

~
SLP(C)No. 2488 OF 2004

ITEM No.2

Court No. 1

SECTION III
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.2488/2004

(From the judgement and order dated 17/09/2003 in FO 1395/2003
of The CESTAT, Circuit Bench at Cochin)

COMMNR. OF CENTRAL EXCISE, CALICUT

Petitioner (s)

VERSUS

M/S. KUMAR INDUSTRIES

Respondent (s)

(With prayer for interim relief and office report)

Date : 20/04/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner (s)Mr. Soli J. Sorabjee, AG
Ms. Nisha Bagchi, Adv.
Mr. B. Krishna Prasad,Adv.

For Respondent (s)Mr. G. Prakash,Adv.

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

Leave granted.

The appeal is allowed. No costs.

[Alka Dudeja] [Janki Bhatia]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2572 OF 2004
(Arising out of S.L.P. [C] No. 2488 of 2004)

Commissioner of Central Excise, Calicut ... Appellant (s)

Versus

M/s. Kumar Industries

... Respondent(s)

O R D E R

Leave granted.

In view of the decision in Commissioner of Central Excise, Mumbai Vs. M/s. Allied Photographic India Ltd., reported in 2004 (4) SCALE 326, the appeal deserves to be allowed.

However, one of the questions as to whether the respondent has passed on the duty burden to its customers has not been decided by the Tribunal. We, therefore, set aside the order and judgment under challenge and remit the matter to the Tribunal to decide the question as to whether the respondent herein had passed on the duty burden to the customers or not in terms of Section 11B of the Central Excise Act, 1944, as it stood at the relevant time.. The said question be decided on the basis of the material already on record and no further material shall be permitted to be adduced by either of the parties before the Tribunal.

The appeal is, accordingly, allowed. No costs.

.....CJI.

.....J.
(S.B. Sinha)

.....J.
(S.H. Kapadia)

New Delhi,
April 20, 2004.