

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 9261, 9172, 9173, 9037, 9232
AND 9111 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 - Yes
2 to 5 - No

M/S SAMBHAV INTERCHEM & OTHERS
VS
UNION OF INDIA & OTHERS

Appearance:

MR PR NANAVATI for Petitioners of Spl.Civil
Appls.Nos.9261,9172, 9173 and 9037 of 1997.

MR RS SANJANWALA for Petitioner of Spl.Civil
Appln. No.9111 of 1997

MR ASHOK L SHAH for Petitioner of Spl.Civil
Appln.No.9232 of 1997.

MS. A.MEHTA for Respondents in all matters

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/12/97

Rule. Ms.A.Mehta appears and waives service of notice of rule on behalf of respondents. In the facts and circumstances of the case, all the matters have been taken for final hearing.

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#. In all these petitions, a common question of law arises for our determination and it would, therefore, be appropriate to dispose of all the matters by a common judgment.

#. The case of the petitioners is that they have filed appeals against orders passed by Commissioner of Central Excise in different divisions. Alongwith appeals, applications for interim orders were also filed. It is the case of the petitioners that applications for stay/interim relief have not been dismissed or rejected, but they are not decided also. Thus, on the one hand, applications are pending and on the other hand, coercive recovery is sought to be effected by the respondent authorities. They have, therefore, prayed that during the pendency of applications for stay, no coercive recovery should be effected. For that limited purpose, the petitioners are in this Court.

#. Almost in identical circumstances, a question came to be considered in D.C.W. Limited and Others Vs. Commissioner (Appeals) & Others, (1997) 38(2) GLR 913. In that case also, an appeal was pending before appellate authority and alongwith appeal, an application for stay was made. The application was not decided one way or the other and coercive recovery proceedings were started. Considering provisions of the Act as also the underlying object of making such application and passing of orders, the Division Bench, to which one of us was a party, (C.K.Thakkar,J.) stated in para 11:

"There cannot be any valid reason for not hearing the stay application for number of months or till final hearing of the appeals. On behalf of the petitioners our attention has been drawn to the orders of the Appellate Tribunal (CEGAT), wherein it has been directed that on receipt of stay and misc. applications, the Registrar shall immediately furnish to the person presenting the application, the date of hearing which will be same day in the second week thereafter and if the day is a holiday, the next working day or on the same day in second week. Several orders of this

Court have also been cited before us where the directions have been given to dispose of the stay application within specified time and not to enforce coercive recovery during that period. If the applications for stay and waiver of pre-deposit are not decided till final hearing of the appeals anomalous situation would arise as to hearing and maintainability. Even if the Appellate Authority was to dismiss the appeal on merits that may not be in a position to render it on the ground that there is no pre-deposit and consequently that appellant may not get an opportunity to agitate the questions on merits before higher forum."

#. It was further observed that not deciding an application for stay/interim relief for a considerable long time would also not be in the interest of revenue. It would, therefore, be necessary to dispose of such applications as expeditiously as possible.

#. In our opinion, the ratio laid down in D.C.W. Limited and Others (supra) would apply with equal force to these petitions also. It is, therefore, directed that the authorities will decide Civil Applications for stay/interim relief as expeditiously as possible preferably within four weeks from the receipt of the writ. Till then, no coercive recovery will be effected. The petitions are accordingly allowed. Rule is made absolute in each petition. In the facts and circumstances of the case, there is no order as to costs. Original judgment is kept in Special Civil Application No.9261 of 1997 and a copy in each of the petitions.

Sd/-

(C.K.Thakkar,J.)

Sd/-

Dt:30-12-1997 (R.P.Dholakia,J.)

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