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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1048/2005

COMMISSIONER OF INCOME TAX Appellant

Through Mr. R.D. Jolly with
Mr. Rajeev Awasthi

versus

M/S UNIPATCH RUBBER LTD. Respondent

Through Mr. B.N. Goswami

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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07.09.2006

For orders, see ITA No. 1293/2006.

MADAN B. LOKUR, J

VIPIN SANGHI, J

SEPTEMBER 07, 2006

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+ ITA 1293/2006

THE COMMISSIONER OF INCOME TAX Appellant
Through Mr. R.D. Jolly with
Mr.Rajeev Awasthi

versus

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CM No.11302/2006 (Delay)

The delay in filing the appeal is condoned.

The application is allowed.

ITA 1293/2006

The Revenue is aggrieved by an order dated 27th October, 2004
passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA No.



3311/Del/2001 relevant for the assessment year 1997-98.

The only question that has arisen in this case is whether the payment of excise duty by the Assessee on clearance of goods manufactured by it but not sold, though included in the closing stock for the relevant previous year can be allowed as a deduction under Section 43B of the Income Tax Act, 1961.

Section 43B of the Act states that a deduction of excise duty shall be allowed only in respect of the previous year in which that amount is actually paid. This has absolutely no reference to the sale of the goods but only to payment of excise duty.

A similar situation had arisen in *Commissioner of Income Tax vs. Bharat Petroleum Corporation Ltd.*, (2001) 252 ITR 43 (Bom) and in *Chemicals and Plastics India Ltd. vs. Commissioner of Income Tax*, (2003) 260 ITR 193 (Mad).

In both these cases the question was answered in favour of the Assessee and against the Revenue and it was held that the payment of excise

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duty could be deducted under Section 43B of the Act in computi.



income of the Assessee.

We are not inclined to take a view different from these two High Court. In our opinion, no substantial question of law arises for consideration.

Dismissed.

A handwritten signature in black ink, appearing to read 'Madan Lokur'.

MADAN B. LOKUR, J

A handwritten signature in black ink, appearing to read 'Vipin Sanghi'.

VIPIN SANGHI, J

SEPTEMBER 07, 2006

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