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% 14.11.2008

Present: Ms P. L. Bansal with Mr Mohan Prasad Gupta,  
Ms Anshul Sharma and Mr Sanjeev Rajpal  
for the Appellant.  
Mr Ajay Vohra with Ms Kavita Jha and Mr Sriram  
Krishna for the Respondent.

+ **ITA 1207/2008**

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This appeal under Section 260-A of the Income Tax Act, 1961 is directed against the order dated 06.07.2007 passed by the Income Tax Appellate Tribunal in ITA No. 3555/Del/1999 pertaining to the assessment year 1995-1996.

The appellant has proposed the following substantial questions of law:-

- (a) Whether ITAT was correct in law in deleting the addition of Rs 83,15,315/- made by the Assessing Officer by disallowing advance custom duty paid by the assessee during the year?
- (b) Whether advance custom duty is allowable as expenditure under Section 43B of the Act when it was not allowable otherwise under other provisions



of the Act, since the assessee is adopting mercantile system of accounting?

- (c) Whether order passed by ITAT is perverse in law and on facts when it held that advance custom duty is to be excluded from the Closing Stock, which was not the issue before it?
- (d) Whether ITAT was correct in law in directing the Assessing Officer to exclude amount of Rs 1,27,50,334/- being the custom duty, from the closing stock of raw material in order to give full effect to Section 43B of the Act?
- (e) Whether custom duty was to be included in the valuation of Closing Stock as per the method of accounting employed by the assessee?

Insofar as the first set of questions are concerned, namely, (a) to (c), we find that the Tribunal has adequately dealt with the same and has correctly applied the law. The Tribunal has held that the provisions of Section 145A were not applicable to the proceedings of the year in question. It has also held that once the liability of customs duty has been incurred, it is admissible under Section 43B

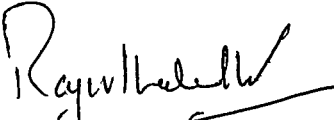


in the year of demand. It is an admitted position that the customs duty was paid in the year in question. Therefore, the Tribunal's finding cannot be faulted.

As regards the second set of questions, namely, (d) and (e), the issues stand covered against the revenue and in favour of the assessee by the Supreme Court decision in the case of *Berger Paints India Limited v. CIT: 266 ITR 99 (SC)*.

In view of the foregoing, no substantial question of law arises for our consideration. The appeal is dismissed.

  
BADAR DURREZ AHMED, J

  
RAJIV SHAKDHER, J

November 14, 2008  
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