IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7599-7600 OF 2009
(Arising out of S.L.P. (C) Nos.11854-11855 of 2009)

M/s. Ballarpur Industries Ltd. ...Appellant(s)

Versus

Commissioner, Trade Tax, Uttaranchal ...Respondent(s)

O R D E R

Heard learned counsel on both sides.

Delay condoned.

Leave granted.

The narrow issue which, in our view, requires proper adjudication is, whether the impugned product, namely, Sun Flower Oil, is a refined oil or an ordinary oil under the Uttar Pradesh Trade Tax Act, as applicable to the State of Uttaranchal? We are concerned in these appeals with Assessment Year 1994-1995.

Since the impugned order of the High Court is an ex-parte order, we set aside the impugned order and remit the case to the Uttaranchal High Court for *de novo* consideration on merits in accordance with law, particularly in view of the fact that the above question is likely to recur even after the Assessment Year in question. The assessee will have to show whether the

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impugned product is a refined oil. Since the issue relates to classification, we direct the High Court to *de novo* consider the case in accordance with law. This is the only question which needs to be answered on merits by the High Court.

The civil appeals are, accordingly, allowed with no order as to costs.

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

......................J.
[DR. B.S. CHAUHAN]

New Delhi,
November 16, 2009.