

**(2009) 07 CAL CK 0040**

**Calcutta High Court**

**Case No:** CEXA No. 16 of 2009 and GA No. 514 of 2009

Commissioner of Central Excise

APPELLANT

Vs

Lord's Chemicals Ltd.

RESPONDENT

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**Date of Decision:** July 29, 2009

**Citation:** (2010) 258 ELT 48

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Sankar Prasad Mitra, J

**Bench:** Division Bench

**Advocate:** R. Bharadwaj, for the Appellant; N.K. Chowdhury, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Court : This is an appeal against the judgment and order dated August 19, 2008 passed by the Customs, Excise and Service Tax Appellate Tribunal in Excise Application No. EDM-65/05 [2009 (245) E.L.T. 695 (Tribunal)]. The Tribunal has affirmed the order of the assessing officer.

2. Admittedly, a show cause notice was issued on the presumption that the entries, as recorded in the private note book maintained by the labour contractor, should be taken as the clearance figures of finished products from the factory. It is settled law that such presumption is not permissible. The presumption, on the basis of which the show cause notice was issued, was misplaced in the absence of any corroborating, reliable and independent evidence. Therefore, the Tribunal below was right in rejecting the contention of the revenue and in accepting the contention of the assessee. Therefore, the appeal is summarily dismissed.

3. In view of the dismissal of the appeal, the application for stay stands rejected.

4. We make no order as to costs.

5. All parties concerned are to act on a signed xerox copy of this order on the usual undertakings.