

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/TAX APPEAL NO. 322 of 2023

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M/S. ULTRATECH NATHDWARA CEMENT LIMITED (FORMERLY KNOWN  
AS BINANI CEMENT)

Versus

COMMISSIONER OF CUSTOMS (APPEALS)

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Appearance:

MR GAURAV MATHUR WITH MR YASHRAJ CHAMPAWAT FOR SINGHI &  
CO(2725) for the Appellant(s) No. 1  
for the Opponent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 07/06/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. Heard learned advocate Mr. Gaurav Mathur assisted by learned advocate Mr.Yashraj Champawat for Singhi & Co. for the petitioner.

2. The appeal is admitted for considering the following substantial questions of law:

"(a) Whether it was open to the learned Tribunal to have disposed of the Miscellaneous Application and the appeal as having become infructuous instead of allowing the same?

(b) Whether the learned Tribunal has not erred in failing to appreciate that by virtue of approval of a resolution plan, the terms thereof will bind the Respondent Department under Section 31 of the Insolvency and Bankruptcy Code, 2016?

(c) Whether the learned Tribunal was not required to have allowed the Miscellaneous Application and held that the demand for Differential Duty stands extinguished by virtue of the terms of the Resolution Plan of Ultratech Cement Ltd. for Binani?

(d) Whether it was open to the learned Tribunal to dispose the appeal as infructuous for want of directions from the Department of Central Board of Indirect Taxes & Customs?

(e) Whether the learned Tribunal has erred in holding that in absence of any explicit provision under the Customs/Central Excise Act, the learned Tribunal cannot decide whether the adjudged amount can be recovered by the Department or otherwise, in spite of fact that Insolvency and Bankruptcy Code have overriding effect over all the other Acts by virtue of Section 238 of IBC?"

It is open for the appellant to file separate application for stay in case of any difficulty.

(VIPUL M. PANCHOLI, J)

(D. M. DESAI, J)

LAVKUMAR J JANI