

SUPREME COURT OF INDIA

Control Touch Electronics Private Limited

Vs.

Commissioner of Central Excise, Pune

C.A.No.4789 of 2000

(S. H. Kapadia, S. N. Variava and Dr. AR. Lakshmanan JJ.)

19.10.2005

JUDGMENT

S. H. Kapadia, J.

1. This matter has been tagged with Civil Appeal No. 3197 of 2000 which has been disposed of by this Court by the judgment reported in. However, on the aspect as to whether a circular issued by the Board would prevail over the judgment of this Court, this Court has held as follows:

"Under these circumstances, we would have dismissed Civil Appeal No. 3397 of 2000 and allowed Civil Appeal No. 1469 of 2002. However, we are shown a Circular of the Board dated 27th October, 1994 which dearly gives an interpretation as canvassed before us by Mr. Sridharan. Before this Court there is a divergence of opinion whether such Circulars prevail over Judgments of this Court. This question has been referred to a Constitution Bench by a Judgment in the case of Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries reported in (S.C.)- We, therefore, after giving the above finding, tag these matters with the cases before the Constitution Bench. We clarify that this is only for the purpose of ascertaining whether the Circular would prevail or the Judgment of this Court would prevail. If ultimately it is held by the Constitution Bench that Judgments of this Court would prevail, then Civil Appeal No. 3197 of 2000 will stand dismissed and Civil Appeal No, 1469 of 2002 will stand allowed without any further Orders. If, however, the Constitution Bench takes a contrary opinion, then of course, the reverse will follow. In either case there will be no order as to costs."

2. Thus on merits we hold that this case will also be covered by that judgment. However, on the limited aspect as to whether or not the circular of the Board can prevail, we also tag this matter along with those cases which are pending before the Constitution Bench. If ultimately it is held by the Constitution Bench that judgments of this Court would prevail then this appeal would stand dismissed. If however the Constitution Bench takes a contrary view, then of course the reverse will follow. In either case there will be order as to costs.

3. It must be mentioned that it was submitted that there is an additional point. It is submitted that on the interpretation given by this Court the appellants are still entitled to the exemption under a Notification as they fall within the proviso to that Notification. Such a point has not been contended at any stage. It has not even been taken in the Special Leave Petition. We do not permit such a point to be raised for the first time. It is not a pure question of law but will also require determination of facts.