

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 1037 of 2007****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 &amp; CUSTOMS, SURAT - II....Appellant(s)

Versus

UNITED PHOSPHOROUS LTD.....Opponent(s)

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Appearance:

MR RJ OZA, ADVOCATE for the Appellant(s) No. 1

MRS SWATI SOPARKAR, 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 : 30/04/2015**

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

1. We have heard Mr. R.J. Oza, learned Sr. Advocate, assisted by Ms. Rujuta Oza, learned counsel appearing on behalf of the appellant and Ms. Bhoomi Thakore for Mr. S.N.Soparkar, learned counsel for the respondent.

2. Being aggrieved and dissatisfied with the judgment and order dated 5.12.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad[“Tribunal” for short] in Appeal No. 3851 of 2001, the appellant has preferred the present appeal.

3. Show cause notice was issued to the respondent which was adjudicated by the adjudicating authority, who vide order in original dated 22.11.2000, ordered recovery of central excise duty of Rs. 8,05,765/- from the respondent unit. The adjudicating authority also imposed penalty of equal amount. The adjudicating authority also directed to levy interest at the appropriate rate from the respondent. Being aggrieved with the said order in original, the respondent preferred an appeal before the Commissioner [Appeals], who vide order in appeal dated 31.10.2001 confirmed the duty amount and set aside the penalty, however, dropped the interest demanded. Being aggrieved with the said order in appeal, the respondent preferred an appeal before the Tribunal, who vide its order dated 5.12.2006 allowed the appeal by quashing the order in appeal. Against the said order of the Tribunal, the appellant has preferred the present appeal.

4. The amount of excise duty involved in this appeal is below Rs. 10.00 Lakh.

5. 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 involved in this appeal is below Rs. 10 Lakh.

**(V.M.SAHAI, ACJ.)**

**(R.P.DHOLARIA,J.)**

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