

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1263 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE ACTING CHIEF JUSTICE****MR. VIJAY MANOHAR SAHAI****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?
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COMMISSIONER - CENTRAL EXCISE AHMEDABAD-II....Appellant(s)

Versus

MADHUSUDAN SPECIAL SECTION P LTD....Opponent(s)

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Appearance:

MR HRIDAY BUCH, ADVOCATE for the Appellant(s) No. 1

MR PARESH M DAVE, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE THE ACTING CHIEF JUSTICE MR. VIJAY MANOHAR SAHAI**
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 27/02/2015

ORAL JUDGMENT

**(PER : HONOURABLE THE ACTING CHIEF JUSTICE
MR. VIJAY MANOHAR SAHAI)**

1. We have heard Mr. Hriday Buch, learned counsel appearing on behalf of the appellant-Revenue.
2. This Tax Appeal has been filed by the Revenue under Section 35G of the Central Excise Act, 1944, challenging the order dated 23rd April, 2008 passed by the Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, passed in Central Excise Appeal No. E/240 of 2008 and Stay Application No. 240 of 2008.
3. It appears that the respondent was issued show cause notice dated 18th March, 1999 calling upon them to show show cause as to why central excise duty amounting to Rs. 7,94,292/- short paid by the respondent from the month of April '98 to March '99 should not be recovered under Rule 96ZP read with Section 11A of the Central Excise Act, 1944. The respondent was further called upon to show cause as to why penalty of should not be imposed under Rule 96ZP[3][ii] of the Central Excise Rules, 1944 for not discharging duty liability fixed by the Commissioner and goods cleared without payment of duty. Interest at the rate of 18% was also sought to be

charged on the said amount from the respondent.

4. The said show cause notice was adjudicated by the Deputy Commissioner, Central Excise, Division-I, Ahmedabad-I, vide Order-in-Original dated 31th October, 2000, who confirmed the duty of Rs. 7,94,292/- and ordered the respondent to pay interest at the prescribed rate as applicable under Rule 96ZP[3] of the Rules, 1944. So far as the penalty was concerned, it was directed to be decided after the decision of the Supreme Court in Civil Appeal No. 5203 of 1998. The order dated 31st October, 2000 with regard to imposition of penalty was subsequently modified on 17th August, 2001 by issuing corrigendum and penalty of Rs. 7,94,292/- was imposed on the respondent assessee, which was ordered to be recovered only after the decision of the Apex Court in Civil Appeal No. 5203 of 1998. The said Order-in-Original dated 31st October, 2000 came to be challenged before the Commissioner [Appeals] in appeal. The Commissioner [Appeals], vide Order-in-Appeal dated 9th October, 2003 held that he was not empowered to decide the appeal arising out of the decision taken by the authority below the rank of Commissioner. So far as the penalty was concerned, the same was not imposed. Being aggrieved

by the said order of the Commissioner [Appeals] dated 9th October, 2003, the Revenue went in appeal before the CESTAT, who, vide order dated 18th June, 2007 remanded the matter back to the Commissioner [Appeals], for decision on merits. On remand, the Commissioner [Appeals], vide Order-in-Appeal dated 27.11.2007 set aside the Order in Original and remanded the matter for finalization of demand after determination of annual production capacity. The said order in Appeal dated 27.11.2007 passed by the Commissioner [Appeals] was challenged by the revenue in appeal before the CESTAT, who vide order dated 23rd April, 2008 remanded the matter to the Commissioner for re-fixation of annual production capacity first and then to decide the duty liability of the assessee. It is this order of the Tribunal dated 23rd April, 2008 against which the revenue has come in appeal before this Court.

5. It is required to be noted that the amount of excise duty is Rs. 7,94,292/- which is much below Rs. 10 Lac.
6. A Division Bench of this Court in the case of **COMMISSIONER OF CENTRAL EXCISE & CUSTOMS V. STOVEC INDUSTRIES LTD., reported in 2014(33) STR 124 (Guj)** held that in view of Circular dated

17.8.2011, tax appeal involving the duty amount below Rs. 10 lakh is not maintainable and this Circular also applies to the pending appeal. Following the aforesaid decision of the Division Bench, we dismiss this tax appeal as not maintainable since the amount of duty is below Rs. 10 Lakh.

(V.M.SAHAI, ACJ.)

(R.P.DHOLARIA,J.)

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