

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2576 OF 2009
(Arising out of SLP(C) No.6486 of 2008)

M/S JAI JAGDAMBA MALLEABLE (P) LTD.

...APPELLANT (S)

VERSUS

UNION OF INDIA & OTHERS.

...RESPONDENT(S)

ORDER

Leave granted.

In this case at the time of the assessee's application coming up for admission before the Settlement Commission, the following order was passed:

“On examining the submissions made by both sides, we find that the applicant satisfies the conditions contained in Section 32E of Central Excise Act, 1944. Keeping in view the plea taken by the applicant that the Company's other income was taken as sale proceeds of clandestine clearances and the claims for deduction lodged before the Commissioner Central Excise Kanpur vide letter dated 23.02.06 and the comments furnished by DGCEI, Kanpur vide letter dated 1.03.06, we find that the claims and counter claims needs to be verified with reference to facts and evidence on record leading to the issue of Show Cause Notice. It does not appear to be appropriate to brand the applicant as a company not making full and true disclosure attributing non-cooperation at this stage, subject to the outcome of the investigation to be ordered by the Commission, the application is admitted under Section 32F(1) of Central Excise Act, 1944. The admitted amount of Rs.12,13,611/-, may be appropriated from the advance payment of Rs.15,00,000/- made by the applicant company.”

As can be seen from the above quoted para, counter claim filed by the assessee was to be verified with reference to the facts and evidence on record leading to the issuance of Show Cause Notice.

Without undertaking that exercise the Settlement Commission passed a final order confirming the demand of the Department in the Show Cause Notice for a sum of Rs.57,10,562/-. In the circumstances, we set aside the impugned judgment of the High Court as well as the order of the Settlement Commission and we are directing the Settlement Commission to undertake the above exercise and dispose of the matter in accordance with law. The Commission may also consider remanding the matter to the Adjudicating Authority, if so advised, in terms of Section 32L of the Central Excise Act, 1944. In case the Settlement Commission itself decides to adjudicate upon the demand, then due opportunity should be given to the assessee to put-forth his case.

The appeal is disposed of accordingly with no order as to costs.

New Delhi,
April 09, 2009



.....J.
[S.H. KAPADIA]

.....J
[AFTAB ALAM]

JUDGMENT

ITEM NO.41

COURT NO.5

SECTION III

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (Civil) No(s).6486/2008

**(From the judgment and order dated 07/09/2007 in CMWP No. 536/2007
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)**

M/S JAI JAGDAMBA MALLEABLE (P) LTD.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 09/04/2009 This Petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM**

**For Petitioner(s) Mr. Harvinder Oberoy, Adv.
Mr. Raj Kishor Choudhary, Adv.
Mr. Harpreet Singh, Adv.
Mr. Jitendra Kumar, Adv.**

**For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Ms. Purnima Bhat Kak, Adv.
Mr. C.V. Subba Rao, Adv.
Ms. Anil Katiyar, Adv.
Mr. B.V. Balaram Das, Adv.**

**UPON hearing counsel the Court made the following
O R D E R**

Leave granted.

The appeal is disposed of with no order as to costs.

**(S. Thapar)
PS to Registrar**

**(Madhu Saxena)
Court Master**

The signed order is placed on the file.

