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ITEM NO.205

COURT NO.14

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6173/2009

(From the judgement and order dated 11/12/2007 in
137/2007 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

TA No.

COMMR.OF CENTRAL EXCISE,CUSTOMS RAJKOT

Petitioner(s)

VERSUS

M/S AMUL INDUSTRIES P.LTD.

Respondent(s)

(With appln(s) for c/delay in filing SLP,permission to file
additional documents) (FOR FINAL DISPOSAL)

Date: 03/12/2010 This Petition was called on for hearing
today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. R.P.Bhatt, Sr.Adv
Mr.K.Swami,Adv.
Ms.Binu Tamta,Adv.
Mr.B.K.Prasad,Adv.
Mrs Anil Katiyar,Adv.

For Respondent(s) Mr. S. Ganesh, Sr. Adv.
Mr. Tarun Gulati, Adv.
Mr.S.Mathews,Adv.
Mr.Neil Hildreth,Adv.

Mr. Praveen Kumar, Adv.

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

Delay condoned.

Leave granted.

The appeal is disposed of in terms of the signed order.

(KUSUM SYAL)
SR. P.A.

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10259 OF 2010
(Arising out of SLP(C) No. 6173 of 2009)

COMMR. OF CENTRAL EXCISE, CUSTOMS RAJKOT

...Appellant (s)

VERSUS

M/S. AMUL INDUSTRIES P. LTD.

...Respondent (s)

O R D E R

Delay condoned.

Leave granted.

We have gone through the impugned judgment and order dated 11.12.2007 passed by the High Court of Gujarat, which has been challenged before us.

Counsel appearing for the appellant has stated before us that apart from the fact that the impugned order is not sustainable on merit, he has an additional submission to make in the present case to the effect that the impugned judgment and order passed by the High Court is also devoid of any reason.

We have gone through the judgment of the High Court very carefully and on consideration thereof, we are fully satisfied that the same is devoid of any reason. There is no discussion on the issues involved. A bare perusal of the said order would indicate that there is no discussion at all on the issues involved and the entire appeal was disposed of only by recording the following:-

"Counsel for the appellant has failed to show us that for eligibility to avail credit of duty, it is necessary that the assessee should have its own plant and machinery. In absence of that, we see no merit in this appeal.

Appeal stands dismissed at admission stage."

By the aforesaid impugned judgment and order what the High

Court was called upon to do was to dispose of an appeal and necessarily therefore it was expected that the issues involved in the appeal should have been discussed threadbare and after such discussion findings were required to be recorded and thereafter only conclusions could have been recorded.

The High Court except for referring to the provisions of the Act and also quoting a portion of the order of the Tribunal did not venture upon any discussion at all and only by recording the aforesaid one sentence as its conclusions, disposed of the entire appeal. This in our considered opinion was not proper disposal of the appeal and according to us the High Court failed to discharge its responsibility of recording reasons before recording its conclusions while disposing of an appeal.

Consequently, we have no other option but to set aside the impugned judgment and order passed by the High Court and remit
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back the appeal to the High Court for fresh consideration in accordance with law. Needless to state that while doing so all the issues raised in the appeal should be considered and dealt with by giving reasons for its decision.

The High Court is also requested to dispose of the appeal as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of the order. It is also needless to mention that this Court while remitting back the matter to the High Court has expressed no opinion, nor recorded any views on the merits of the disputes between the parties.

.....J
(DR.MUKUNDAKAM SHARMA)

.....J

(ANIL R.DAVE)

NEW DELHI
DECEMBER 3, 2010