

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1413 OF 2007

SECRETARY DEPARTMENT OF REVENUE ... APPELLANT(S)

:VERSUS:

M/S. SANT STEEL AND ALLOYS PVT. LTD. AND ... RESPONDENT(S)  
ORS.

ORDER

Respondent No.1 herein has filed an application for revocation of leave granted in favour of the appellant, inter alia, on the premise that the order impugned in this appeal was wrongly said to have been passed in Writ Petition No. 628/2005 which had already been disposed of on 20.4.2006. Respondent No.1 had set up a unit for manufacturing MS Inguts Runner Risers, on the land being Khasra Nos. 60-Ka & 61 in the Industrial Estate, Jashodhpur, Tehsil Kotdwar, District Pauri Garhwal (Uttaranchal) now known as Uttarakhand, with effect from 31.3.1997.

The Central Government issued a notification bearing No.

49/2003 on 10.6.2003 exempting the industries located in the State of  
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Uttaranchal from payment of excise duty. Allegedly, the said notification was to apply only to the new industrial units, namely, those industrial units which had commenced their commercial production on or after 7.1.2003 or the existing industrial units which had increased their installed capacity by not less than 25% on or after the said date. Another notification (No.50/2003) was issued by the Central Government on 10.6.2003 whereby those industries which were listed in Annexure-II thereto would be entitled to exemption from payment of central excise duty.

It is, however, the contention of the Central Government that while issuing the aforesaid notification, it was made clear that no new area shall be included therein and if some new area is included, the industries which would be beneficiaries would be only the new industries.

A writ petition, however, was filed by Respondent No.1 herein before the Uttaranchal High Court which was marked as Writ Petition No.181/2005. The said writ petition was disposed of by reason of an order dated 3.3.2005, directing the Government of India to consider and dispose of the representation of Respondent No.1 by 30 th April, 2005. Pursuant thereto, a representation was made to the Government of India by Respondent No.1. The stand of the Government of India in this behalf appears to be that it was to abide entirely by the

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recommendations made by the State of Uttarakhand to it, for the purpose of inclusion of more Khasra numbers in the respective schedules. A draft notification was prepared by the Government of India in April, 2005 for amending the notification dated 10.6.2003, to include more Khasra numbers subject to the conditions mentioned hereinbefore, i.e. for the newly notified areas, the exemption would be extended only to the new units and not to the existing units. The said draft notification was forwarded to the State of Uttarakhand.

Upon verification of the same by the State of Uttarakhand and upon taking of a policy decision by the Government of India, a further notification was issued on 19.5.2005 amending its earlier notification.

Respondent No.1 questioned the said notification by filing another writ application, being Writ Petition No.628/2005, before the Uttaranchal High Court on or about 19.6.2005 inter alia stating that the Government of India acted mala fide by including the Khasra numbers of the appellant in Annexure II, as by reason thereof it has been deprived of its right to obtain exemption from payment of central excise. We need not go into the other contentions raised in the said

writ applications at this stage. We may, however, notice that a categorical stand has been taken by the Government of India that it would not entertain any further request for change or inclusion of Khasara numbers and the said notification dated 19.5.2005 was to be

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treated as final.

It, however, appears that while the said matter was taken up by the High Court, the Assistant Solicitor General made a concession stating that correction shall be made in Annexure II to the earlier notification by including the land of writ petitioner, although the policy of the Central Government was otherwise. It was in the aforementioned situation, an application for recall of the said order has been filed inter alia on the premise that in fact such a concession had been made by the Assistant Solicitor General in Writ Petition No.542/2005: Parvatiya Plywood Private Limited vs. Government of India & Ors, and not in the writ petition filed by Respondent No.1 herein. The Division Bench of the High Court, however, by its order dated 3.5.2006 directed as under:

"This application has been filed only on the ground that the correction in the notification can be made only after the verification by SIDCUL. Learned counsel for the petitioner submitted that since the State Government has already recommended for Schedule II, therefore, there is no requirement for any inquiry or investigation. This position that the State Government has itself recommended for correction in the notification under Schedule II instead of Schedule III has not been denied by the respondents. Therefore, the respondents are directed to comply the earlier order dated 20.4.2006 passed by this Court within a period of one month from

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today."

As according to the Government of India, again a factual error has been committed by the High Court, an application for review was filed by it which was marked as Review Petition No.81/2006 in Writ Petition NO.628/2005. The said Review Petition appears to have been listed along with other review application filed by the Central Government. However, in the cause title of the impugned order dated

19.12.2006, in stead and place of Review Petition No.81/2006 in Writ  
Petition No.628/2005, only Writ Petition No.628/2005 was  
mentioned, in terms whereof the Division Bench constituted a  
Committee to go into the questions raised by the entrepreneurs who  
were the writ petitioners therein.

Mr. Lahoti, learned counsel appearing on behalf of the  
respondent-applicant in support of the application for revocation of the  
leave granted, would submit that keeping in view the admitted fact that  
Writ Petition No.628/2005 already stood disposed of, the question of  
considering the same, over again by reason of the impugned judgment  
did not arise and as such this Court had wrongly granted leave in favour  
of the appellant herein.

Our attention in this behalf has also been drawn to the  
judgment and order dated 3.3.2005 passed by another Division Bench  
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of the High Court of Uttarakhand, wherein notice was taken of the letter  
dated 20th September, 2004 issued to the Joint Secretary, Ministry of  
Commerce and Industries by the Secretary of the Industrial Department  
of the Uttarakhand State.

Upon hearing the learned counsel for the parties, we are of the  
opinion that in the facts and circumstances of this case, only one  
conclusion can be arrived at, namely, that the review application which  
had been filed by the appellant might have been the subject matter of  
consideration before the Division Bench of the High Court and not the  
main writ application itself. We, however, are of the opinion that  
interest of justice would be subserved if we set aside the impugned  
order passed by the High Court and direct the Division Bench to hear  
the said Review Petition No.81/2006 in Writ Petition No.628/2005  
afresh. We direct accordingly.

We make it clear that the High Court, while considering the the  
said review application on merit, shall inter alia consider the stand of



Mr. Yash Vardhan, Adv.

UPON hearing counsel the Court made the following  
ORDER

Heard the learned counsel for the parties. The appeal is  
disposed of in terms of the signed order.

SLP(C) No.10103/2007 is taken on board. List this petition on  
3.10.2007.

(A.S. BISHT)  
COURT MASTER

(PUSHAP LATA BHARDWAJ)  
COURT MASTER

[Signed order is placed on the file]