

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 436 of 2011
WITH
TAX APPEAL No. 437 of 2011

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI

Sd/-

HONOURABLE MR.JUSTICE N.V. ANJARIA

Sd/-

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2.	To be referred to the Reporter or not ?	NO
3.	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5.	Whether it is to be circulated to the civil judge ?	NO

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COMMISSIONER OF INCOME TAX-1 - Appellant

Versus

BELL GRANITO CERAMICA LTD - Opponent

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Appearance :

MR M R BHATT, SENIOR STANDING COUNSEL ASSISTED BY MRS MAUNA M BHATT for Appellant.

None for Opponent.

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI

and

HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 13/06/2012
COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

We have heard Mr. M.R. Bhatt, learned Senior Standing Counsel assisted by Mrs. Mauna M. Bhatt for the revenue.

2. In these Tax Appeals, the following substantial questions of law have been proposed by the revenue :-

“Whether the Appellate Tribunal is right in law and on facts in holding that no addition on account of excise duty can be made to the closing stock unless a balancing deduction was allowed in the P & L account ?”

3. The Tribunal has recorded its finding in paragraph 5 which is extracted below :-

“5. We find that Hon'ble Jurisdictional High Court in the case of Narmada Chematur Petrochemicals Limited (Supra) has held that, if the duty of Central Excise is not due and payable, it cannot be termed to be a cost in relation to the raw materials then such duty also cannot be termed to be a cost qua the finished goods appearing in the closing stock because admittedly, on the said day (presumption being that such goods are excisable goods) no excise duty is due and payable at the said stage and for the purposes of Excise Act, they levy is not complete unless and until Section 3 and 4 of the

Excise Act operate together. According to Hon'ble High Court for the purpose of the said statute, which is the only statute under which duty of central excise can be levied and collected, the charge is not fastened in law and it cannot be stated that for the purpose of computing chargeable income such a charge gets fastened qua the finished goods appearing as part of closing stock. Further Hon'ble High Court elaborating that it would result into an anomalous situation under the two statutes, the Excise Act and the IT Act leading to contrary positions under both the statutes and in the facts of the present case, even on application of the general principles, the addition sought to be made by Revenue cannot be sustained. Further, it is held that making of an entry or absence of an entry cannot determine rights and liabilities of parties. In other words, Hon'ble High Court held that if the law does not lead to incurring of a liability, or does not lead to a corresponding right to insist for discharging such a liability any accounting practice (even if suggested by the ICAI) cannot lay down anything to the contrary. Hon'ble High Court has discussed the provisions of Section 145A which has been inserted by Finance (No.2) Act, 1998 w.e.f. 1st April, 1999. Hon'ble High Court considered that though the Bill proposed retrospective insertion ultimately the section has come on the statute book only from 1st April, 1999 but what is more material is that the same relates to inclusion in the value of inventory the amount of any tax, duty etc. paid or liability incurred for the same under any law in force. Meaning thereby such tax, duty, etc. should

have been actually paid or should be actually due and payable under the law applicable to such tax, duty, etc. in force. Otherwise even Section 145A will also not carry case of Revenue any further. CIT v. English Electric Co. of India Ltd. (2000) 243 ITR 512 (Mad) and CIT v. Dyanavision Limited (2004) 267 ITR 600 (Mad) was also considered. And finally concluded that under the scheme of the excise duty, the assessee incurs liability to pay excise duty only upon both the events taking place, namely manufacture of excisable goods and removal of excisable goods; excise duty is not therefore includible in the valuation of closing stock.

We find that the issue is squarely covered in favour of the assessee and against the Revenue by the decision of Hon'ble jurisdictional High Court in Narmada Chematur Petrochemicals Ltd. (supra). Accordingly, this common issue in the appeals of the Revenue is dismissed."

Since the controversy is covered by the judgment of this Court in **ACIT v. Narmada Chematur Petrochemicals Limited (2010) 233 CTR 265 (Guj.)**, therefore, in our opinion, no question of law, much less, any substantial question of law arises in these two tax appeals for the consideration of this Court. Both the Tax Appeals are accordingly dismissed.

Sd/-

[V. M. SAHAI, J.]

Sd/-

[N. V. ANJARIA, J.]

Savariya