

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos 11594, 11595, 11596,
11597, 11598, 11599, 11600, 11601, 11602, 11603,
11604, 11605 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ANKITA TAX-CHEM INDUSTRIES PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11594 of 2002
MR PARESH M DAVE for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1,3-4
..... for Respondent No. 2
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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 27/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

RULE. Service of rule is waived by learned Senior Central Government Standing Counsel Shri D.N. Patel for the respondents.

The petitioners have challenged the validity of order dated 18th May, 2002 passed by the CEGAT.

Learned advocate Shri Paresh M. Dave appearing for the petitioners has submitted that the said order passed by the CEGAT is unjust, improper and illegal because while passing the impugned order the CEGAT had ignored its view expressed in the case of WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE, KOCHI reported in 1992(48) ECR 286(Tribunal). It has been also submitted by him that the view expressed in WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE was followed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD Vs. COMMISSIONER reported in 2001 (135) E.L.T. 1110. It has been thereafter submitted by him that the view expressed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER has been confirmed by the Hon'ble Supreme Court as Civil Appeal No. D15220 of 1999 filed by Commissioner of Central Excise, Bhopal against the said order was dismissed by the Hon'ble Supreme Court on 19.11.1999.

In pursuance of notice issued by this Court, learned Senior Central Government Standing Counsel Shri D.N. Patel has appeared for the respondent authorities. Looking to the fact that the earlier view expressed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER has been now confirmed by the Hon'ble Supreme Court by dismissing an appeal filed against the said order, he had to reluctantly agree to the fact that the impugned order passed by the Tribunal cannot be justified.

Looking to the above referred undisputed fact, in our opinion, the Tribunal was in error in taking a different view than the one which it had taken in the case of WHATTS ELECTRONICS PVT. LTD Vs. COLLECTOR OF CENTRAL EXCISE, KOCHI and in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER. Possibly the Tribunal was not aware of the fact that the view expressed by it in the case of SHREE CABLES & CONDUCTORS ETC had been confirmed by the Hon'ble Supreme Court.

Even if the said fact was not known to the Tribunal, in our opinion, the Tribunal should not have changed its view without assigning any reason or without referring to its earlier view expressed in the case of WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE and SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER.

In view of the above referred undisputed facts, we quash and set aside the impugned order passed by the Tribunal so that the order passed by the Commissioner of Appeals(Surat) can operate.

Rule is made absolute with no order as to costs.

(A.R DAVE,J.)

(K.M. MEHTA,J.)

(PER K.M. MEHTA,J.)

For the reasons given in the judgement and order dated 27/12/2002 passed in Special Civil Application No. 10759/2002 by this Court (Coram:-A.R. DAVE & K.M. MEHTA,J.J.) separately but concurring, these writ petitions are allowed.

(K.M. MEHTA,J.)

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