

**SUPREME COURT OF INDIA**

Himson Textiles Enginr. Indust. Ltd.

Vs.

Commr. of Customs

Civil Appeal No. 5469 of 1997

(S. P. Bharucha, N. Santosh Hedge and Ruma Pal, JJ.)

01.02.2000

**JUDGMENT**

**S.P. BHARUCHA, N. SANTOSH HEGDE AND RUMA PAL, JJ.**

1. In this order of the Customs, Excise and Gold (Control) Appellate Tribunal which is under appeal, the Tribunal has applied the ratio of the decision of this Court in Collector of Customs (Prev.), Ahmedabad v. Essar Gujarat Ltd. -: 1996(88)ELT609(SC) . It has found that the Commissioner (Appeals) was in error in following the decision of this Court in Union of India v. Mahindra & Mahindra Ltd. -:1995ECR427(SC) .

2. It is, fairly, not disputed that the judgment in the case of Essar Gujarat has no application to the facts of this matter. It is, therefore, in our view, appropriate to set aside the judgment and order under appeal and to restore to the file of the Tribunal the appeal before it (Appeal No. C/415-V/95-Bom.) for being heard and decided afresh. Due attention shall be paid to the facts of the case, to the judgment in the case of Mahindra & Mahindra and, indeed, to the judgment of the Tribunal in the case of Maruti Udyog Ltd. which was approved by the order of this Court on 26th April, 1989.

3. The appeal is allowed accordingly. No order as to costs.