**(1986) 11 BOM CK 0013**

**In the Bombay High Court**

**Case No :** Notice of Motion No. 2717 of 1986 In Appeal No. 1032 of 1986 In Writ Petition No. 2743 of 1986

Dewas Tools Pvt. Ltd. and another APPELLANT

Vs

Union of India and others RESPONDENT

**Date of Decision :** 28-11-1986

**Acts Referred:**

**Citation :** (1987) 11 ECR 80 : (1987) 27 ELT 646

**Hon'ble Judges :** M.H. Kania, C.J;H. Suresh, J

**Bench :** Division Bench

## Judgement

Kania, C.J.—By consent the appeal placed on Board for hearing and final disposal.

2. Same appearances.

3. This appeal is directed against an order of a learned Single Judge summarily dismissing the Writ Petition No. 2943 of 1986 on the ground that there was no reason why the petitioners (appellants) should not have availed of the alternative remedy. In our view, this order is not sustainable. The admitted facts show that the appellants imported a horizontal high speed ban saw for allow steel with cutting speed upto 120 metres per minute. According to the appellants, this item was covered under the O.G.L. by reason of Entry 94 of Appendix I Part ''B'' of the Import Policy for April, 1985 to March, 1988. The said Entry runs as follows :

"Horizontal High Speed Ban Saw for alloy steel with cutting speed (120 metres per minute or more)".

On a plain reading of this entry it appears that a horizontal high speed ban saw for alloy steel with cutting speed upto a maximum of 120 metres per minute cannot be excluded from the purview of this entry as sought by respondents merely on the basis that the entry covers only saws of the said type with cutting speeds of 120 metres and more. To do so would be to interpret the word "or" in the said Entry 94 as "and" and there is no warrant for this. In this connection, it is significant that, as can be seen from Exhibit ''B'' to the affidavit in rejoinder of appellant No. 2, a number of reputed manufacturers manufacture saws of the aforesaid type with cutting speeds far exceeding 120 per minute and with minimum cutting speeds which are very much below 120 and it would be absurd to argue that these types of saws would not be covered under Entry 94. In fact, that contention is not even sought to be urged.

4. The only other contention taken up by the respondents is on the basis of a bald assertion in the affidavit in reply filed by the Assistant Collector of Customs that experience show that a cutting saw with a maximum cutting speed of 120 feet per minute will never give actual performance upto that speed. The Assistant Collector has not chosen to say that he has observed any cutting saw in actual operation and hence not much importance can be given to a statement or generalisation of this type. It appears that the petitioner have not only a fair case but a case with an excellent chance of success and there is no reason why the petitioners should be compelled to go to the appellate authority.

5. In the result, the appeal is allowed. As far as the order of summary dismissal is concerned, the same is set aside. Rule to issue in terms of prayers (a) to (c) of the petition returnable in the normal course. As far as interim relief is concerned, in view of what we have stated above, we grant interim relief in terms of prayer (a) of the Notice of Motion, making it clear that the same will continue till the final disposal of the writ petition or further orders whichever is earlier on condition that the appellants will furnish within four weeks from today a Bank guarantee to the satisfaction of the Prothonotary and Senior Master of an amount equivalent to 33% of the difference in duty and a personal bond for 67% of the difference, but without taking into account any fine which might have been levied in lieu of confiscation, because it is common ground that the order of confiscation was not justified. The guarantee to remain operative for a period of six months from today. In the meantime, the appellants undertake that they will install the machines in their factory and will not dispose of, encumber or create any third party interest in the same. The respondents will be at liberty to take a test of the actual maximum operational speed of the said machines, after they are installed by the appellants; and, in case the maximum speed is found to be less than 120 metres per minute, it will be open to the respondents to apply for vacating the interim order or varying the same. If the respondents do not test the machines at all, within the said period of six months, or it is found that the maximum speed thereof is upto 120 metres per minute, the appellants will be at liberty to apply for cancellation of the bank guarantee. The appellant will, however, the given a personal bond for 33% of the entire difference in duty. The appellants undertake that within one month of clearance, they will install the machines in their factory.

6. The appeal disposed of as aforesaid. No order as to costs.

7. The respondents waive service of the rule nisi.

 