

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14970 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

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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

SANGHANI BRIGHT STEEL MANUFACTURES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 14970 of 2004
MR DHAVAL SHAH for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Rule. Learned Standing Counsel Shri Malkan waives service of rule for the respondents.

#. Serious grievance is made in this petition by the petitioners that without serving the notice of hearing, the Customs, Excise & Service Tax Appellate Tribunal (for short "CESTAT") allowed Appeal No.E/827/02 of the department and set aside the order passed by the Commissioner (Appeals) of Customs & Central Excise, Rajkot passed in favour of the petitioners. Before approaching this Court, the petitioners had approached the learned CESTAT by way of Misc. Application dated 2.11.2004 (Annexure-D) for recalling its order allowing the appeal of the department and pass a fresh order in accordance with law after hearing the petitioners by restoring the main appeal. Along with the said application, affidavit of Shri Ramesh Maganlal Sanghani, one of the partners of the petitioner firm is also filed. After the order passed by the learned CESTAT in appeal, the respondents were trying for forcible recovery, therefore, the petitioners have approached this Court by way of this petition as so far that the learned CESTAT has not decided that application for recalling the order passed in appeal by it.

#. On 16.11.2004, the learned Vacation Judge (Akil Kureshi,J) on the statement made at the bar by the learned counsel for the petitioners that they were not served with the notice in appeal by the learned CESTAT ordered to issue the notice to the respondents and by way of interim order directed them not to take any coercive steps in pursuance of the recovery notice dated 27.10.2004 (Annexure-B). In response to the notice, reply affidavit dated 5.11.2004 is filed and in para 5 of it, they have stated that they were not in a position to clarify as to whether the petitioners were served with the notice of personal hearing from the learned CESTAT or not.

#. In view of the above, when the petitioners have already approached the learned CESTAT for recalling its impugned order dated 5.3.2004 (Annexure-C), then no useful purpose would be served by keeping this petition alive. The interest of justice would be served by directing the learned CESTAT to hear and decide the application dated 2.11.2004 (Annexure-D) submitted by the petitioners to the learned CESTAT for recalling its order as early as possible. Accordingly, learned CESTAT is directed to decide the application dated 2.11.2004 for recalling the order passed in appeal as early as possible

and not later then 31.1.2005 after hearing the learned counsel for the parties. At the first instance, both the parties shall appear before the learned CESTAT on 14.12.2004 and on that day, the learned CESTAT will give the date of hearing to the parties and after hearing the parties, it shall decide the application dated 2.11.2004 (Annexure-D) as early as possible and not later then 31.1.2005, as directed hereinabove. Rule is made absolute to the aforesaid extent.

Copy of this order be given to both the learned counsel for the parties for its immediate implementation.

(B.J.Shethna,J)

(Sharad D.Dave,J)

(pathan)