

SHAKTI TRAVEL & TOURS v. STATE OF BIHAR

415

a clarify that Electricians and Fitters shall be entitled to overtime allowance for the period of their stay of days of work after their duty hours for handing over charge to the next incumbent i.e. successor incumbent reporting for duty. The above shall thus govern and the award of the Tribunal shall be deemed to have been substituted by the direction as above. The management shall accordingly work out the amount of overtime allowance for the Electricians and Fitters who shall be entitled to withdraw any such amount in deposit to the extent of their entitlement and if not already paid.”

b 4. Considering the fact that the Tribunal reached the conclusions in making the award on the appreciation of oral and documentary evidence adduced before it, there was no reason for the learned Single Judge to interfere with the award made by the Industrial Tribunal much less was there any basis for the Division Bench while affirming the view taken by the learned Single Judge to clarify in such a manner as to destroy the effect thereof. Inasmuch as the grievance made before us is only in relation to the overtime allowance that is sought to be paid in terms of the order made by the Division Bench of the High Court, we think it appropriate to clarify that the award made being on facts should stand affirmed and the order made by the High Court in directing the payment of overtime allowance without any evidence before it was not justified. Therefore, we set aside the order made by the Division Bench of the High Court as well as that of the learned Single Judge and hold that the award made by the Tribunal is in order. The appeal is disposed of accordingly.

e (2002) 9 Supreme Court Cases 415

(BEFORE G.B. PATTANAIK AND U.C. BANERJEE, JJ.)

SHAKTI TRAVEL & TOURS . . . Appellant;

*Versus*

f STATE OF BIHAR AND ANOTHER . . . Respondents.

Criminal Appeal No. 412 of 2000<sup>†</sup>, decided on April 28, 2000

**Negotiable Instruments Act, 1881 — S. 138 provisos (b) & (c) — Complaint — Maintainability — Complaint not asserting that demand notice had been served on the accused, held, not maintainable**

*Held :*

g The accused has a right to pay the money within 15 days from the date of the service of notice and only when it fails to pay, is it open for the complainant to file a case under Section 138 of the Negotiable Instruments Act. That being the position and in the complaint itself having not been mentioned that the notice had been served, the complaint itself is not maintainable. (Para 2)

Appeal allowed

H-M/CAT/24218/SR

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<sup>†</sup> Arising out of SLP (Crl.) No. 2576 of 1999

416

SUPREME COURT CASES

(2002) 9 SCC

ORDER

1. Leave granted.

2. The accused who is the appellant, assails the order of the High Court refusing to quash the complaint filed under Section 138 of the Negotiable Instruments Act. The only ground on which the learned counsel for the appellant prays for quashing of the complaint is that on the assertions made in para 8 of the complaint, it must be held that notice has not been served and, therefore, an application under Section 138 could not have been maintained. Undoubtedly, the accused has a right to pay the money within 15 days from the date of the service of notice and only when it fails to pay, is it open for the complainant to file a case under Section 138 of the Negotiable Instruments Act. That being the position and in the complaint itself having not been mentioned that the notice has been served, on the assertions made in para 8, the complainant itself is not maintainable. We accordingly quash the complaint.

3. The appeal is accordingly allowed.

(2002) 9 Supreme Court Cases 416

(BEFORE S.P. BHARUCHA, C.J. AND N. SANTOSH HEGDE  
AND SHIVARAJ V. PATIL, JJ.)

SINKHAI SYNTHETICS & CHEMICALS (P) LTD. . . Appellant;

*Versus*

COLLECTOR OF CENTRAL EXCISE, AURANGABAD . . Respondent.

Civil Appeals No. 9363 of 1995 with Nos. 9409-10 of 1995,  
decided on April 16, 2002

**Excise — Refund — Duty paid under provisional assessment in excess of that assessed finally — Refund of, not barred by principle of unjust enrichment — Inapplicability of S. 11-B, Central Excise Act — Assessee's claim to exemption disputed by Revenue — Assessee paying the excise duty under protest and contesting the case — Ultimately, the dispute decided by CEGAT in favour of the assessee — In such circumstances, S. 11-B, held, not applicable — Hence, refund directed to be made — Central Excise Act, 1944, S. 11-B — Applicability — Central Excise Rules, 1944, R. 9-B(5) — Refund under — Inapplicability of S. 11-B of the Act (Paras 6, 4 and 5)**

*Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 : (1997) 89 ELT 247, followed  
Appeals allowed H-M/ET/26244/S

**Chronological list of cases cited**

**on page(s)**

1. (1997) 5 SCC 536 : (1997) 89 ELT 247, *Mafatlal Industries Ltd. v. Union of India* 418d-e, 418g

ORDER

1. The assessees claimed the benefit of an exemption notification. The Revenue challenged the claim. The matters went higher and up to the