

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2446 OF 2010

Vijaya Silk House (Bangalore) Limited ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

ALONGWITH

WRIT PETITION NO. 2541 OF 2010

Aloka Exports ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 2544 OF 2010

Vijay Silk House (Mumbai) Limited ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 2587 OF 2010

Ahuja Exports ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 1240 OF 2011

Gulabdas & Co. ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 2522 OF 2010

Femstex Trading Co. Pvt. Ltd. ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 443 OF 2011

India Exports ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 444 OF 2011

M/s. Silkasia ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 445 OF 2011

Girish International ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 537 OF 2011

Ace Impex ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 628 OF 2011

Tulsidas Tahilram (India) ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

WRIT PETITION NO. 761 OF 2011

Banbury Implex Pvt. Ltd. ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

AND

WRIT PETITION NO. 1629 OF 2012

Mayur Manufacturing Co. ... Petitioner
Vs
1. Union of India & Anr. ... Respondents

Mr. Akhileshwar Sharma for the Petitioners.

Mr. Tejveer Singh with Ms. Padma Divakar for the Respondents in
Writ Petition Nos.537/2011, 628/2011 and 761 of 2011.

Mr. Tejveer Singh for the Respondents in all other Writ Petitions.

CORAM : S.J. VAZIFDAR, &
M.S. SANKLECHA, JJ.

THURSDAY, 16TH AUGUST, 2012

P.C.:

1. Writ Petition No.1629 of 2012 is, with the consent of the parties, placed on board and considered for admission.
2. Rule.
3. With the consent of the parties, the Writ Petitions are taken up for final hearing.
4. Each of the petitions challenge the Taxation Laws (Amendment) Act, 2005, in respect of insertion of clause (iiid) and (iiie) to Section 28 and the insertion of the third and fourth provisos to Section 80HHC of the Income Tax Act, 1961.
5. Similar matters had been filed before various High Courts. The respondents, therefore, filed Transfer Petition (C) No.945 of 2006, praying for the transfer of the Writ Petitions mentioned therein to the Supreme Court.

By an order dated 4th April, 2011, the Supreme Court allowed

the Transfer Petition. The Supreme Court recorded the contention on behalf of the respondents that if the matters are decided by different High Courts it may lead to diverse judgments, resulting in confusion and difficulties in enforcement.

6. A further Transfer Petition, being Transfer Petition (C) No.703 of 2011 was filed in respect of certain other similar Writ Petitions. The same was disposed of by an order dated 3rd February, 2012. The Supreme Court observed that looking to the large number of matters pending in various High Courts and since the question related to the virus of the said provisions, it would be more convenient and beneficial if all the matters are decided by one High Court. The Supreme Court, accordingly, directed that all the matters which had been filed/transferred to the Supreme Court, be sent to the High Court of Gujarat.

7. The Gujarat High Court heard a batch of Writ Petitions. By an order and judgment dated 2nd July, 2012, a Division Bench of the Gujarat High Court disposed of the Writ Petitions in the following terms :-

“26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessee whose assessments were still pending although such benefit will be available to the assessee whose assessments have already been concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a few section of the assessee.

27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of the amendment and not in respect of earlier assessment years of the assessee whose export turnover is above Rs. 10 Crore. In other words, the retrospective amendment should not be detrimental to any of the assessee.”

8. It is admitted that the present Writ Petitions are identical to the Writ Petitions which were the subject matter of the Transfer Petitions before the Supreme Court and the judgment of the Gujarat High Court. Only the first four Writ Petitions listed above were the subject matter of the Transfer Petitions. In other words, the first four matters stood transferred to the Gujarat High Court pursuant to the above orders of the Supreme Court. The other Petitions, therefore, did not

stand transferred to the Gujarat High Court.

9. Keeping in mind that the Supreme Court had transferred all the matters to the Gujarat High Court in order to avoid confusion and difficulties in enforcement of conflicting judgments of different High Courts, we are of the view that it would be appropriate in these Writ Petitions to follow the judgment of the Gujarat High Court.

10. In the circumstances, for the above reasons, the Writ Petitions, other than the first four Writ Petitions, are disposed of in the terms of the order and judgment of the Gujarat High Court. The first four Writ Petitions, in any event, stand disposed of by the order and judgment of the Gujarat High Court. No order as to costs.

M.S. SANKLECHA, J.

S.J. VAZIFDAR, J.