

ITEM NO.106

COURT NO.4

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(s). 4789 OF 2000

CONTROL TOUCH ELECTRONICS P.LTD.

Appellant (s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, PUNE

Respondent(s)

(With office report)

Date: 19/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE DR. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s) Mr. V. Sridharan, Adv.

Mr. MP. Devanath, Adv.

For Respondent(s) Mr. Mohan Parasaran, ASG.

Mr. Aarohi Bhalla, Adv.

Mr. P. Parmeswaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

This matter has been tagged with Civil Appeal No.3197 of 2000 which has been disposed

of by this Court by the judgment reported in [2005 (188) ELT 3]. However, on the aspect as to

whether a circular issued by the Board would prevail over the judgment of this Court, this Court

has held as follows:

1 Appeal "Under these circumstances, we would have dismissed Civil

However, No.3197 of 2000 and allowed Civil Appeal No. 1469 of 2002. we are

clearly shown a Circular of the Board dated 27th October, 1994 which gives an

interpretation as canvassed before us by Mr. Sridharan. Before this Court there is a divergence of opinion whether such Circulars prevail over Judgments of this

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Court. This question has been referred to a Constitution Bench by a Judgment in the case of Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire

Industries reported in 2005 (181) E.L.T. 364 (S.C.). We, therefore, after giving the above finding, tag these matters with the cases before the Constitution Bench. We clarify that this is only for the purpose of ascertaining whether the Circular would prevail or the Judgment of this Court would prevail. If ultimately it is held by the Constitution Bench that Judgments of this Court would prevail, then Civil Appeal No. 3197 of 2000 will stand dismissed and Civil Appeal No.1469 of 2002 will stand allowed without any further Orders. If, however, the Constitution Bench takes a contrary opinion, then of course, the reverse will follow. In either case there will be no order as to costs."

Thus on merits we hold that this case will also be covered by that judgment. However,

on the limited aspect as to whether or not the circular of the Board can prevail, we also tag this

matter along with those cases which are pending before the Constitution Bench. If ultimately it is

held by the Constitution Bench that judgments of this Court would prevail then this appeal would

stand dismissed. If however the Constitution Bench takes a contrary view, then of course the

reverse will follow. In either case there will be order as to costs.

It must be mentioned that it was submitted that there is an additional point. It is

submitted that on the interpretation given by this Court the appellants are still entitled to the

exemption under a Notification as they fall within the proviso to that Notification. Such a point

has not been contended at any stage. It has not even been taken in the Special Leave Petition. We

do not permit such a point to be raised for the first time. It is not a pure question of law but will

also require determination of facts.

(S. Thapar)

(Jasbir Singh)

PS to Registrar

Court Master