

ITEM NO.103

COURT NO.11

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(s). 807/2006

WESTERN COALFIELDS LTD.

Appellant(s)

VERSUS

C.C.E., MADURAI

Respondent(s)

(with office report)

WITH

C.A. No. 7625/2005

(With C.A. No. 3217-3218/2010

(With Office Report)

C.A. No. 8439-8440/2011

(With Office Report)

C.A. No. 9693-9694/2011

(With Office Report for Direction)

C.A. No. 4826/2012

(With Office Report)

C.A. No. 4992/2012

(With Office Report)

Date : 06/08/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Ambhoj Kumar Sinha, Adv.

Mr. S. Nanda Kumar, Adv.
Mr. Parivesh Singh, Adv.
Ms. Jyoti Sharma, Adv.
Mr. V. N. Raghupathy, Adv.

For Respondent(s) Mr. K. Radhakrishna, Sr. Adv.
Ms. Sunita Rani Singh, Adv.
Ms. Aruna Gupta, Adv.
Mr. B. Krishna Prasad, Adv.
Mrs. Anil Katiyar, Adv.
Mr. Arvind Kumar Sharma, Adv.

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

The appellants are Public Sector Undertakings engaged in coal mines. According to them the price of coal is fixed by the Coal Ministry and the appellants sell goods on the price fixed by the Ministry and no central excise duty is payable on coal.

A classification dispute between the Department and M/s. Fenner (India) Limited who was the producer and who had paid duty on the goods under protest on account of a classification dispute. The said dispute ultimately came to be settled in favour of M/s. Fenner (India) Limited who did not claim refund of differential duty on the goods. However, their buyers, namely, the appellants herein, filed refund claims. Show cause notices were issued by the Department which oppose these claims on the ground of limitation and that in any case the appellants were unjustly enriched. This was the subject matter of contest before the First Appellate Authority who in turn rejected the refund claims as time- barred.

An appeal was filed by the appellants herein to CESTAT which by judgment and order dated 8th August, 2005 has dismissed the said appeal. Consequently, the appellants have filed the present Civil Appeals before us.

By an order dated 16th December, 2005 Civil Appeal filed by the appellants herein was dismissed by this Court on the ground that the matter was covered against the appellants by the decision in 2004 (4) SCC 34 (Commissioner of Central Excise, Mumbai-II vs. Allied Photographics India Ltd.) The appellants filed Review Petition No.333/2006. By an order dated 23.7.2007 the review petition was allowed and the earlier order dated 16th December, 2005 was rejected, as a result the present appeal stood admitted.

We find that in the present case the Tribunal has correctly applied the decision of the three Judges Bench in Allied Photographics India Ltd. in the said judgment as paragraph 15 thereof found that the judgment of the Division Bench of this Court in the case of National Winder was stated to be per incuriam for the reasons given therein.

We find that despite National Winder have been held to be per incuriam, this Court in Allied Photographics India Ltd. has referred the same matter to a larger Bench in the light of the conflicting decisions which it found between two Division Benches of this Court and paragraph 104 of the judgment in Mafatlal Industries Ltd. which is a Bench of seven Hon'ble Judges of this Court. We have been informed by counsel for both the parties that the larger

Bench has yet to decide this issue.

Accordingly, we adjourn these matters to await the result of the larger Bench in C.A.No.....(No. Will be provided by the counsel later on) which will ultimately resolve the issue one way or the other.

With these observations for the present, these appeals stand adjourned.

(SUMAN WADHWA)
AR-cum-PS

(SUMAN JAIN)
COURT MASTER