I.T.C. Ltd vs Commissioner Of Central Excise, New ... on 10 September, 2004

Equivalent citations: AIR 2005 SUPREME COURT 1370, 2004 AIR SCW 7208, 2004 (8) SRJ 480, (2004) 7 JT 409 (SC), 2004 (7) SCALE 540, 2004 (3) LRI 801, 2004 (7) ACE 237, 2004 (7) SCC 591, 2004 (7) SLT 65, (2004) 171 ELT 433, (2004) 6 SUPREME 564, (2004) 7 SCALE 540, (2004) 22 INDLD 370

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Bench: Ruma Pal, P. Venkatarama Reddi

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           CASE NO.:
Appeal (civil)  70 of 1999

PETITIONER:
I.T.C. LTD.

RESPONDENT:
COMMISSIONER OF CENTRAL EXCISE, NEW DELHI AND ANR.

DATE OF JUDGMENT: 10/09/2004

BENCH:
RUMA PAL & P. VENKATARAMA REDDI

JUDGMENT:
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JUDGMENT 2004 Supp(4) SCR 293 The Judgment of the Court was delivered by RUMA PAL, J. : M/s. ITC Ltd. (hereafter referred to as the appellant) manufactures cigarettes. Prior to 1983 excise duty was leviable on cigarettes under Section 4 of the Central Excise and Salt Act, 1944 (referred to as 'the Act') at rates specified under Tariff Item 4 of the First Schedule to the Act. The dispute in this appeal to the excise duty payable by the appellant for the period 1983 to 1987 on the cigarettes manufactured by it. The resolution of this dispute lies primarily in the interpretation of two exemption notifications namely Notification No. 36/83 dated 1.3.1983 (referred to hereafter as 'the 1983 Notification') and Notification No. 201/85 dated 2.9.1985 (referred to hereafter as 'the 1985 Notification') issued under Rule 8(1) of the Central Excise Rule, 1944 (referred to as the 'Rules') and Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act 1957. The 1985 notification which replaced the 1983 notification was in similar terms except that the rates of excise duty and the categories of the cigarettes entitled to be exempted were different. In substance however, as far as the question of interpretation is concerned, there was no material difference between the 1985 and the 1983 notification. The necessity of our going into the other issues raised in these appeals would depend upon what interpretation we put on these Notifications. Between the 1983 Notification and the 1985 Notification as well as after the 1985 Notification there were other notifications which are not of any consequence as far as the issues raised in the appeal are

concerned; and are not required to be referred to in greater detail. If we have said the 1983 notification for the first time introduced the concept of levying excise duty with reference to the retail sale price of cigarettes instead of the whole sale price at which the manufacturer sold cigarettes at the time and place of their removal under Section 4 of the Act. The retail sale price was defined in the notifications as "the maximum price (exclusive of local taxes) at which the packet of cigarettes may be sold in accordance with the declaration made on such package by the manufacturers".

According to the appellant, the "declaration" referred to in the 1983 and 1985 Notifications was the printed price which was in any event required to be printed on each cigarette packet by virtue of the Standards of Weights and Measures Act, 1976 (referred to hereafter as the SWM Act) as well as the Standard Weights & Measures (Packaged Commodity) Rules 1977 (referred to as the Packaged Commodities Rules). The appellant cleared cigarettes manufactured by it during this period after paying excise duty on the basis of the Maximum Retail Price (MRP) which was exclusive of local taxes printed by the appellant on each cigarette packet.

Sometime prior to March, 1987 searches were carried out by Central Excise Officers at various premises including the five factories, the registered office, the district offices and branch offices of the appellant as well as in the premises of some of its wholesale dealers. On 27th March 1987, the respondent No. l issued a show cause notice to the appellant and its job workers (called Outside Contract Manufacturers (OCMs) in which it was alleged that the concessional rates of duty under the notifications had been wrongly availed of by the appellant and the OCMs. It was alleged in the show cause notice that the investigation had revealed that "ITC consciously and deliberately ensured that the actual retail sale prices of these cigarettes (which had been assessed to exempted rates of duty on their declarations) were higher than the declared and printed sale prices"; that the appellant had been "controlling the margins /prices of wholesale dealers, secondary wholesale dealers and retailers, they have been fixing the margins and varying the same to suit their convenience and design; they have chosen to communicate much margins/trade prices in a clandestine manner"; that immediately after the budgetary changes of 1983 the appellant had drastically reduced the margins available to the wholesale dealers (WDs), secondary wholesale dealers (SWDs) and retailers and at the same time, increased their sale price and sale realizations and that by reducing margins available to the retailers to a level of 10 paise per thousand cigarettes, the appellant had unofficially fixed effective prices being the actual price of its cigarettes and communicated the same to the WDS, SWDS and retailers; that the effective price was generally higher than the printed declared price and that the appellant had, therefore, deliberately printed false prices on the packs. The show cause notice concluded with the charge that the appellants had printed lower sales prices with the intention of evading payment of appropriate duty in contravention of the provisions of Rule 9(1), Rule 52 and Rule 52A of the Rules and that by availing of the exempted rates the appellant had contravened the 1983 and 1985 notifications as amended from time to time. It was said that the appellant, its Directors and OCMs had not only rendered themselves liable to payment of duty short paid but also rendered themselves liable for penalties under the provisions of Rule 9(2), Rule 52-A, Rule 209 and 210.

A writ petition was filed by he appellant in the Calcutta High Court challenging the validity of the show cause notice. This was dismissed. An appeal was preferred before the Division Bench which was also dismissed.1 While dismissing the appeal, the Division Bench said :

> "The Adjudicator will be entitled to proceed with the adjudication proceedings in accordance with law. It is made clear that both Writ Petitioner and the Respondents will be at liberty to urge all the questions on facts and on law before the Adjudicator and the Adjudicator will be at liberty to go into all the questions arising out of the Show Cau'e Notice. It will be open to the writ petitioner to demonstrate before the Adjudicator that the quantification of the liability made in the show Cause Notice is wrong in law and without any basis or erroneous. All the questions on fact and law pertaining to this aspect of the case are left open to be decided by the Adjudicator. On this aspect, if necessary, the appellant will be entitled to adduce evidence before the Adjudicator."

Special Leave Petitions were preferred from the decision of the Division Bench before this Court. By an order dated 8th May, 1995 this Court recorded that counsel for the Special Leave Petitioners had stated that since the High

1. Since reported in (1991) 53 ELT 234. Court had left the questions involved open for decision in the final stage, the petitioners sought leave to withdraw the Special Leave Petitions. The Special Leave Petitions were accordingly dismissed as withdrawn. This left the field open for the respondents to proceed with the proceedings pursuant to the Show Cause Notice.

On 29th December, 1995 the respondent No. l confirmed the demand made in the Show Cause Notice to the extent of Rs. 799.35 crores against the appellants and the OCMs (Rs. 681.5 crores on the appellant and Rs. 117.58 crores on the OCMs). Penalties of Rs. 66.50 crores were levied on the appellant, Rs. 7 crores on the OCMs and Rs. 3.5. crores against the Directors of the appellant.

Appeals were filed from the decision of the respondent before CEGAT. The Tribunal disposed of the appeals on 4th September, 1998. The OCMs' appeals were allowed by quashing the duty demanded from, as well as the penalties imposed against, them. Penalties imposed on the appellant and its officers were also set aside. The quantification of the duty demand raised on the appellant was also set aside and the matter was remanded back to the Adjudicating Authority for fresh quantification of the duty demand on the appellant in accordance with the Tribunal's findings.

The appellant has challenged the Order of the Tribunal by way of this appeal (C.A. No. 70 of 1999). The Revenue also filed several appeals (Civil Appeal Nos. 6101-6113/198) before this Court being aggrieved by the directions of the Tribunal to re-determine the duty demand on the appellant, the setting aside of the duty liability of the OCMs and the quashing of the penalties against the appellant, its Directors and the OCMs. On 15th January, 1999 the appeals filed by the Revenue (Civil Appeal Nos. 6102/98, 6103/ 98, 6110/98, 6111/98,6112/98) and 6113/98) in respect of penalties imposed on the Directors were dismissed by this court. Civil Appeal Nos. 5104-6109/ 98 file by the Revenue relating to the duty demand against the OCMs' were admitted restricted to the question

relating to their liability for 6 months only. As far as the Revenue's appeal against the appellant (Civil Appeal No. 6101/ 98) and the appellant's appeal against the Revenue (Civil Appeal No. 70/99) were concerned, they were admitted. The adjudication proceedings for re-computation of the duty demand pursuant to the Tribunal's order were, however directed to continue but no order was to be passed.

The adjudication proceedings were concluded and the duty liability of the appellant was re-determined. The Adjudicating Authority then submitted his conclusion in a sealed cover to this Court. In the course of proceedings before us, we permitted the parties to inspect the fresh adjudication order but it was made clear that such inspection would not be construed as communication of the order to the concerned parties. After such inspection the adjudication order has been resealed and is not the subject matter of any of the pending appeals.

This judgment disposes of C.A. No. 70/99 and C.A. 6101/98. The other appeals relating to O.C.Ms have been delinked and posted separately.

As we have indicated at the ouset, the outcome of these appeals depends primarily on the interpretation of the 1983 notification which is quoted below:

> CIGARETTES (TARIFF ITEM 4) In exercise of the powers conferred by sub-rule (1) of the rule 8 of the Central Excise Rules, 1944, read with sub-section 3 of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government hereby exempts cigarettes of the description specified in column (1) of the Trade below and falling under sub-item II (2) of Item No. 4 of the First Schedule to the Central Excises and Salt Act, 1944 (l of 1944), from so much of the duty of excise leviable thereon under the said Acts as is in excess of the amount calculated at the rate specified in the corresponding in Column (2) of the said Table.

T H E T A B L E

_____ _____ Description Rate (1) (2) Cigarettes (being cigarettes packed in the packages) of which the adjusted sale price per one thousand -

(i) does not exceed rupees Thirty-five rupees per one fifty thousand.

(ii) exceeds rupees fifty but Thirty-five rupees per one does not exceed rupees thousand plus three rupees sixty and fifty paise per one thousand for every increase of rupees five or fraction thereof in the adjusted sale price in excess of rupees fifty.

(iii) exceeds rupees sixty Forty-two rupees per one thousand plus three rupees and seventy-five paise per one thousand for every increase of five rupees or fraction thereof in the adjusted sale price in excess of rupees sixty.

_____ Provided that the amount of duty so levied shall be apportioned in the ratio of 2.75 : l .00 between the duty leviable under the Central Excises and Salt Act, 1944 (l of 1944) and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), respectively.

Explanation. - For the purpose of this notification -

(1) "adjusted sale price", in relation to each cigarette contained in a package of cigarettes, means the unit price arrived at by dividing the sale price of such package by the number of cigarettes in such package :

Provided that, -

(a) where such cigarettes are packed in packages containing the same number of cigarettes but the sale prices of such packages are different, the adjusted sale price in relation to each such cigarette shall be the unit price arrived at by dividing the highest of such sale prices by the number of cigarettes in such package, and

(b) where such cigarettes are packed containing different number of cigarettes, the unit price for each such package shall be determined by dividing the sale price of each such package by the number of cigarettes therein and the highest of such unit prices shall be the adjusted sale price in relation to each such cigarette;

(2) "cigarettes packed in packages", means cigarettes which are packed for retail sale, in packages which -

(a) contain 10, 20, 50 or any higher number (being a multiple of 50) of cigarettes, and

(b) bear a declaration specifying the maximum sale price thereof as the amount specified in the declaration, plus local taxes only;

(3) "sale price" in relation to a package of cigarettes means the maximum price (exclusive of local taxes only) at which such package may be sold in accordance with the declaration made on such package.

Thus exemption was granted in respect of cigarettes which were (i) packed in packages for retail sale of 10,20,50 or any higher number (being a multiple of 50), (ii) bearing a declaration specifying the maximum sale price (exclusive of local taxes) at which such package may be sold. The rate of exemption from excise duty was to be calculated on the basis of the unit price of 1000 cigarettes, the unit or the adjusted sale price being arrived at by dividing the sale price of the package by the number of cigarettes in the package. The rate of exemption differed with the price of the cigarettes and was granted in three slabs depending on whether the sale price per thousand cigarettes was Rs. 50 and under, or was between Rs. 50 and Rs. 60 or was Rs. 60 and above.

The appellants submission in this regard, as we had briefly summarized earlier, is that the notification had to be understood in the light of the provisions of the SWM Act, 1976 and the Packaged Commodities Rules, 1977 and that the retailer could not legally sell the cigarettes at a price which was not in accordance with the price declared on the package. It was submitted that on a reading of the plain language of the notification it was clear that the sale price was the printed price i.e. the price at which "packages may be sold in accordance with the declaration". It was submitted that this interpretation followed from the language of the notification and that no other interpretation could not be given. According to the appellant both the Adjudicating Authority and the Tribunal had erred in interpreting the notification differently and in effect recasting it by holding that the exemption was to be granted only if the MRP was the price at which the cigarettes were in fact or should have been sold by the retailers. Reference has also been made to the legislative history and the context in which the Notification was issued to buttress the submission. Without prejudice to this contention, the appellant's counsel took us through volumes of material to prove that the MRP fixed and printed on the cigarette packets was on the basis of a reasonable and an honest exercise.

The respondent has stated that the declaration of price (MRP) was required to be an honest declaration and that the definition of the sale price in Explanation III to the notification contemplated that a package would ordinarily be sold at the price declared and that the sale price declared or printed would have to have a co-relation with the price at which such package was likely to be sold. Otherwise it would give the assessee the freedom to print any price knowing that the package would not be sold in accordance with the declaration made on such package. It has further been submitted that the Excise Authorities are entitled and in fact are bound to determine the truth of such a declaration just as they are required to determine the true legal relation resulting from a transaction if the same is concealed by a device. According to the Revenue, it would be inconsistent with public policy to interpret a taxing statute or notification in such a manner as to condone, facilitate or sanction an assertion by an assessee that the declaration they make need not be true and correct. It has also been submitted that the principle of strict construction applied only to the charging section in a taxing statute and not the machinery of assessment which the notification in this case provides. In any event the onus to prove that the notification was applicable and the conditions satisfied was on the assessee. It was contended that the expressions "sale price", "retail sale price", "maximum sale price", as also "retail sale" in the notification had a definite connotation in ordinary commercial parlance and such expressions, when used in an excise notification, would have to be given the meaning in which these words are normally understood in the trade and in ordinary commercial parlance. It was submitted that any ambiguity or doubt in an exemption notification would have to be resolved to in favour of the Revenue. In addition to these submissions, the Revenue submitted that the question whether the declaration made by an assessee on a package of cigarettes disempowered the revenue from going behind the declaration had been specifically raised in the writ proceedings by the appellant while challenging the show cause notice and had been categorically rejected. It is, therefore, submitted that the issue was barred by res judicata since the decision of the High Court was binding between the parties, particularly when the Special Leave Petitions challenging the decision on the writ petitions were dismissed as withdrawn.

In reply, the appellant submitted that the Revenue had never raised the issue of res judicata at any stage in the proceedings either before the Adjudicating Authority or the Tribunal. On the contrary, it was specifically stated by the department before the Adjudicating Authority that the findings of the High Court were not binding on the adjudicating authority and the issue had been argued before the Authorities on such basis. Apart from this, it is submitted that the Calcutta High Court had expressly left all questions both of fact and law open and this was also the basis on which the Special Leave Petitions were withdrawn by the appellant. It is submitted that in any event this Court was not bound by the decision of the High Court since that order merged in the order of the Adjudicating Officer which in turn merged with the decision of the Tribunal. The order of the writ court was, according to the appellant, an interlocutory order and not final. Besides, it is argued, there was no question of res judicata when what was to be decided was a pure question of law and not of fact.

There can be no doubt that the Division Bench had rejected the interpretation sought to be put by the appellant on the notification. This is apparent, particularly from paragraphs 98, 110 to 115 of the judgment as reported in (1991) 53 ELT 234. But there are other paragraphs in the judgment which appear to suggest that the Court was merely taking prima- fade view of the matter and it was for the Adjudicating Authority to finally decide all the questions including questions of fact. (vide paragraphs 5 and 175). Although it is more than likely, as has been rightly contended by the Revenue, that the Division Bench had not intended to leave open the issue whether the Revenue could question the declaration made on the cigarette packages by a manufacturer for the purpose of determining the excise duty payable, the ambivalent expression used by the Division Bench in paragraph 175 quoted by us earlier in this judgment, was understood by both the parties to mean that the issue of interpretation of the notification was at large and could be raised and determined before the adjudicating authority. That was the reason why the special leave petitions challenging the decision of the High Court were withdrawn by the appellants. That was also the reason why the Department categorically asserted before the Adjudicating Authority that the decision of the High Court was not binding on the Adjudicator. This is recorded in the minutes of the proceedings before the adjudicating authority as follows :

> "The learned Additional Solicitor General (ASG) submitted that, firstly, it is not the case of the Department that, keeping in view the specific observations of the Division Bench of the Calcutta High Court, the findings of the Court are binding on the Adjudicator. At this stage, the Adjudicator wanted a clarification on what is meant by the persuasive effect which the judgment has. It was explained that what is meant is that if in the opinion of the Adjudicator a different view from that which has taken by the Court is the correct view either on law or on facts, it would be open to him to come to such a conclusion which is different from what has been held by the Court. If on the other hand, it is possible that two views are possible on any particular issue of fact or on law, he may adopt the views expressed by the Court which in such circumstances can be said to nave a persuasive effect. On this aspect, it was pointed out on behalf of the Department that the Department is in agreement with the submissions made by the learned counsel for ITC that what has been held by the Court in the case is not as such binding on the Adjudicator".

Even before the Tribunal the stand taken by the Department was not that the issue relating to the interpretation of the notification had been finally concluded by the High Court. Both the adjudicating authority and the Tribunal also proceeded on the basis that the High Court's decision had merely persuasive value. The issue relating to the interpretation of the notification was argued at length by both parties before the adjudicating authority and the Tribunal, both of whom decided the issue independently of the High Court's decision.

Doubtless the principle of res judicata is a fundamental doctrine of law that there must be an end to litigation. (See Daryao v. The State of U.P., [1962] 1 SCR 574 but the plea of res judicata has to be specifically and expressly raised. (See : Medapati Surayya v. Tondapu Bala Gangadhara Ramakrishna Reddi, AIR 35 (1948) PC 3, 7. This view has been recently reiterated in V. Rajeshwari v. T.C. Saravanabava, (2003) 10 Scale 768, where it is said that the foundation of the plea of res judicata must be laid in the pleadings. If this was not done, no party would be permitted to raise it for the first time at the stage of the appeal. The only exception to this requirement is when the issue of res judicata is in fact argued before the lower Court. In this case not only had the plea not been taken by the Revenue at any stage before any of the authorities, but arguments exactly to the contrary had been put forward by the respondent. We will not permit the plea to be raised now. In the circumstances, it is not necessary to consider the other arguments urged on the appellant to counter the respondent's submission on the applicability of the principles of res judicata.

Corning now to the question of interpretation of the Notification: the several decisions cited by both parties indicate the approach to a question of interpretation of a notification issued under a fiscal statute.

In Innamuri Gopalan v. State of Andhra Pradesh, [1963] 2 SCR 898, a Notification had been issued under Section 9 of the Andhra Pradesh General Sales Tax Act, 1947 exempting from tax the sale or purchase of certain goods. The appellant claimed the benefit of the exemption. This was denied to the appellant by the Revenue, a denial which was upheld by the High Court, on the ground that the object of the Notification was to avoid double taxation and exemption from sales tax could be claimed only by in cases where additional excise duty was leviable and paid. Since the appellant's goods were not leviable to additional excise duty, it was held no exemption from sales tax could be claimed under the Notification. The reasoning was disapproved and the appeal was allowed by this Court saying :-

> "If the tax payer is within the plain terms of the exemption the cannot be denied its benefit by calling in aid any supposed intention of the exemption authority. If such intention can be gathered from the construction of the words of the statute or rule or by necessary implication therefrom, the matter is different, but that is not the position here."

The Court held that the State was "possibly right in the submission that the object behind he framers of the notification was to avoid double taxation but the operation of an enactment or of a notificating has to be judged not by the object which the legislature or the notifying authority, as the case may be, may have had in mind but by the words which it has employed to effectuate the

legislative intent".

This was reaffirmed in Hansraj Gordhandas v. H.H. Dave & Ors., [1969] 2 SCR 260 where it was said that :

> ".....the operation of the notification has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent."

Tariff Item 26AA of the First Schedule to the Central Excise and Salt Act, 1944 was interpreted in J. K. Steel Limited v. Union of India, [1969] 2 SCR

481. The item provided for ad valorem "plus the excise duty for the time being leviable on pig iron or stool ingots, as the case may be" in respect of iron or steel products. The assessee had manufactured wired out of steel rods which had been imported. No excise duty was leviable on steel ingots because it was manufactured outside the country. The excise authorities consented that the word "leviale" referred to the rate and not to the actual levy of excise duty on the steel ingots used in the manufacture of the iron and steel products. This submission was accepted by the majority by saying :

> "It is said that the item should be strictly construed, it being a taxing enactment. But no rule or principle of construction requires that close reasoning should not be employed to arrive at the true meaning of a badly drafted entry in an Excise Act. I believe I am not stretching the language of the entry against the subject, but it appears to me that in the context of the scheme of the Excise Act this is the only reasonable construction to give to the entry".

(Emphasised) Presumably the phrase "badly drafted" was used to mean that the language of the Entry was ambiguous. In case of such ambiguity 'close reasoning' will be employed - but without stretching the language to arrive at the only reasonable construction. These decisions exemplify the general rule of statutory construction that words have to be construed strictly according to their ordinary and natural meaning, particularly when the statute is a fiscal one irrespective of the object with which the provision was introduced. Of course if there is ambiguity in the statutory language, reference may be made to the legislative intent to resolve the ambiguity. But if the statutory language is unambiguous then that must be given effect to. The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms ambivalent and do not manifest the intention of the legislature2.

It was in this manner that Section 10 of the Income Tax Act, 1961 was construed in Oxford University Press v. CIT, [2001] 3 SCC 359 Section 10 of Income Tax Act, 1961 provides for the exclusion of income of a University or other educational institutional constituted solely for educational purposes and not for purposes of profit. The view of the majority was that the section plainly provided that the exemption was available only to institutions established solely for educational purposes and nor for commercial activities. The plain meaning was accepted not only on

the basis that a provision for exemption from tax is a fiscal statute and a fiscal statute has to be strictly construed, but also in view of the legislative object as manifest from the provision.

But there are exceptions to this rule. The first is that the rule of strict construction does not apply to a provision which merely lays down the machinery for the calculation or procedure for the collection of tax.

This has been held in Gursahal Saigal v. Commissioner of Income Tax, Punjab, [1963] 3 SCR 893. The case related to the interpretation of Section 18A(6) of the Indian Income Tax Act, 1922. Under sub-section (1) of Section 18A power was given to an assessee to make his own estimate of the advance tax payable by him and to pay according to such estimate. Sub-section (8) of Section 18A provided for payment of interest by the assessee on the differential amount between the tax as estimated and the tax as regularly assessed. The mode of computation of such interest was laid down in sub- section (6) of that Section, namely, from January l of the financial year in which the estimated tax was paid. The assessee neither submitted any estimate nor paid any tax. He was charged with interest under Section 18A(8). The assessee challenged this on the ground that since he had not paid tax at all it was not possible to calculated interest in the manner laid down sub-section (6). In rejecting the submission of the assessee, this Court said sub-section (8) only laid down the machinery for assessing the amount of interest for which liability was clearly created and that the reference to sub-section (6) provided the machinery to calculate the amount of interest. It was held that in interpreting such "machinery provisions", the rule is that that construction should be given which makes the machinery workable.

The second exception is : If two constructions are possible and a strict construction would lead to an absurd result then the construction which is in keeping with the object of the statutory provision or in keeping with equity could be accepted. This was the view expressed in Commissioner of Income Tax v. J.H. Gotla, Yadagiri, [1985] 4 SCC 343 while interpreting section 24(2) of the Income Tax Act, 1922 :

> "....if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not mean always so and if a construction results in equity rather than in injustice; then such construction should be preferred to the literal construction."

In the present case, the two notifications are statutory fiscal provisions. They require that excise duty on cigarettes must be levied on "adjusted sale price". "Sale price" has in turn been defined in relation to a package of cigarettes as meaning the maximum price (exclusive of local taxes only) at which such package may be sold in accordance with the declaration made on such package.

The three phrases which require interpretation are "may be sold", "in accordance with" and "declaration made". The first question is : are these expression ambiguous ? There is no dispute that

"made" means "printed" and that "in accordance with" means "in a manner conforming with". The dispute as we see it turns on the phrase "may be sold". The Revenue's contention, which was accepted by all the authorities up to this stage, is that the phrases 'may be sold' means "capable of being sold". Therefore the MRP should be fixed at a price so that the cigarette packet could be sold by the retailer in accordance with the declaration made. In other words, according to the Revenue, the cigarette manufacturer was bound to print an MRP at which the retailer could and was likely to sell the cigarettes keeping a reasonable margin of profit. This submission proceeds on the basis that the word 'may' must be understood as meaning "can", It may be noted that the Revenue's submission is at variance with the interpretation put by the Division Bench on the word 'may' which used it to mean 'likely' when it said :

> "If the declaration made on the packages are of a price in accordance with which such packages will not or may not be sold, then the declaration would amount to a false declaration."

While the word 'may' can indicate "possibility" as held by the Division Bench, or "capability" as submitted by the Revenue, it is also used as denoting "permission". A person may do something if he is permitted to. It appears to us that it is in this third sense that the words 'may' has been used in the notification because it has been qualified with the phrase 'in accordance with'. Reading these two phrases 'may be sold' and 'in accordance with' together, the definition of 'sale price' in relation to a package of cigarettes would mean the MRP (exclusive of local taxes) at which such package is permitted to be sold in conformity with the printed price. If the word 'may' is construed to mean 'likely' or 'can' then the phrase 'in accordance with' would be rendered meaningless as it would be open to the retailer to sell it at such price as he may think fit notwithstanding the printed MRP. Indeed that is exactly how the Tribunal construed the phrase "may be sold" by saying:

> "These words clearly suggest that the declared printed price must be such that the packages may be or can be or are capable of being sold at such price. The declared price may be such that the packages may not be or cannot be or are not capable of being sold at such price. In such a contingency the printed price is not the "sale price" and ASP cannot be based on such printed price; "sale price" in such a contingency will be the maximum price at which the packages may be, can be or are capable of being sold at the price, irrespective of whatever be the price actually declared or printed on the package."

It would be doing violence to the language of the Notification if "In accordance with" is taken to mean "irrespective of. The argument of the Revenue and the reasoning of the Division Bench also overlooks the phrase 'made on the package'. According to the notification it is the declaration made, or the MRP as printed, on the package which alone is the sale price and which furnishes the foundation for the calculation of the adjusted sale price. There is no other basis provided. The construction put by the Tribunal is contrary to the words used, an exercise in interpretation which is clearly impermissible and against the well-established cannon of construction that in construing any statutory provision, words may not be added or amended but must, if reasonably possible, be construed as they stand.

According to the Revenue, any interpretation other than the one put forward by it and accepted by the Tribunal and the High Court, would lead to the absurd consequence that the cigarette manufacturers could print any price on the cigarette package for the purpose of avoiding excise duty and the Revenue would be bound to accept such price. According to the Tribunal "A plain reading of the language of Explanation (4) containing the definition of "sale price" and the scheme of the notification clearly shows that the manufacturers of cigarettes are required to declare the correct price at which they expect or visualize the packages to be sold in retail to consumers; in other words, there must be an honest exercise by the manufacturers to determine the price which is to be declared and printed and the printed price must reflect such honest exercise. If it were not so, the notification will serve as premium for dishonesty and tax evasion."

Therefore, it was held :

> "……it would be open to the Department to go behind the printed prices and find out the effective prices at which the retailers may sell the packages to consumers and treat such prices as the printed prices for the purpose of determining the slab applicable for the purpose of determining the rate of duty applicable."

What the Revenue would have us do and what the Tribunal has in fact done, is to shift the basis for levy of excise duty under the exemption notification from the MRP actually printed on the package to a price which is to be deemed to be the printed price. All this is done in order to avoid what the Tribunal considered could not have been the object of the notification viz., "a situation where it would be open to a manufacturer to deliberately and successfully "under declare" the price by declaring a price less than the price at which he knows the packages may be sold".

The object of the notification was to firmly fix the basis for levy as we have expatiated later and the interpretation we have put on the notification is in keeping with this object. Furthermore the reasoning of the Tribunal, apart from being contrary to the principles enunciated in Innamuri Gopalan (supra), proceeds on the basis that 'may' means "likely", an interpretation which cannot be correct for the reasons already stated. As against this if we were to construe the word "may' as 'permitted', which is the plain meaning of the word given the context in which it appears, the consequences would not be absurd as apprehended by the Tribunal. According to the notification, the retailer is permitted to sell in accordance with the declaration made on the package. Permission could be contractual or statutory. If the permission were a contractual term, it would have to be established that there was privity between the manufacturer and each retailer. This is not the case of either party. The statute which forbids the sale of commodities including cigarettes, otherwise than, or permits such sale only, in accordance with the printed MRP is the Standards of Weights & Measures Act and the Packaged Commodity Rules. This was accepted by the Tribunal when it said :

> "We do not think that P.C. Rules have any particular bearing on the interpretation of the exemption notifications under consideration except that these notifications devised a scheme of exemption taking advantage of the scheme of the P. C. Rules in force and the fact that cigarettes are sold in packages and therefore are governed by the P. C. Rules. "

(Emphasis supplied) Interestingly as far as the Ministry of Finance, Department of Revenue is concerned, in a written note submitted to the Public Accounts Committee for the year 1985-86 and which has been referred to in the, Thirty Fourth PAC report it said :

> "The declaration of the maximum retail price on all commodities dealt with in packaged form including cigarettes is a requirement under the Standards of Weights & Measures (Packed Commodities) Rules 1977. This declared price has been taken as a basis for determining the slabs at which the excise duty would be charged in terms of Notification No. 211/83 dated 4.8.83. If the retailer sells a packet of cigarettes at a price higher than the declared price then it is an infringement of the Standards of Weights & Measures (Packed Commodities) Rules, 1977 which is being enforced by the State Governments and the Union Territories. Only if there is evidence to show that the difference between the declared price and the higher price charged by the retailer or any wholesaler flows back to the manufacturer in some form or the other the question or application of the Central Excise Law would arise".

There is no allegation of any 'flow back' in the appellant's case. Therefore the "permitted" course of action or sale by the retailer is statutorily prescribed under the 'the SWM Act' and the Packaged Commodities Rules. The provisions of the SWM Act have been given overriding effect by the non-obstante provisions of Section 3 of the Act. Section 39 of the Act provides for a declaration to be made on the package by every manufacturer specifying, inter-alia, the unit sale price of the Commodities in the package and the sale price of the package. Under Section 83 of the SWM Act, Central Government has been given power to make rules for carrying out the provisions of the Act by notification. In exercise of these powers, the Central Government framed the Packaged Commodities Rules. Rule 2(r) defines 'retail sale price' as meaning :

> "the maximum price at which the commodity in packaged form may be sold to the ultimate consumer, inclusive of all taxes, transport charges and other dues;
>
> Rule 23(2) provides that :
>
> "No retail dealer or other person shall make any retail sale of any commodity in packaged form at a price exceeding the retail sale price thereof.
>
> (Explanation. - For the removal of doubts, it is hereby declared that a sale, distribution or delivery by a wholesale dealer to a retail dealer or other person is a 'retail sale' within the meaning of this sub-rule.)"

Rule 23(6) provides as :

> "23(6) No retail dealer or other person shall obliterate, smudge or alter the sale price or the retail sale price, indicated by the manufacturer or the packer, as the case may be, on the package or on the label affixed thereto.

> If the retailer or manufacturer violates these provisions, he is liable to be proceeded against and may be fined up to an extent of Rs. 2000 per package under Rule 39 of the Packaged Commodities Rules and Section 67 of the SWM Act.
>
> The SWM Act as well as the Packaged Commodities Rules nave been enacted the consumers who are entitled to pay only such price as has been printed thereon. The purpose of printing the MRP on cigarette packages is to achieve a standardization of prices throughout the country and to inform consumers of the appropriate price of the product. There is no scope for "under declaration" because the consumer can insist on the retailer abiding by the printed MRP. Provisions for penalties under the Act on the retailer ensures this. It is not open to the retailer who may be proceeded against for selling above the printed MRP to contend that it was incorrect or false, nor can the retailer defend any violation of the printed MRP by asking for an enquiry into its reasonableness. If adhering to the MRP unreasonably narrows the retailer's margins, the retailer can demand a reduction in the price from the wholesaler or desist from selling the product. This applies similarly to the wholesaler, whose feedback to the manufacturer will either force the manufacturer to raise the MRP or lose distributors. Given these serious economic consequences, the manufacturers cannot print a whimsical or fanciful figure as the MRP. The result is a system of incentives and enforcement that begins with the consumer. When this system is properly enforced, levying tax on MRP according to the notification clearly does not lead to absurd consequences. Incidentally, the Public Accounts Committee (1984-85) noted in their report :
>
> "The Committee find that retail sale of the packet of cigarettes at a price higher than the declared printed price amounts to an infringement of the Standards of Weights and Measures (Packed Commodities) Rules, 1977 which is being enforced by the State Governments and the Union Territories. The Committee have been informed that a number of cases have been booked by the various State Governments for the violation of the provisions of the said Rules but they have yet to be apprised of the action taken in the matter."

If the consumer fails to demand the MRP or the State authorities do not enforce the statutory requirements, the system under the notification breaks down, but that does not legally justify an interpretation of the notification by presuming an illegality on the part of the retailer.

The Revenue's case then is that the notification was required to be worked out without reference to the SWM Act and Packaged Commodity Rules. In other works, what was required was a separate declaration for the purpose of the Notification. The reasons given in support of this argument are (1) the SWM Act had not been extended to Sikkim at the relevant time where the cigarettes were being manufactured and sold; (2) If the SWM Act and Packaged Commodity Rules were repealed or made inapplicable to cigarettes in future, the notification would continue to operate on its own force; (3) The notification did not refer to the SWM Act or to the Packaged Commodity Rules, unlike Section 4 of the Central Excise Act which makes reference to controlled prices under different enactments.

The submission is unacceptable. As we have already said the notification speaks of a permitted sale according to the MRP. The notification does not itself provide for any sanction or prohibition against the retail sale of cigarettes at any rate other than the printed MRP. All that it does is to accept that printed MRP according to which the cigarettes are permitted to be sold by the retailer, as the sale price for the purpose of grant of concessions under the notification. Besides the notification was an exemption notification. If the cigarettes being manufactured in the State of Sikkim did not fall within the terms of the exemption, the manufacturers in Sikkim would be denied the benefit of the notification, and the Tariff rate fixed under the statute would apply. It would not mean that the notification must be construed in a manner so as to extend the exemption to those cigarettes not expressly covered by the exemption. The second submission is entirely hypothetical. One cannot foretell whether the notification would have continued to operate on the same terms even if the SWM Act or Packaged Commodity Rules were repealed or made inapplicable to cigarettes. Indeed during the operation of the Notifications in question viz. 1983 to 1987, the SWM Act and Packaged Commodities Rules remained on the statute book. They still do. Regarding the third submission, the second proviso to Section 4(l)(a) of the Act as it then stood read :

> Provided that
>
> (i) where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons), each such price shall, subject to the existence of the other circumstances specified in clause (a), he deemed to be the normal price of such goods in relation to each such class of buyers;
>
> (ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at price, being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause.
>
> (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

It is true that the proviso does not refer to the SWM Act or the Packaged Commodities Rules, but it does not specifically refer to fixation under any other enactment either. AU that it requires is that the price must be the maximum price fixed under a law 'for the time being in force'. What is important is that the proviso statutorily recognized that the price which may not be the actual price received, could form the basis of levy of excise duty. As was said in Aluminium Industries Ltd. v. Collector Central Excise Bhuvaneshwar, [1998] 9 SCC 404, that by virtue of this proviso a legal fiction has been created. The price fixed under any law for the time being in force has to be taken as the normal price of the goods irrespective of the actual amount realized. In any event with the new system of levy of excise duty on cigarettes being introduced in 1983 linking excise duty to the retail price printed. Rule 8 of Central Excise Rules was amended by the introduction of Sub-Rule (3).

Sub-rule (3) provides :

> "An exemption under sub-rule (1) or sub-rule (2) in respect of any excisable goods from any part of the duty or excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-rule shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.
>
> EXPLANATION: 'Form or method' in relation to a rate of duty of excise means the basis, viz. valuation, rate, number, length, area, volume or other measure with reference to which the duty is leviable."

It was then submitted by the Revenue that even if the SWM Act applies, a manufacturer - assessee was bound to make a bona fide and honest assessment of the retail price and that the declaration made on a package is not final for the purposes of the SWM Act or Packaged Commodity Rules. Reliance is placed on Clause 8 of Part-II of the Tenth Schedule to the Packaged Commodity Rules which, according to the Revenue, envisages that the declarations made on package can be examined with a view to ascertaining whether such declaration conform with the rules. It is also submitted that similar declarations required to be made under different fiscal statutes have invariably been held to require the declarant to make a true and honest declaration. Several decisions have been cited in this context. Before considering their applicability the ground needs to be cleared by stating that the question is not whether the printed declaration is final for the purposes of the SWM Act or the Packaged Commodity Rules, but whether it is final for the purposes of the notification.

It has been correctly submitted on behalf of the appellant that declarations required under divers statutes have different characteristics and consequences depending upon the nature of the declaration. A declaration may be (1) an assurance of an existing state of affairs or (2) an assurance of a future course of conduct by the declarant himself or (3) a statement of required conduct by a third party. In the first two kinds of declarations the onus is one the declarant to make good the declaration. In other words the truth of the declaration may be verified. But when all that is stated in the declaration is a requirement to be fulfilled by another, what is to be enquired into is compliance with the requirement and not the correctness of the declaration itself. The Revenue has failed to keep in mind the distinction between different kinds of declarations. Most of the cases cited by the Revenue in this context deal with the first and second kinds of declaration where the declaration asserts a present of future state of affairs and seeks to certify as true, facts which may be questioned by the authority which is called upon to act on such certification whereas declarations under the notification fall into the third category.

Declarations to be furnished in Form 'C' by registered purchasing dealers under Section 8(1) of the Central Sales Tax Act, 1956 which certify that the purchasing dealer is a registered dealer in respect of commodities mentioned in the declaration, are illustrative of the first kind of declaration. Thus it was held in the State of Madras v. M/s. Radio and Electricals Ltd., [1966] Suppl. SCR 198 that the Sales Tax Authority was competent to scrutinize the certificate to find out whether it is genuine. He

could also make an enquiry about the contents of the certificate of registration to satisfy himself whether the goods purchased were covered by the certificate or not. But once he was satisfied that the certificate is genuine and that it covers the goods being purchased, the Sales Tax Officer was incompetent to hold an enquiry whether the goods so specified could be used for any of the purposes mentioned in form 'C' or whether the goods purchasing were in fact not used for the purposes declared in the certificate. M/s. Chuni Lal Parshadi Lal v. Commissioner of Sales Tax, [1986] SCC 501 followed the decision in State of Madras v. Radio and Electricals Ltd. (supra) and held that for the purpose of the U.P. Sales Tax Act, 1948, the Sales Tax Authorities could only look into the question whether the certificate was forged or fabricated and the Sales Tax Officer could not hold an enquiry whether the purchasing dealer, notwithstanding the declaration, was likely to use the goods purchased for purposes other than that mentioned in the Form 'C. If the certificate was valid and covered the goods purchased, the Court held that it raised an irrebuttable presumption that the goods would be used for the purposes mentioned, since the purpose of the rule was to make the object of the provision of the act workable which was realization of tax at one single point, i.e. at the point of sale to the consumer. (p. 511).

Similarly, declarations of value for the purposes of import or export duty under the Customers Act, 1902 fall within the first category. For example Jacksons Thevara v. Collector of Customs and Central Excise, [1991] 2 SCC 62 was a case where the declaration on the basis of which concessional rate of import duty was availed of by the importer, was found to be false. The importer had declared that the goods were to be used for substantial expansion of his unit. In fact they were to be used for setting up a new unit of a company. In Toolsidass Jewraj v. Additional Collector of Customs, [1991] 2 SCC 443 the full export value had not been stated in the shipping bills and G.R.I. forms. This was admitted but was sought to be explained by the importer. The explanation was not accepted by the Customs Authorities because to do so would have contravened the Foreign Exchange Regulation Act. In both these cases this Court upheld the action of the Customs Authority in taking action against the person by going into the truth of the declaration.

Examples of the third kind of declaration are usually to be found where assessment under Statute A is dependent upon a basis provided by Statute B. In such case, the assessing officers under Statute A cannot question the basis. That is within the province of the authorities under Statute B. In the decision of Union of India v. M/s. Rai Bhadur Shreeram Durga Prasad (P) Ltd., [1969] l SCC 91, the furnishing of a declaration under Section 12(1) of the Foreign Exchange Regulation Act, 1947 was a pre-condition to the export of goods under the Customs Act, 1962. This Court said that the correctness of the declaration could not be questioned by the Custom Authorities on the ground that the declaration under Section 12(1) of FERA was incorrect. Similarly, in M. Narasimhaiah v. Deputy Commissioner for Transport, [1987] Supp. SCC 452, the Kamataka Motor Vehicles Taxation Act provided for taxation with reference to a number of passengers which the vehicle was permitted to carry. The assessee had a permit issued under the Motor Vehicles Act, 1939 which permitted him to carry a number of passengers. On the basis that the assessee had carried passengers above the permitted limits, tax was sought to be levied under the Taxation Act in respect of the assessee's vehicle. This Court held that when the statute itself provided for the highest levy of tax on the basis of the number of passengers permitted to be carried in the vehicle, the Court could not ignore the phrase "which the vehicle is permitted to carry" and levy tax on the basis of the actual number of

passengers carried. The most recent decision which illustrates the third kind of declaration is the decision in Apollo Tyres Ltd. v. CIT, Kochi, [2002] 9 SCC l in which Section 115-J of the Income Tax Act, 1961 was construed with reference to the budget speech of the Finance Minister while introducing that Section into the Act. The Section provided for the payment of minimum tax by every company on the basis of its profit and loss account prepared in accordance with the specified provisions of the Companies Act. This Court held that the assessing officer under the Income Tax Act had no power to re-scrutinise the account by embarking upon a fresh inquiry in regard to entires made in the Books of Account of the Company. Similarly, in terms of the notification we are called upon to construe, the Excise Authority is required to act on the basis of the printed MRP. The notification does not envisage an inquiry into the correctness of the MRP printed on the packages by the Excise Officer. As far as he is concerned, he is limited to satisfying himself that there is a declaration in the prescribed form. To hold otherwise would not only defeat the object with which the notification was introduced but lead to a reversion to the earlier mode of assessing the value of the manufactured commodity, the uncertainty associated therewith and an impossibly chaotic situation as we shall subsequently indicate. The reliance on the Rules and forms by the Revenue appertaining to assessments does not therefore carry its case any further.

The object with which the levy was shifted from the assessable value to the printed MRP was stated by the Finance Minister in his budget speech while introducing the new system :

> "The revenue realization had been affected inter alia on account of disputes over the method of arriving at the assessable value. With a view for (sic) ending the room in uncertainty once for all, I propose to fix specific rates of duty in respect of cigarettes. These rates of duty would be linked to their retail sale price printed on the cigarette packs".

It appears that this is how the Central Board of Central Excise also understood the scheme. The 34th Report of the Public Accounts Committee (1985-86) records the evidence of the Chairman, Central Board of Excise and Customs. He said :

> "In this Case in 1982 and 1983 we opted for the 'specific rate of duty'. For the purpose of calculation since the printing of the price is a legislative requirement, we will go by that and have 'specific duty'. Another system is ad valorem which has created enormous problems..... .....What we are interested is to collect a certain amount of duty from a particular industry. The rate of duty is accordingly fixed. Ad valorem duty is based on the value of the goods. 'Specific rate' is directly related to the product. So, it was decided that we could adopt a formula linked to 'printed retail price' for classification of the goods for deciding the amount for duty that this particular commodity should bear..... .....
>
> Even at that time we were conscious of the fact that there could be an overcharging of the prices by the retailer. But according to Packaged Commodities Rules the retailers were bound to sell the goods at that particular price, and if the prices were more there

was a legal provision for taking action against the retailers".

The attempt was clearly to do away with the disputes, litigation and consequent delay involved in determination of the assessable value of the whole sale price of cigarettes. As far as the appellant is concerned between 1973 to 1981, several proceedings were pending relating to various aspects of the determination of the assessable value in respect of the cigarettes manufactured in its five factories including disputes relating to the permissible deductions on account of post manufacturing expenses.

The Tribunal itself noted that the intention underlying the Notification was to get over "hassles arising on the question of determination of assessable value under Section 4(l)(a) of the Act and the admissible deductions". But then it held that the switch over was made from "assessable value to 'quasi-specific duty'. Duty is either specific or not. Since it is not specific according to the Tribunal, it would be open to the Department to go behind the printed prices and find out the "effective prices" at which the retailers may sell the packages to consumers and treat such prices as the printed prices for the purpose of determining the rate of duty applicable. The consequences of this interpretation by the Tribunal would be starting. There is no dispute that the Notification envisages a single retail price in respect of certain brands of cigarettes. It is this single retail price which has to be printed on the package. If one were to accept the High Court's prima facie view, the printed MRP should reflect the actual price at which the particular kind of cigarette is sold throughout the country. The patent impossibility of this was acknowledged by the Tribunal which held that the actual price at which the cigarettes were sold could not "lawfully or logically" be the printed MRP because "the manufacturer has limited or little control over the actions of the retailers" who are, in the case of the appellant, "about a million in number"; that the appellant could not be held responsible for "the tendency of the retailers to charge higher than the printed price so as to secure larger margin" and that different prices may be actually charged for the same brand all over the country. Therefore, the Tribunal held that the printed MRP should have been the "reasonable price" at which the cigarettes could be sold. This led the Tribunal and the adjudicating authority to go into an elaborate exercise to determine what should be that single reasonable price for the entire country which should have been declared and printed by the appellant on the packages.

In our opinion the outcome of this would be equally illogical. It envisages an excise officer in one part of the country determining what would be the reasonable market price throughout the country for that particular brand, an exercise which the Tribunal itself concede would require the examination of the cost data and market considerations and would be a "very complicated and time consuming impractical exercise which was rightly not provided for". And yet according to the Tribunal's and the Revenue's interpretation of the notification, the Excise Officer would have had to do just that. Apart from the patent impracticability of the matter, the question whether the price so fixed by the Excise authority is 'reasonable' or not would itself be justiciable with the consequent blockage of revenue in the quagmire of litigation. That is precisely what the Notification had sought to avoid.

The certainty of specific rates which was sought to be achieved by the notification has been undone by the adjudicating authority and the Tribunal. The notification had introduced a system for levy of

excise duty on an experimental basis. If the experiment was a failure for whatever reason, it was open to the respondents to do away with it and replace the system by some other as it did in 1987. But as long as the notification stood, it had to be given effect to. In the view we have taken, there is no need to go into other questions debated before us. We, therefore, allow Civil Appeal No. 70 of 1999 (M/s. ITC Ltd. v. Commissioner of Central Excise & Anr.) and dismiss Civil Appeal No. 6101 of 1998, (Commissioner of Central Excise, New Delhi v. M/s. ITC Ltd.). The impugned demands raised against the appellant are set aside without any order as to costs.

C.A. No. 70/99 allowed.

C.A. No. 6101/98 dismissed.

2. Keshavji Ravji and Co. and Others v. Commissioner of Income Tax, [1990] 2 SCC 231.