

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).9 2 2 8 / 2 0 0 5

(From the judgment and order dated 0 5 / 1 1 / 2 0 0 4 in W P No. 1 1 2 5 1 / 2 0 0 4  
of The HIGH COURT OF DE L H I AT N. DE L H I)

M/S. SHAN T I F R A G R A N C E S

Petitioner(s)

VER SUS

UNION OF INDI A & ORS.

Respondent(s)

(With prayer for interim relief and office report)(For final disposal)

WI T H  
SL P (C) NO. 1 3 1 7 8 of 2 0 0 6 - With appln. for c/delay in filing rejoinder and with  
prayer for interim relief and office report(for final disposal)

SL P (C) NO. 1 3 9 8 7 of 2 0 0 6 - With prayer for interim relief and office report (for  
final disposal)

SL P (C) NO. 1 3 9 8 8 of 2 0 0 6 - With prayer for interim relief and office report (for  
final disposal)

SL P (C) NO. 1 4 9 7 8 of 2 0 0 6 - With prayer for interim relief and office report (for  
final disposal)

SL P (C) NO. 2 0 7 1 4 - 2 0 7 1 7 of 2 0 0 7 - With appln. for c/delay in filing SL P and wit  
h  
office report (for final disposal)

SL P (C) NO. 3 6 0 of 2 0 0 7 - With appln. for stay and with prayer for interim relief  
and Office Report (For final disposal)

Date: 2 2 / 0 4 / 2 0 0 8 This Petition was called on for hearing today.

CORAM :

HON' B L E MR. JUS T I C E S.H. KA P A D I A  
HON' B L E MR. JUS T I C E B. SUD E R S H A N R E D D Y

For Petitioner(s) Mr. C.A. Sundar a m, Sr.Adv.

Mr. P r aveen Ku m a r , Adv.

Ms. Rohini Musa, Adv.

Mr. Abhishek Gupta, Adv.

Mr. Dhruv Agrawal, Sr.Adv.

Mr. Nalin Talwa r, Adv.

Mr. A.K. Jain, Adv.

Mr. P r adeep Misra, Adv.

Mr. M.L. Lahoty, Adv.

Mr. P a b a n K. Shar m a , Adv.

Mr. Himans hu Shekh a r, Adv.

Mr. Ajay Choudhary, Adv.

Ms. Neeru Vaid, Adv.

For Respondent(s) Mr. P a r a g Tripathi, ASG.

Ms. Vandana Mishra, Adv.  
Ms. Rashmi Malhotra, Adv.  
Ms. Asha G. Nair, Adv.  
Ms. Neera Gupta, Adv.  
Ms. Arti Gupta, Adv.  
Mr. D.S. Mahra, Adv.  
Mrs. Anil K atiyar, Adv.  
Mr. V.K. Verma, Adv. (N P)

For Contemnor: Mr. Soli J. Sorabjee, Sr. Adv.

Mr. P. P . Rao, sr. Adv.  
Mr. V.J. Francis, Adv.

UPON hearing counsel the Court made the following  
O R D E R

List these matters on a non- miscellaneous day on 15th July, 2008 .

(S. Thapar)  
P S to Registrar

(Madhu Saxena)  
Court Master

The signed order in SL P (C) Nos. 20714 - 20717 of 2007 and SL P (C) No. 9288 of 2005 are placed on the file.

I N T H E S U P R E M E C O U R T O F I N D I A

C I V I L A P P E L L A T E J U R I S D I C T I O N

S . L . P . ( C I V I L ) N O . 9 2 2 8 O F 2 0 0 5

M/S SHAN T I F R A G R A N E S  
T ( S )

...A P P E L L A N T

V E R S U S

U N I O N O F I N D I A & O T H E R S  
N T ( S )

...R E S P O N D E N T

O R D E R

On 4th March, 2008, the following Order was passed in the above  
Special Leave Petition (Civil) No. 9228 of 2005 :-

"In matters concerning Revenue we have come across writ petitions being filed in the High Courts challenging the validity of Notifications without disclosing pendency of assessment proceedings/ appeals therefrom, this is one such case.

In the lead matter the Assessment Order was passed on 31.3.2004. The Assessment Year is 2002 - 03. On 14.7.2004 M/s. Shanti Fragnances (assessee) moves the Delhi High Court vide CW P No. 11251 / 2004 challenging the validity of the Notification dated 31.3.2000 issued under Delhi Sales Tax Act, 1975. In the Writ Petition it has been solemnly stated that the assessee has not adopted any other proceedings, though on the date of the filing of the writ petition the assessee had preferred statutory appeal against the order of assessment which was

pending since 19.5.2004. It needs to be reiterated that the writ petition was filed on 14.7.2004. Therefore the petitioner - assessee had failed to disclose to the High Court that it had filed an appeal during the pendency of the writ petition.

The deponent is the Director of M/s. Shanti Fragnances. From the Original Record we find that his name is Krishna Chourasi a S/o of Sh. P.C. Chourasi a residing at A-198, Gujranwala Town, Part -I, Delhi. He has declared the affidavit as Director of the Company.

We are taking serious view of this matter particularly when huge stakes are involved and it was incumbent on the assessee to disclose to the High Court that an appeal was pending before the First Appellate Authority.

In this case the contents of Gutka/ Paan Masala is in issue.

The record further indicates that the writ petition was filed on 14.7.2004. It further indicates that High Court had issued notice on 19.7.2004. Without counter the matter proceeded and the judgment came to be delivered on 5.11.2004. The position is clear that the matter was taken up by the High court as the High Court appears to have been told that in the writ petition the question involved was only regarding the validity of the Notification dated 31.3.2000. It appears that the High Court has not been informed about the pending assessment proceedings/ appeals therefrom.

In the circumstances the following order is passed:

Registry is directed to issue show cause notice to Sh. Krishna Chourasi a S/o Sh. P.C. Chourasi a, residing at A-198, Gujranwala Town, Part -I, Delhi, as to why proceedings for contempt should not be taken against him in view of the aforesaid circumstances. It is important to note that in the supporting affidavit the contemnor has specifically stated that the contents of the accompanying civil writ petition are true and correct and no material has been concealed therefrom.

We also direct the Registry to forward a copy of this order to the High Court so that in future whenever such writ petitions come before the High Court the Judges should enquire whether any assessment proceedings or appeals therefrom are pending before proceeded further in the matter.

Notice returnable on 22.4.2008.

Mr. Krishna Chourasi a is directed to be present personally in Court on that date.

Dasti service is also permitted."

Today when the above Special Leave Petition came before this Court for further action to be taken, Mr. Sorabji learned senior counsel appearing on behalf of deponent - Director of M/s Shanti Fragnances stated that the deponent/contemnor acted without any intent to mislead the High Court. However, learned counsel fairly stated that in such cases Courts are right in taking appropriate action for not complying with requirements of disclosing relevant facts in the Writ Petitions. Learned counsel fairly stated that as a matter of first chance Shri Krishna Chaurasi a may be penalised with a fine,

particularly, when he assures the Court that in future such mis- statements in the Writ Petition as mentioned in Order of this Court dated 4 th March, 2 0 0 8 would not be made by him in Court proceedings.

Mr. Sorabjee, learned senior counsel further states that Shri Chaur a si a tenders unconditional apology to this Court which is hereby accepted on the condition that he will deposit Rs. 5 0 , 0 0 0 / - (Rupees fifty thousand) with the Registry within four weeks from today, as fine. It may further be stated that Shri Chaur a si a is

present in Court pursuant to our earlier Order dated 4 th March, 2 0 0 8 . The said amount will be paid over by the Registry to the National Association for the Blind, Mumbai.

Before concluding we may mention that in matters after matters, particularly, involving revenue we find suppression of the relevant fact before the High Court as well as before this Court as to whether assessee has invoked statutory remedy. Apart from suppression of facts, even misleading statements are sometimes made in that regard.

We wish to clarify that in every matter, be it the assessee or the department, it would be necessary to state specifically in the Writ Petition/ Special Leave Petition whether proceedings are pending before the departmental authorities. Similarly, if

the assessee invokes statutory remedy pending the Writ Petition even then the assessee/department shall say so by way of a counter affidavit or additional affidavit pending such Writ Petition.

The object underlying this direction is that the High Court should be told as to whether the assessee has exhausted the statutory remedy under the respective Tax Laws as non-disclosure of such relevant facts may warra nt the dismiss al of the Writ Petition before the High Court.

Accordingly, above Order dated 4.3. 2 0 0 8 stands complied with.

On merits, Special Leave Petition to come for hearing on 1 5 th

July,

200 8.

.....J .  
[ S.H. KA P A D I A ]

New Delhi,  
April 2 2, 2 0 0 8

.....J  
[ B. SUD E R S H A N R E D D Y ]  
IN TH E SU P R E M E COUR T OF INDI A

CIVIL APPELLATE JURISDICTION

S.L.P. (CIVIL) NOS. 20714 - 20717 OF 2007

M/S KUBERTOBACCO PRODUCTS (P) LTD.  
(S)

...APPELLANT

VERSUS

COMM. OF VALUE ADDED TAX & ORS.  
RESPONDENT(S)

...

ORDER

By our Order dated 4<sup>th</sup> March, 2008, we directed the VAT Tribunal, New Delhi, to decide Tax Appeal Nos. 280-283 of 2006 on or before 15<sup>th</sup>

April, 2008 uninfluenced by the observations made by the High Court in the impugned judgment before us. The Tribunal vide Order dated 11<sup>th</sup> April, 2008 disposed of the said appeal Nos. 282 / AT VAT / 05 - 06. We have examined the Order passed by the Tribunal.

At the outset, it may be stated that the Tribunal has not examined the merits of the case which we expected Tribunal to do. In this case we wanted the Tribunal to examine the contention of the assessee as to whether Gutka is a chewing tobacco. This question required the Tribunal to examine the ingredients of the product and also relevant tests like marketability, common parlance tests etc. while deciding this factual aspect. Unfortunately, the Tribunal has not understood our Order dated 4<sup>th</sup> March, 2008. It may be

made clear that we did not expect the Tribunal to express its opinion on the validity of the Notification in question. It may be stated that basically before us the question is on the liability to tax applicable to Gutka. But, we wanted the Tribunal to give its finding on the question as to whether Gutka is a chewing tobacco or not. As stated, this aspect has not been examined. Therefore, we remit the matter to the Tribunal once again only to decide this question on merits uninfluenced by the observations of the High Court in the

impugned judgments.

Before concluding we wish to add that the Tribunal will examine and decide only those Tax Appeals wherein the assessee/ appellant before the Tribunal deposits fifty per cent of the assessed tax and furnishes bank guarantee of a nationalised bank for the balance amount within a period of three weeks from the date of the receipt of this Order.

The Tribunal is requested to decide the above question within a period of eight weeks from the date the appellant- assessee complies with the pre- deposit order.

To be listed on a non- miscellaneous day in July, 2 0 0 8 .

.....J .  
[ S.H. KA P A D I A ]

New Delhi,  
April 2 2, 2 0 0 8

.....J  
[ B. SUD E R S H A N R E D D Y ]