

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4165 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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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?

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PRAMUKH STEEL PVT. LTD

Versus

UNION OF INDIA

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Appearance:

MR MIHIR H JOSHI for Petitioner

MR JAYANT PATEL for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 26/05/98

ORAL JUDGEMENT

Rule. Mr. Jayant Patel, learned Additional Standing Counsel appearing for the respondents waives service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today.

2. By way of present petition, the petitioner seeks writ of mandamus restraining the respondents from resorting to coercive measures for the recovery of the sum of which the demand is made vide order dated 4th February, 1998 pending hearing and decision in the appeal and application for stay filed in appeal. Let me state few more facts. The petitioner received show cause notice on 10th March, 1997 calling upon it to show cause why MODVAT Credit facility availed of by it for the period from October 1996 to December, 1996 amounting to Rs. 9,94,195/- should not be disallowed and recovered under Rule 571 of the Central Excise Rules. On receipt of the said notice, on 26th January, 1998, the petitioner filed written statement. Respondent No. 3, on 4th February, 1998, confirmed the demand of the said amount and also imposed penalty of Rs.1,00,000/-. On 10th February, 1998, respondent No. 4 reiterated the demand made by order of respondent No. 3. The petitioner then filed representation before the respondent authorities and also preferred an appeal before respondent No. 2 wherein he also preferred an application for stay. The said appeal and application for stay are still pending and not heard and same are unnecessarily delayed. Meanwhile, respondents nos. 3 and 4 are threatening to recover the amount by coercive measures, and, therefore, this petition is filed.

3. So long as the application for stay in appeal is not disposed of, it would not be just and proper on the part of the respondents nos. 3 and 4 to resort to coercive measures for the purpose of recovery of the said amount.

4. In this view of the matter, respondent No. 2 is directed to dispose of the stay application preferred by the petitioner in the appeal within the period of one month from the date of this order and respondents nos. 3 and 4, till the disposal of the stay application, shall not resort to coercive measures for recovery of the amount. Rule is accordingly made absolute with no order as to costs.

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Vyas