ITEM NO.43 COURT NO.5 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5173 OF 2008

M/S. DIWAN SAHEB FASHIONS PVT.LTD. Appellant (s)

VERSUS

COMMISSIONER OF CENT.EXCISE, DELHI Respondent(s)

(With appln. for stay, permission to file additional docts. and exemption from filing legible copies of annexure of hand written documents)

Date: 27/03/2009 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s) Mr. Alok Yadav, Adv.
Mr. M.P. Devanath,Adv.

For Respondent(s) Mr. Gopal Subramanium, ASG.
Mr. S.K. Dubey, Adv.
Ms. Rachana Srivastava, Adv.
Ms. Himani Jadoun, Adv.
Mr. Mohd. Noorullah, Adv.

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

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.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5173 OF 2008

M/S DIWAN SAHEB FASHIONS PVT.LTD. ...APPELLANT (S)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, DELHI ...RESPONDENT(S)

O R D E R

By consent the matter is taken up for final hearing.

In this case the matter needs to be remitted to the Tribunal to decide whether there existed dummy units set up by the assessee as alleged by the Department. If so, whether transactions undertaken by the assessee have been routed through the dummy units. It is in this context that the Tribunal will also decide as to who was the real manufacturer of the items in question. Depending on the answers to the above issues the Tribunal will then decide the question regarding applicability of the Exemption Notification.

Accordingly, the impugned judgment is set aside, the matter is remitted to the Tribunal for consideration in accordance with law.

Accordingly, the appeal is disposed of with no order as to costs.

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

New Delhi,
March 27, 2009

....................J
[AFTAB ALAM]