

**(1991) 02 MAD CK 0037**

**In the Madras High Court**

**Case No :** Writ Petition No's. 18533, 18534 of 1990 and 40 of 1991

Film Center

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 15-02-1991

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 37B

**Citation :** (1991) 54 ELT 80

**Hon'ble Judges :** Kanakaraj, J

**Bench :** Single Bench

**Advocate :** Shri Arvind P. Dattar and S. Subramaniam, for the Appellant; Shri K. Jayachandran, A.C.G.S.C., for the Respondent

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## **Judgement**

Kanakaraj, J.

1. These writ petitions are taken up for final disposal by consent.

2. W.P. 18534 of 1990 : The challenge is to the notice issued by the Superintendent of Central Excise on 6-11-1990 directing the petitioner to file

a classification list separately for the hypo-solution under the Heading 37.07 of the Schedule to the Central Excise Taxation Act. This direction is

apparently based on a circular of the Central Board, dated 31-8-1990 purported to have been issued u/s 37B of the Central Excises and Salt Act,

1944.

3. W.P. 18533 of 1990 is to declare the said circular as ultra vires of the Constitution of India. W.P. 40 of 1991 is to quash the very same circular

by another petitioner. In these writ petitions, no doubt, there is no challenge to any further communication from the Superintendent of Central

Excise.

4. The point argued in all these writ petitions is that by issuing the circular, dated 31-8-1990, the Central Board has practically tied the hands of the

assessing authorities in the matter of making assessments. According to the petitioners, whatever objections they may take before the assessing

authorities. It will be a futile exercise because the assessing authorities will be bound by the said circular. In Paragraph 3 of the said circular, the

Central Board says that the conversion of hypo into hypo-solution would amount to manufacture since hypo-solution is different from hypo.

Therefore, the circular further says, hypo-bath or hypo-solution would properly be classified as a separate manufacture/product under Heading

37.07 of the Schedule. In Paragraph 6 of the circular, there is a direction that all pending assessments should be finalised on the above basis. I find

that a similar circular and a follow-up letter by the Superintendent of Central Excise came up for consideration earlier and I had held that circulars

cannot be challenged in writ proceedings and the matter has to be adjudicated by the authorities and the Superintendent of Central Excise had only

called for particulars from the assessee. That judgment was taken on appeal to W.A. Nos. 58 to 61 of 1991 (Zinc Products v. Union of India -

Judgment dated 11-2-1991) and a Division Bench of this Court has now categorically laid down the law by saying that the circulars as such cannot

be challenged, but the subsequent communication of the Supdt. of Central Excise is illegal and only a regular show cause notice can be issued to

the assessees. The following observation may be quoted :

It is for the authorities concerned to issue the requisite show cause to the appellants if there is a warrant for the same and if that event happens, it

is for the appellants to express their stand and if they are to face any adverse proceedings, liberty is theirs to seek the due process of law, as stated

above.

Following the said judgment of the Division Bench, I allow W.P. No. 18534 of 1990 and quash the letter of the Superintendent of Central Excise

dated 6-11-1990. So far as W.P. Nos. 18533/90 and 40/91 are concerned, they relate to the challenge of the circular and following the judgment

of the Division Bench, the challenge has to fail with the following observations : I make it clear that the proviso to Section 37B of the Act should be

strictly followed by the assessing authorities. That proviso makes it very clear

that no circular or order made u/s 37B shall affect a particular assessment. That is precisely what the Division Bench also has pointed out. Therefore, I have to make it clear that the assessing authorities before passing final orders should ignore Paragraph 6 of the impugned circular. I, therefore, allow W.P. Nos. 18533 of 1990 and 40 of 1991 partly to the extent that Paragraph 6 of the impugned circular shall stand quashed. In other respects, the authorities shall take note of the proviso to Section 37B before passing final orders. There will be no order as to costs in these writ petitions.