

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 NO(s). 4967-4969 OF 2000

COLLECTOR OF CENTRAL EXCISE, PUNE

Appellant (s)

VERSUS

M/S. D.B. ELECTRONICS & ORS.

Respondent(s)

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

Date: 29/09/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. Rajiv Dutta, Sr. Adv.
Mr. Subba Rao, Adv.
Mr. S. Beno Bencigar, Adv.
Mr. Nayak, Adv.
Mr. P. Parmeswaran, Adv.

For Respondent(s)

Mr. Joseph Vellapally, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Ragvesh Singh, Adv.

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

Heard learned counsel for the parties.

The appeals are dismissed with no order as to costs.

(R.K. DHAWAN)
COURT MASTER

(VEERA VERMA)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4967-4969 OF 2000

COLLECTOR OF CENTRAL EXCISE, PUNE

.... APPELLANT.

VERSUS

M/S. D.B. ELECTRONICS & ORS.

.... RESPONDENTS.

O R D E R

This Appeal is filed against the order of Customs, Excise and Gold
(Control) Appellate Tribunal (hereinafter called 'CEGAT') dated 9th March, 2000.

Briefly stated, facts are as follows:

The Respondents are manufacturing, among others UPS systems.

They availed benefit of Notification No.46/81-CE dated 1st March, 1981. A show
cause notice was issued to them on 22nd July, 1987. It was claimed that since
they employed more than 10 persons, benefit of said Notification was not
available to them.

...2/-

The Collector, by an order dated 16th March, 1988, confirmed the demand and imposed penalty. The Appeal filed by the Respondents was allowed by the CEGAT on the ground that principles of natural justice had been violated. The matter was remitted back to the Collector, Central Excise. During the re-hearing, a letter dated 3rd January, 1991 was issued to the Respondents purporting to rely upon a statement worked out on basis of wages paid by the Respondents. Thereafter, by Order dated 24th October, 1991, the defence of the Respondents qua E.S.I. and Provident Fund returns was fully accepted. However, relying on the statement prepared on basis of wages, a demand was made and penalty levied. The Tribunal has allowed the Appeal by the impugned Order. It is held amongst other things that this demand is based on inferences and surmises and is not sustainable.

Having examined the papers and having heard counsel, we find that even in this appeal there is no challenge to the acceptance of Respondents defence to ESI and Provident Fund returns. Thus the only other material available is the statement prepared on basis of wages paid by the Respondents. We thus find that the Tribunal is right in holding that the order of the Collector is based solely on surmises and conjunctures.

...3/-

We thus see no reason to interfere with the impugned order.

The Appeals are accordingly dismissed with no order as to costs.

.....J
(S.N. VARIAVA)

.....J
(TARUN CHATTERJEE)

NEW DELHI ;

SEPTEMBER 29, 2005.