

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. 4231 OF 2001

Commissioner of Customs, New Delhi

Appellant (s)

Versus

M/s. Oriental Exports, New Delhi

Respondent (s)

(With office report)

With  
C.A. No. 4322/2001 (With appl(s) for ex parte stay and office report)

Date: 27/04/2006 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.  
Mr.K. Swami, Adv.  
for Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. Madhav Rao, Adv.  
Mr. M.P. Devnath, Adv.

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

The appeals are dismissed. No costs.

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

(Kanwal Singh)  
Court Master

[Singed order is placed on the record.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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CIVIL APPEAL NO. 4322 OF 2001

O R D E R

These appeals have been filed by the Revenue.

The Tribunal, in the impugned order, following its earlier decision, in Messrs Needle Industries India Ltd. v. CCE [1998 (101) ELT 286(T)] has taken the view that the doctrine of unjust enrichment is not applicable to provisional assessment in terms of Section 18 of The Customs Act which is similar to Rule 9B of the Central Excise Rules.

A two-Judge Bench of this Court in C.C.E., Mumbai v. Allied Photographics India Ltd. [2004(4) SCC 55], noticing the inconsistency, doubted the correctness of two decisions rendered by three-Judge Bench of this Court in, i.e, (i) Sinkhai Synthetics & Chemicals (P) Ltd. v. C.C.E. [2002 (9) SCC 416 : 2002 (143) ELT 17] and (ii) C.C.E. v. TVS Suzuki Ltd. [2003(7) SCC 24 : 2003 (156) ELT 161] as contrasted to the Constitution Bench decision in Mafatlal Industries Ltd. v. Union of India [1997 (5) SCC 536].

The three-Judge Bench which considered the correctness of the aforesaid two decisions (of three-Judge Bench) has in CCE, Mumbai-II v. Allied Photographics India Ltd. [2004(4) SCC 34] held that the judgment in Sinkhai Synthetics's case (supra) was per incuriam [para 14 at page 52]

and approved the decision in the later case, i.e., TVS Suzuki's case (supra).

The three Judge Bench has also taken the same view, as was taken by the

Tribunal, to the effect that the doctrine of unjust enrichment is not

applicable to the provisional assessment even after the finalisation thereof.

The point in issue in the present case is, thus, squarely covered by

the three-Judge Bench decision in Allied Photographics' case [2004(4)

SCC 34]. In view of this, the appeals are dismissed and the order passed by

the Tribunal is affirmed. No costs.

....J.

.....  
(ASHOK BHAN)

New Delhi;

.....J.

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April 27, 2006. (LOKESHWAR SINGH PANTA)