Ms. Sujata Kurdukar, Adv.

In CA 4610-15/03 Mr. Arshad Hidayatullah, Sr. Adv.  
Mr. Pramod B. Agarwala, Adv.  
Ms. Praveena Gautam, Adv.  
Mr. Ajay Pal Singh, Adv.

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

C.A. Nos. 3409-3411/2001.

The appeals are allowed. No costs. .

C.A. Nos. 4610-4615/2003.

Heard in part.

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

(Radha R. Bhatia)  
Court Master

[Signed order is placed on the file]

CIVIL APPELLATE JURISDICTION

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Appellant (s)

Versus

M/s. Ownes Brockway Ltd.

Respondent (s)

O R D E R

By the impugned order the Customs, Excise & Gold (Control) Appellate Tribunal, West Regional Bench, Mumbai, [for short "the Tribunal"] has set aside the order-in-original. It appears that at the time of final hearing before the Tribunal, a request was made on behalf of the Revenue for an adjournment on the ground that the Senior Standing Counsel was not available to address the arguments. The Tribunal rejected the request for adjournment on the ground that it was specifically made clear on the last date of hearing that the case will be disposed of on the next date of hearing irrespective of the presence of senior counsel on either side, and, after hearing the learned counsel appearing for the assessee, accepted the appeals.

With the assistance of the learned senior counsel appearing for the parties, we have gone through the order in original as well as the impugned order passed by the Tribunal. We find that the Tribunal has not recorded a clear cut finding on facts. Mr. Arshad Hidayatullah, learned Senior

Counsel appearing for the assessee fairly states that the ex parte proceedings ordered against the Revenue as well as the order impugned in these appeals be set aside and the case be remitted back to the Tribunal for deciding it afresh, after affording due opportunity of hearing to the parties, in accordance with law. Counsel appearing for the Revenue has no objection to this recourse being adopted.

In view of this, the ex parte proceedings ordered against the Revenue as well as the order under appeals are set aside and the case is remitted back to the Tribunal for a fresh decision thereon, after affording due opportunity to the parties, in accordance with law.

The appeals are allowed accordingly. No costs.

The Registry is directed to transmit the original record back to the Tribunal forthwith.

...J.

.....  
(ASHOK BHAN)

New Delhi;  
April 26, 2006.

.....J.  
(LOKESHWAR SINGH PANTA)