

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3943 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEMANT PLASTICS & CHEMICALS LTD

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR PB MAJMUDAR for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 30/07/1999

ORAL JUDGEMENT [PER : C.K. THAKKER, J]

Rule. Mr. PB Majmudar appears and waives service for Respondent no.1 and Mr. MR Shah appears and waives service for Respondent Nos. 2 & 3. In the facts and circumstances of the case, the matter is taken up for

final hearing today.

This petition is filed against Stay Order No. 344 of 1999 passed by the Commissioner (Appeals), Vadodara on 27th April, 1999.

Being aggrieved by the order-in-original passed by the appellate authority, an appeal is filed by the petitioner which is pending before the appellate authority. Along with appeal, an application for stay was also filed. Appellate authority rejected said application for stay and directed the petitioner to deposit the amount of Rs.89,631/ as pre-deposit under section 25F of the Central Excise Act,1944.

In the facts and circumstances of the case, when appeal is pending and all questions including question as to whether product can be said to be "manufacture" within the meaning of the Act would be decided by the appellate authority, in our opinion, it cannot be said that by not granting interim order, any illegality can be said to have been committed. We do not see any reason to interfere with the order passed by the appellate Court and petition deserves to be dismissed and accordingly appeal is dismissed.

Learned counsel for the petitioner, however, has submitted that time to make payment may be extended so that amount can be deposited within that period. In the facts and circumstances, time to deposit will be extended and such payment will be made within two weeks from the date of receipt of writ.

Rule is discharged. No order as to costs.

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