

# SUPREME COURT OF INDIA

Commissioner of Customs and Excise, Bangalore

Vs.

Sujata Textile Mills Limited

C.A.No.1499 of 2000

(S.H.Kapadia and S.N.Variava and Dr.A.R.Lakshmanan JJ.)

03.03.2005

## JUDGMENT

### **S.H.Kapadia, J.**

1. Application for amendment of cause title in Civil Appeal No. 4686 of 2004 is allowed. Amendment to be carried out forthwith.
2. All these Appeals raise a common question and therefore are being disposed of by this common order. Under Section 4(4)(d)(ii) of the Central Excises and Salt Act 1944, the value is not to include the amount of duty of excise, sales tax and other taxes if any payable on goods. Under Section 18 of the *Karnataka Sales Tax Act, 1957* a registered dealer has to pay a tax known as 'turnover tax' and by virtue of sub-section (3) of Section 18 he is not permitted to pass on that tax to the customer. The question is whether at the time of working out valuation of the goods, under the Central Excises and Salt Act, 1944, the turnover tax can be deducted. To be remembered that at this stage it will not have been actually paid.
3. The Tribunal has, in all these cases, held that so long as the tax is payable it can be deducted. We see no infirmity in this reasoning.
4. However, a clarification is sought from this Court as to whether ultimately the Department can ask for proof that the tax is actually paid. There is no dispute that the Department can always call for proof that the amount is actually paid. If it is later on found that the amount is not actually paid the Department can, after following the procedure prescribed, revalue the goods.
5. In some of the matters the Department has sought to disallow on the ground that the invoice did not show the element of turnover tax. In our view, this action on the part of the Department is not sustainable. The invoice would never show the element of turnover tax, since the same cannot be recovered from the customers.

6. All these Appeals stand disposed of with the above clarifications. There will be no order as to costs.