

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). 5577 OF 2000

COMMNR. OF CENTRAL EXCISE, MUMBAI

Appellant (s)

VERSUS

M/S. PARLE INTERNATIONAL LTD.

Respondent(s)

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

Date: 04/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE DR. JUSTICE AR. LAKSHMANAN  
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s)

Mr. A.S.Rao,adv.for  
Mr. P. Parmeswaran,Adv.

For Respondent(s)

Mr. Rajiv Shakher,adv.  
Mr. U.A.Rana,adv.  
Mrs. K.Sumathi,Adv.for  
M/S Gagrat & Co.

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

The appeal is allowed.  
No costs.

[SUMAN WADHWA]  
COURT MASTER

[MADHU SAXENA]  
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5577 OF 2000

Commnr. of Cental Excise,  
Mumbai .. Appellant

vs.

M/s. Parle International  
Ltd. .. Respondent

O R D E R

We are of the view that the issue in this case stands concluded by the decisions of this Court in Commissioner of Central Excise, Mumbai II vs. Allied Photographics India Ltd., reported in 2004 (4) SCC 34, and Sahakari Khand Udyog Mandal Ltd. vs. Commissioner of Central Excise & Customs reported in 2005 (3) SCC 738. The High Court's decision to the contrary is wrong and is, therefore, set aside.

The High Court had interfered in the matter and set aside the show cause notice issued by the appellant calling upon the respondent to show cause why it should not be denied refund under Sec.11-B of the Central Excise Act, 1985. Since we have set aside the decision of the High Court, the show cause notice revives. Having regard to the facts of the case, we record the submission of the learned counsel appearing on behalf of the appellant that the issue of limitation will not be raised by it in the event the respondent gives an answer to the show cause

notice. In any event, we extend the time consequent upon this appeal being allowed. We extend the time for to the respondent to show cause to the notice within a period of six weeks. It will be open to the respondent to file the answer in the

form and manner required by the appellant without prejudice to the respondent's submission before the authority concerned that such a compliance was not necessary having regard to the application already made for refund by it on 28.9.1999.

It is made clear that this Court has decided the appeal purely on a question of law. All the issues of fact as well as the issue relating to the form of answer to the show cause notice will be decided by the authorities concerned. The authorities will take such decision uninhibited by any observations of the High Court on the merits of the respondent's case.

No costs.

.....J.  
(RUMA PAL)

.....J.  
(Dr. AR. LAKSHMANAN)

.....J.  
(S.H.KAPADIA)

New Delhi;  
August 4, 2005.