

(2001) 12 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No's. 3249, 5746, 5747 and 19884 of 1999

Beauty Dyers

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZQ
Central Excises and Salt Act, 1944 — Section 37, 3A

Citation : (2002) ECR 291 : (2004) 163 ELT 28

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Arvind P. Datar for C. Saravanan, for the Appellant; V.T. Gopalan, Addl. Solicitor General, for K. Veeraragavan, ACGSC, for the Respondent

Judgement

K. Govindarajan, J.—The writ petition in W.P. No. 19884/1999 is filed seeking to issue a writ of declaration declaring Rule 96ZQ of

Central Excise Rules, 1944 issued by the 1st respondent as ultra vires Section 34 and 37 of the Central Excise Act, 1944 as it offends Articles 14,

19(1)(g) and 265 of the Constitution of India insofar as the petitioner is concerned.

2. The members of the petitioner-association in W.P. No. 19884/99 are engaged in the process of cotton fabrics and man-made fabrics falling

under Chapter 52, 54 and 55 of the Central Excise Tariff Act, 1985. The Central Government introduced a scheme enacting Section 34 of the

Central Excise Act, 1944, to levy Excise duty on production capacity of the industry.

3. Exercising powers conferred under Sub-section (3) of Section 34 read with Section 37 of the Central Excise Act, 1944, the Central

Government made certain amendments to the Central Excise Rules, 1944. While doing such exercise, the Central Government inserted Rule 96ZQ

under which the liability of the independent processor of textile fabrics to pay interest and penalty if the amount of duty on the specified date is

paid. Under Sub-rule (5) to Rule 96ZQ it is stated as follows : -

(5) If an independent processor fails to pay the amount of duty on the date specified in Sub-rule (3), is liable to pay.

(i) the outstanding amount of duty along with interest at the rate of 36% per annum calculated for the outstanding period on the outstanding amount;

and

(ii) the penalty equal to an amount of duty outstanding from him at the end of the such month or Rs. 5,000/- whichever is greater.

4. The petitioner-association is aggrieved by the second portion of the said Rule, namely, the levy of penalty equal to the amount of duty

outstanding from him at the end of such month of Rs. 5,000/- which ever is greater. According to the learned Senior Counsel appearing for the

petitioner such a maximum levy without considering reason for the delay cannot be sustained as, such a levy would be confiscatory in nature and so

it is ultra vires.

5. While dealing with similar provision, the Apex Court in the decision in State of Madhya Pradesh and others Vs. Bharat Heavy Electricals, has

held as follows :-

12. It is not necessary for us to decide whether the provision for levy of penalty equal to ten times the amount of entry tax would be confiscatory

and, therefore, ultra vires since Mr. Singh, in fairness, submitted that the State treats it as the maximum limit and not fixed amount of penalty leaving

no discretion for imposition of lesser penalty. This stand of the State itself concedes that the assessing authorities are not bound to levy fixed

penalty equal to ten times the amount of entry tax whenever the provisions of Section 7(5) are attracted. Depending upon the facts of each case the

assessing authority has to decide as to what would be the reasonable amount of penalty to be imposed, the maximum being ten times the amount of

the entry tax. So construed, Sub-section (5) of Section 7 cannot be regarded as confiscatory. Consequently, this also cannot be a ground for

holding Section 7(5) to be ultra vires.

13. From the aforesaid it follows that Section 7(5) has to be construed to mean that the presumption contained therein is rebuttable and secondly

the penalty of ten times the amount of entry tax stipulated therein is only the maximum amount which could be levied and the assessing authority has

the discretion to levy lesser amount, depending upon the facts and circumstances of each case. Construing Section 7(5) in this manner the decision of the High Court that Section 7(5) is ultra vires cannot be sustained.

6. The petitioners have filed writ petitions in W.P. Nos. 3249, 5746 and 5747 of 1999 aggrieved by the Rules enabling the authorities to levy 36%

on the outstanding amount of duty per annum for the outstanding period. Though the petitioners in the above Writ Petitions have challenged the

said portion of the Rule on the basis that such a levy of interest is unreasonable, I am not able to accept the same for want of basis for such

arguments. Further, the Central Government have fixed such a rate of interest only if the amount is not paid in time. Moreover, such an occasion

did not arise for the petitioners to pay the interest. The petitioners have come forward with the writ petitions only on the basis that the authorities

have informed that if the amount is not paid they will levy charges as per the Rule impugned in these writ petitions.

7. While dealing with the levy of penal interest, the Apex Court in the decision in Calcutta Jute Manufacturing Co. and another Vs. Commercial

Tax Officer and others, : the Apex Court has observed as follows :-

The tax amount which they should have paid as per Section 6B remained with the appellant during the entire period and they would have earned

good profit with that amount. The State to which the tax amount should necessarily have gone, was not able to utilize it for public purposes. When

appellants had the advantage of keeping the amount of tax without paying it to the State exchequer only because the High Court granted orders

restraining the State from recovering that amount from the assessee, no act of the Court shall cause prejudice to any party, The pristine doctrine

couched in the maxim, "actus curiae reminem gravabit" has ever remained a salutary and guiding principle.

So the challenge of the petitioners regarding the levy of interest at 36% under the impugned Rule cannot be sustained.

8. But, as held by the Apex Court in State of Madhya Pradesh and others Vs.

Bharat Heavy Electricals, , the penalty mentioned in the abovesaid

Rule should be taken as only the maximum amount which would be levied and the assessing authority has discretion even to levy lesser amount

depending upon the facts and circumstances of each case.

9. With the above observations, these writ petitions are disposed of accordingly. No costs. Connected W.M.Ps. are closed.