

j/  
C.A.No. 2487 OF 1999  
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA@@  
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

CIVIL APPELLATE JURISDICTION@@  
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

CIVIL APPEAL NO. 2487 OF 1999@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

M/s. Moti Laminates (P) Ltd. & Anr. ...Appellant(s)

versus

U.O.I. & Ors. ...Respondent(s)

O R D E R@@  
CCCCCCCC

L.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP2

The issue of classification has become final insofar as this appeal is concerned inasmuch as the judgment of the High Court was challenged by the Revenue belatedly and the special leave petition was dismissed. In an unconnected appeal to this Court, the issue that was raised was identical to the issue raised before the High Court in this appeal and this Court reversed the view taken by the High Court. It is submitted by learned counsel for the respondent (Revenue) that, therefore, we should dismiss the claim of the appellant to refund the excise duty that it paid. In that behalf, reliance is placed upon the judgment of this Court in M/s. Shenoy and Co. vs.@@  
CCCCCCCCCCCCCCCCCCCCCCCCCC

Commercial Tax Officer, Circle II, Bangalore (1985 (2) SCC@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC  
512). It is also submitted that we should not interfere in a case like this under Article 136.

In the first place, in the judgment in the case of M/s. Shenoy & Co., several writ petitions raising the plea@@  
CCCCCCCCCCCCCCCCCCCCCC

...2/-

.PA

of unconstitutionality had been allowed by the High Court by a common judgment and a mandamus was issued to the respondent-State. The respondent-State preferred an appeal only against one of the writ petitioners. This Court, employing the provisions of Article 141, held that the mandamus issued by the High Court was rendered ineffective in the case of all the writ petitions. That judgment can have no application to the facts of the case before us, which facts we have already indicated.

Equally, there is no substance in the contention that we should not interfere under Article 136. The judgment of the High Court having become final, the assessee is entitled to a refund of excise duty ordered thereby, such refund to be considered by the authorities in the light of the statute, as amended, and the judgment of

this Court in the case of Mafatlal Industries Ltd. vs. Union of India & Ors. (1997 (5) SCC 536). The appeal is allowed. No order as to costs.

.SP1

.....CJI. (N. SANTOSH HEGDE)

.....J. (N. SANTOSH HEGDE)

.....J. (SHIVARAJ V. PATIL) New Delhi, May 01, 2002.

.PA ITEM NO.103 COURT NO. 1 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.2487/1999

M/s. Moti Laminates (P) Ltd. & Anr. Appellant (s)

VERSUS

U.O.I. & Ors. Respondent (s) (With office report)

Date : 01/05/2002 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE N. SANTOSH HEGDE HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Appellant (s) Mr. Dewan Parikh, Adv. Ms. Pooja Shriram, Adv. Mr. R.N. Karanjawala, Adv. Mrs. Manik Karanjawala, Adv.

For Respondent (s) Mr. T.L.V. Iyer, Sr.Adv.  
Mr. Hemant Sharma, Adv.  
Mr. B. Krishna Prasad, Adv.

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

....L.....I.....T.....T.....T.....T.....T.....J

.SP2  
Heard learned counsel for the parties for few  
minutes.  
The appeal is allowed.  
No order as to costs.

.SP1  
(N. Annapurna) (Shelly Sengupta)  
Court Master Court Master

(Signed order is placed on the file.)