

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

Petition(s) for Special Leave to Appeal (Civil) No.20486/2000

(From the judgement and order dated 04/08/2000 in FO 141/00  
of The CUSTOMS, EXCISE & GOLD (CONTROL) APPLLETTE TRIBUNAL, NEW  
DELHI)

COMMNR. OF CENTRAL EXCISE, MEERUT

Petitioner (s)

VERSUS

M/S. ESTER INDUSTRIES LTD.

Respondent (s)

(With prayer for interim relief)

Date : 03/01/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL  
HON'BLE MRS. JUSTICE RUMA PAL

For Petitioner (s) Mr. Harish N. Salve, SG  
Mr. Nikhil Sakhardande, Adv.  
Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. R. Santhanam, Adv.  
Mr. Rajendra Singhvi, Adv.  
Mr. Sakesh Kumar, Adv.  
Mr. Ashok Kumar Singh, Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....J

.SP2

Issue notice. Mr. Ashok Kumar Singh accepts  
notice.  
Leave granted.  
The appeal is allowed.

.SP1

Kalyani. (S.L. GOYAL)@@  
AA  
COURT MASTER @@  
A AA

(Signed Order is placed on the file.)

.PL56

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@  
EE  
(Arising out of S.L.P.(C) No. 20486 of 2000)

Commissioner of Central Excise, Meerut-II ..... Appellant

Versus

M/s Ester Industries Limited ..... Respondent

O R D E R@@  
EEEEEEEEEE

.....L.....I.....T.....T.....T.....T.....T.....J

.SP2

Issue notice. Mr. Ashok Kumar Singh accepts notice.

Leave granted.

With the consent of the parties, we have heard the learned counsel on merits. In our opinion, the Tribunal was wrong in declining to make a reference. We, accordingly, direct the Tribunal to refer the following two questions to the High Court:

.....L.....I.....T.....T.....T.....J

.SP1

"(a) Whether HSD can be taken as input as mentioned in Section 'AAA' of Central Excise Rules, 1944 and as defined under Rule 57A of Central Excise Rules, 1944 ?

(b) Whether the modvat credit can be allowed on the High Speed Diesel Oil falling under Heading No.27.10 of Central Excise Tariff Act, 1985, which cannot be taken as inputs and which is

: 2 :

specifically excluded from the purview of the modvat under Rule 57A of Rules ?"

.....L.....I.....T.....T.....T.....T.....T.....J

.SP2

The appeal is allowed in the aforesaid terms.

.SP1

.....J  
(B.N. KIRPAL)

New Delhi,  
January 03, 2001.

.....J  
(RUMA PAL)