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C.A.No. 211 OF 1999

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ITEM No.103

Court No. 10

SECTION III

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.211 of 1999

Commr. of Central Excise, Hyderabad

Appellant (s)

VERSUS

M/s. Usha Breco Limited, Calcutta

Respondent (s)

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

Date : 24/04/2002 This Appeal was called on for hearing today.

CORAM :

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

For Appellant (s) Mr. Mr. N.K. Bajpai, Adv.
Ms. Vibha Datta Makhiya, Adv.
Ms. Bharati Tyagi, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. S.K. Bagaria, Adv.
Mrs. Gauri Rasgotra, Adv.
Mr. Suman J. Khaitan, Adv.

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

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.SP2

Heard parties for about 15 minutes.
Appeal stands remanded to the Tribunal in terms of the signed order.

.SP1

(Pawan Kumar) (Prem Prakash)
Court Master Court Master
(signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.211 OF 1999 @@
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Commissioner of Central Excise, Hyderabad ..Appellant

Vs.

M/s. Usha Breco Ltd., Calcutta. ..Respondents

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.SP2

For deciding the question whether making of 'trestles' amounts to manufacture or not, it is necessary to decide the fact whether these 'trestles' are fabricated at the worksite or in the factory. In the instant case, the Tribunal has failed to give a decision on this question of fact while the Commissioner has held that trestles were manufactured in the factory and transported to the worksite. It is pointed out by the learned counsel appearing for the assessee that it is the case of the department itself that these 'trestles' were actually manufactured at the worksite. He points out the averments made in the show-cause notice as also in the grounds of appeal before this Court. Therefore, we find it necessary that the Tribunal should be called upon to decide this question of fact, whether these trestles were assembled and manufactured at the worksite or in the factory, keeping in mind the decision of this Court in the case of Commissioner of ...2/-

: 2 :

Central Excise, Nagpur vs. M/s. Waingana Sahkari Karkhana Ltd. in Civil Appeal No.496 of 1998. For this purpose we remand this matter back to the Tribunal.

With the above observations, the judgment in appeal is set aside and the matter stands remanded to the Tribunal for disposal in accordance with law.

Ordered accordingly.

.SP1

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

.....J.
(SHIVARAJ V. PATIL)

New Delhi,
April 24, 2002.