

(2014) 12 MAD CK 0098

In the Madras High Court

Case No : Writ Petition No. 15751 of 2014 and MP Nos. 1 to 3 of 2014

Float Glass Centre

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Advocates Act, 1961 — Section 8
Central Excises and Salt Act, 1944 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 139(2), 148
Companies Act, 1956 — Section 18, 18(4)
Constitution of India, 1950 — Article 300-A
Customs Act, 1962 — Section 110(1), 110(2), 115, 124, 124(a)
Customs Tariff Act, 1975 — Section 9A, 9A, 9A(1), 9A(5), 9A(5)
Income Tax Act, 1961 — Section 139(2), 271(1)(a)

Citation : (2015) 318 ELT 116

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : R. Parthasarathy, Advocates for the Appellant; G. Rajagopalan, ASG for N. Ramesh, CGSC, Vijay Narayan, SC and M.V. Swaroop, Advocates for the Respondent

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the above writ petition challenging a Notification for extension of time to complete an investigation initiated by the Designated Authority for the imposition of anti-dumping duty.

2. Heard Mr. R. Parthasarathy, learned counsel for the petitioner, Mr. G. Rajagopalan, learned Additional Solicitor General appearing for the respondents 1 and 2 and Mr. Vijay Narayan, learned Senior Counsel appearing for the fifth respondent.

3. The petitioner is engaged in the business of trading clear float glass in India, after importing the same from Saudi Arabia on regular basis through Chennai Port. On a complaint jointly filed by the respondents 3 to 5, who are the domestic manufacturers of the product, the Designated Authority under the

Customs Tariff Act, 1975, initiated an antidumping investigation on 11.4.2013. The period for completion of the investigation in terms of Rule 17(1) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, expired on 10.4.2014. Despite the fact the Designated Authority sought extension of time under the first proviso to Rule 17(1), the Central Government passed an order only on 12.5.2014 granting extension of time upto 10.7.2014. Since the investigation could not be completed even within 10.7.2014, another order of extension was passed on 10.7.2014 granting time upto 10.10.2014.

4. In the meantime, the petitioner came to know about the first extension granted on 12.5.2014, by a communication issued by the second respondent on 5.6.2014. Thereafter, contending that no extension of time can be granted after the expiry of the initial period, the petitioner has come up with the above writ petition.

5. The only issue that arises for consideration in this writ petition is as to whether an extension of time could be granted under the first proviso to Rule 17(1), after the expiry of the initial period of one year or not.

6. The same question came up for consideration before me in a batch of writ petitions W.P. Nos. 11683 of 2014 etc. By a separate judgment delivered today, I have rejected the said contention. Paragraphs 35 to 65 of the said decision, dealing with the very same contention, are re-produced, for the benefit of this writ petitioner, as follows:

35. As I have already indicated, it is only Section 9-A(1) of the Customs Tariff Act, 1975 that empowers the Central Government to impose an anti-dumping duty. The requirement to hold an enquiry, before imposing a duty under Sub-section (1), is provided by Sub-section (2). A careful look at all the eight Sub-sections of Section 9A would show that the requirement to hold an enquiry is spelt out in Sub-section (1-A), Subsection (2), Sub-section (6) and Sub-section (6-A). The nature of the enquiry contemplated under each of these Sub-sections, differ from one another. This can be best appreciated by having a close look at Section 9-A as it now stands, which reads as follows:

9-A. Anti-dumping duty on dumped articles

(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation: For the purposes of this section,-

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means-

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

PROVIDED that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is not comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation

of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined:-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under subsection (2), shall not apply to articles imported by a hundred per cent export-oriented undertaking unless,-

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation: For the purposes of this sub-section, the expression "hundred per cent export-oriented undertaking" shall have the meaning assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that-

(i) there is a history of dumping which caused inquiry or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under subsection (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked

earlier, cease to have effect on the expiry of five years from the date of such imposition:

PROVIDED that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

PROVIDED FURTHER that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any antidumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records, concerning normal value and export price maintained, and information provided, by such exporter or producer.

PROVIDED that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

36. What is contemplated in Sub-section (1-A), is an enquiry to find out whether there was circumvention of anti-dumping duty imposed under Sub-section (1), either by altering the description or the composition of the article, or by the import of such article in an unassembled or disassembled form. The nature of the enquiry contemplated under Subsection (2) is to arrive at the provisional estimate of the normal value and margin, pending final determination. What is

contemplated in Sub-sections (6) and (6-A), is an enquiry regarding the margin of dumping.

37. Since the nature of the enquiry contemplated under different Sub-sections of Section 9-A are different, no time limit is prescribed by the Act, either for the initiation or for the conclusion of an enquiry, under any of the Sub-sections. The only time limit stipulated in Section 9A, is in Sub-section (5) and the two provisos under Sub-section (5) of Section 9A. Though the first proviso to Sub-section (5) speaks about extension beyond the period of five years, which has come to be known as "sunset review", the second proviso steers clear any air of suspicion, by holding that once a review is initiated before the expiry of five years, the anti-dumping duty will continue to remain in force for a further period of one more year, pending the outcome of the review.

38. Keeping the above scheme of Section 9A in mind, if we come to the Rules, it could be seen that the Rules were issued in exercise of the powers conferred by Sub-section (6) of Section 9A read with Sub-section (2) of Section 9-B. It is only in the Rules that a time limit is prescribed for the determination of two things, namely (a) whether or not the article under investigation is being dumped in India, and (b) the amount of duty that is required to be levied for the purpose of removing the injury, where applicable to the domestic industry.

39. In other words, the Parent Act or the superior legislation does not prescribe any time limit for the conclusion of an enquiry. It is only the subordinate legislation, namely the Rules, that stipulates a time limit for the completion of the investigation and for the recording of the final findings. In this background, let me look at the ratio laid down in the decisions relied upon by the learned senior counsel for the petitioner.

40. In *Tarsem Kumar Vs. Collector of Central Excise, Chandigarh*, , certain articles and a car were seized by the Customs Officials and a seizure was ordered under Section 115. But, a notice under Section 124(a) of the Customs Act was not issued on or before the expiry of six months. An order granting extension of time was passed after the expiry of the original period. The Punjab and Haryana High Court held that once the period of six months expires without being extended before its expiry and a break occurs in the continuity of lawful possession of the Customs Authorities, the right of the owner of the seized goods to claim their return accrues at once and that it cannot be defeated by extending the time after the expiry of the period. The Court held that the word "extension" signifies that what is to be extended, should be in existence on the date of extension. The Court also held that once the period stipulated expires, a vested right accrues to the party and that the said vested right cannot be taken away by the extension of time granted after the expiry.

41. But, the decision in *Tarsem Kumar*, may not be of any assistance to the petitioner, in view of the fact that under Section 110(1) of the Customs Act read with Section 124, a liability is imposed upon the Customs Officer to return the

article that was seized, to the person from whom it was seized. In other words, the immediate consequence of the expiry of the period of six months is indicated in the statutory provision itself and hence, the Punjab and Haryana High Court interpreted the said provision as aforesaid.

42. In *National Industrial Corporation Ltd. Vs. Registrar of Companies*, , the Punjab High Court was concerned with a challenge to the order of the Registrar of Companies refusing to accept the change of address of the registered office of the company, on the ground that the period stipulated under Section 18 of the Companies Act, 1956 had expired. The Court pointed out that the word "extension" imports continuance of an existing thing. But, with great respect, the Punjab High Court did not interpret Section 18(4) of the Companies Act, to its true letter and spirit.

43. In *Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another*, , the Supreme Court was concerned with an appeal arising out of a suit for ejectment, possession and mesne profits. The suit for ejectment was filed on the ground that the option for extension of lease was not exercised by the lessee before the expiry of the period of lease. When the matter went to the Supreme Court, one of the questions that was taken up for consideration was as to whether the lessees had acquired the status of what was known as "Thika Tenants" with reference to an ordinance known as Calcutta Thika Tenancy Ordinance. The Ordinance prescribed a period of not less than 12 years, as the duration of the lease, for a person to claim the benefit of the status. Therefore, the question that arose was as to whether the extension sought after the expiry of the period of lease, would enable them to claim that status or not. It is in that context the Supreme Court drew a distinction between the words "extension" and "renewal". It was stated in paragraph 14 as follows :

"It is pertinent to note that the word used is "extension" and not "renewal". To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between "extension" and "renewal" is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word "extension" when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr. A.K. Sen rightly pointed out the schedule specifically mentioned the lease as "for a stipulated period of 20 years". As these words are very clear, there is very little for the court to do about it."

44. But, the ratio laid down in this case also may not be of any assistance to the

petitioner. This is in view of the fact that upon the expiry of the prescribed period, a statutory right was conferred upon the party and hence, the Court felt that nothing could be done to divest the party of such a right, post facto.

45. In *Kumho Petrochemicals Co. Ltd. v. Union of India* [W.P. (C). No. 1851 of 2014, C.M. Nos. 3866 and 3877 of 2014 etc. cases dated 11.7.2014], a Division Bench of the Delhi High Court was concerned with the validity of the Central Government's decision to initiate anti-dumping duty extension proceedings under Section 9A of the Customs Tariff Act, 1975. The challenge to the Notification was made on the ground that an extension ought to have been notified in the Official Gazette and published before the expiry of the five year period from the date of original Notification, so as to enable the Government to invoke the sunset review clause. The contention was upheld by the Division Bench on the ground that but for the Second Proviso to Section 9A(5), there can be no legal extraction during the sunset review.

46. But, the provisos to Sub-section (5) of Section 9A stand on a completely different footing than the rule, with which we are now concerned. Sub-Section (5) of Section 9A provided for an automatic expiry of the anti-dumping duty upon completion of the period of five years from the date of imposition. The First Proviso to Sub-Section (5), which enables the Central Government to extend the period of imposition, made it clear that the extended period would commence only from the date of the order of extension. An exception was carved out to this rule under the Second Proviso, which enables the anti-dumping duty to continue for a period not exceeding one year, if a review, initiated before the expiry of the initial period of five years could not be completed before the expiry. Therefore, the interpretation given by the Division Bench of the Delhi High Court to the word "extension" appearing in the provisos to Sub-Section (5) of Section 9A cannot be blindly applied to cases of this nature. As I have pointed out earlier, the Division Bench of the Delhi High Court was concerned with the prescription contained in the Parent Act itself and not the one contained in the subordinate legislation.

47. In *Brooke v. William Clarke* [(1818) 1 Barnewall and Alderson 396], the Court was concerned with the interpretation of a statutory provision, which entitled the authors of works of literature to an extension of their copyright in the literature. It is in that connection the Court held that the word "extension" is a term properly used for the purpose of enlarging or giving further duration to any existing right, but does not import the re-vesting of an expired right. The Court pointed out that the re-vesting of an expired right would not be an extension, but only to be a recreation. Lord Ellenborough, C.J., pointed out that the word "extension" imports the continuance of an existing thing and that a great public injury would be effected by calling back a right that by lapse of time had become extinct. But, the said decision is also of no use to the petitioner, since the word "extension" occurred in the 8th Section, which was connected with the 9th Section. Moreover, certain rights such as copyrights are proprietary in nature and

once the products, in respect of which, such rights are enjoyed, come into public domain, the clock cannot be put back.

48. In *Ambali Karthikeyan v. Collector of Customs* [2000 (125) ELT 50 (Ker.)], the Kerala High Court was concerned with the interpretation of Section 110(2) of the Customs Act, 1962, under which, the goods, which are seized, are liable to be returned to the person, from whom they are seized, if no notice is given under Section 124(a). The proviso to Section 110(2) enabled the Collector of Customs to extend the period of six months by another period not exceeding six months. It is in that context that the Kerala High Court held that the extension contemplated under the proviso to Section 110(2) should have been ordered before the expiry of the original period.

49. In *Babu Verghese v. Bar Council of Kerala* [(1999) 3 SCC 422], the Supreme Court was concerned with a case arising out of very interesting and peculiar circumstances. The Bar Council of Kerala, which was constituted on 28.01.1992 for a term of five years, approached the Bar Council of India for extension of its term by six months, to enable it to hold elections. Since the term was to expire on 27.01.1997, the State Bar Council moved the Bar Council of India on 31.12.1996 itself. But, unfortunately, a resolution was passed by the Bar Council of India only on 08.02.1997. During the extended term of office, elections were held and a new State Bar Council for Kerala was constituted. The elections were challenged on various grounds, one of which was that the term of the elected Council having expired on 27.01.1997, the State Council ceased to have any jurisdiction to conduct the elections. The High Court rejected the challenge on the ground that the term of the Kerala Bar Council should be treated to have been extended by the Bar Council of India, in view of the resolution passed on 08.02.1997. When the matter landed up in the Supreme Court, the Supreme Court considered the scope of the expression "extend" appearing in the proviso to Section 8 of the Advocates Act, 1961 and held in paragraph 12 that extension ought to have been granted before the expiry of the original term, so as to maintain continuity of office.

50. But, a careful look at the discussion in paragraphs 17 to 30 of the decision in *Babu Verghese* would show that the focal point of debate before the Supreme Court was about the validity of the resolution passed by the Bar Council of India by a process of circulation, as provided in Rule 6 of the Bar Council of India Rules. On facts, the Supreme Court found that the resolution passed by circulation did not speak about confirmation of an action taken by the Bar Council. Eventually, the Supreme Court held in paragraph 30 that all the requirements of Rule 6 were not satisfied. Therefore, the focus in *Babu Verghese* was actually not on extension and what was indicated in paragraph 12 of the decision was only by way of obiter.

51. In *Kolammal (died) and Dr. A. Nagarajan Vs. The State of Tamil Nadu and The Chairman, Tamil Nadu State Housing Board*, , a Division Bench of this Court held that an award passed beyond the prescribed period, without the prior

approval of the Government or the prescribed authority, vitiated the entire acquisition proceedings. No inspiration can be drawn even from this case, since valuable rights to immovable property, protected by Article 300-A of the Constitution, were involved in the case.

52. I agree with Mr. P.S. Raman, learned senior counsel for the petitioner that the Customs Tariff Act, 1975, is both an economic as well as fiscal legislation. The primary object of this legislation is to levy additional duties upon articles of import. Sections 9-A, 9-B and 9-C were inserted, with a view to neutralise the effect of articles of foreign origin being brought into India at less than their normal value. The only prescription with regard to any time limit, contemplated by the Act, is to be found in Sub-section (5) of Section 9-A. No time limit is prescribed therein either for the initiation of an investigation or for the recording of final findings. As a matter of fact, any delay in the recording of final findings, actually enures to the benefit of the person on whom anti-dumping duty is levied, since the levy comes into effect only from the date of issue of the notification. If we keep this fundamental aspect in mind, it will be clear that the time limit of one year prescribed under Rule 17(1) and the procedure prescribed in the first proviso thereto is not intended to confer any benefit upon the importer in India or the exporter from outside the territory of India.

53. No right is created or gets vested in the importer, upon the expiry of the period stipulated in Rule 17(1). Similarly, no right which is vested in the importer is taken away by the extension of the period for conclusion of investigation. If a right is created in the importer, upon the expiry of the period of one year stipulated in Rule 17(1), then the extension of the period granted post facto, may infringe upon such a right. An inconclusive investigation, will never confer any right upon the person against whom the investigation is made. It will be a different story if the investigation is concluded and a finding in favour of the importer is recorded, since in such cases a right accrues.

54. If we analyse carefully, all the decisions relied upon by the learned senior counsel for the petitioner, it will be clear that in all those cases, either a right accrued in favour of the person concerned, upon the expiry of the period stipulated, or the extension granted post facto, had the effect of taking away a right already vested in him.

55. But, in the case on hand, no right got created or accrued in favour of the petitioner, upon the expiry of either the original period, namely 09.12.2013, or upon the expiry of the period of first extension, namely 09.3.2014. This is also not a case where the retroactive extension (to borrow the very same expression used by the petitioner) ordered on 30.4.2014, sought to take away any vested right created in favour of the petitioner during the period from 09.3.2014 to 30.4.2014. If an order of extension does not either take away any vested right or extinguish any right sought to be created by efflux of time, such an extension cannot be assailed, on the sole ground that it was not granted, during the life of the thing itself. If the initiation of any investigation does not infringe upon any

right, the continuance of the same also cannot. As a corollary, the abrupt termination of an investigation would not create any right that may get defeated upon the resumption of the investigation.

56. Generally, time limits prescribed, especially in subordinate legislation, can be taken only to be directory and not mandatory. Otherwise, a subordinate legislation may even destroy the Parent legislation, by default.

57. In *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, a Constitution Bench of the Supreme Court held that the question whether a particular provision is mandatory or directory, cannot be resolved by laying down any general rule and that it would depend upon the facts of each case. The Court has to consider the purpose for which the provision had been made, its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting therefrom when the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject as well as other considerations which may arise on the facts of a particular case, including the language of the provision. The said decision of the Constitution Bench was followed in *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*. While doing so, the Supreme Court pointed out therein that our laws on procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their back, that proceedings that affect their lives and properties should not continue in their absence and that they should not be precluded from participating in them.

58. In *Sharif-ud-din Vs. Abdul Gani Lone*, the Supreme Court indicated that the question whether a provision of law is mandatory or not depends upon its language, the context in which it is enacted and its object. The Court made an important observation, which will resolve the problem for us and hence it is extracted as follows:-

"In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one."

59. Therefore, it is clear that if the condition imposed by the provision of law to do a certain thing within a time frame is upon an authority (such as the Designated Authority in this case) and the consequences of the failure of that authority to comply with the condition, is to fall upon someone else (such as the persons in the domestic market) who have no control over the authority which is

to perform the duty, then the provision of law cannot be construed as mandatory, but only directory.

60. In *Commissioner of Income Tax, Jullundur Vs. Ajanta Electricals, Punjab*, the Supreme Court was concerned with a case where notices under Section 139(2) of the Income Tax Act, 1969 were served on a partnership firm and its partners in respect of the assessment year 1966-67, calling upon them to furnish returns of their income within 30 days from the date of service of notice. All the partners submitted their returns. At the time of completing the assessment, the Income Tax Officer also initiated proceedings under Section 271(1)(a) for levy of penalty, on the ground that there was delay in filing the returns without reasonable cause. But, the assessee contended that they had made applications for extension of time. The Income Tax Officer rejected the contention on the ground that the application for extension of time ought to have been made before the expiry of the due date for the filing of returns. He also levied penalty. The Appellate Authority set aside the order of penalty, forcing the revenue to prefer appeals to the Tribunal. The Tribunal restored the orders of the Income Tax Officer and a reference was made to the High Court. Having regard to the proviso to Section 139(2), which did not contain any limitation to the effect that an application for extension should be filed within the stipulated time, the High Court held that an application for extension of time can be made even after the expiry of that period. The view taken by the High Court in the tax case reference was upheld by the Supreme Court in *Ajanta Electricals*. While doing so, the Supreme Court pointed out that there is no scope for interpreting the word "extend" appearing in the proviso to Section 139(2) to mean that at the time of making the application, the time originally allowed should not have expired. To come to the said conclusion in paragraph 10 of its decision, the Supreme Court drew analogy from Section 148 of the Code of Civil Procedure. Therefore, it is clear that where the word "extend" or "extension" is used in a statute, without any fetters being placed on the manner in which the power to extend is to be exercised, it cannot be contended that such extension ought to be granted before the expiry of the original term.

61. However, Mr. P.S. Raman, learned senior counsel for the petitioner attempted to distinguish the decision in *Ajanta Electricals*, by contending that cases where the statute prescribes a time limit and also confers power upon some authority to extend the time, would stand on a different footing than cases where an authority is conferred with a power both for fixation of time and for extension of time. According to the learned senior counsel, a power conferred upon an authority to fix a time limit for doing something would include a power to extend the same also. In such cases, according to the learned senior counsel, there are no fetters upon the manner of exercise of such a power.

62. But, a careful look at Section 139(2) of the Income Tax Act, 1961, would show that the period of 30 days within which a return of income should be filed upon service of notice by the Assessing Officer, is fixed by the statute itself. The

proviso to Sub-section (2) confers power upon the Assessing Officer to extend the date for furnishing of the return. In other words, Ajanta Electricals is also a case where the statute prescribes a time limit within which an act is to be performed and the Assessing Officer is conferred with a power to grant extension of time. Therefore, the contention of Mr. P.S. Raman, learned senior counsel for the petitioner may hold good in respect of the prescription contained in Section 148 of the Code of Civil Procedure and the decisions arising out of the same. It may not be wholly correct insofar as cases arising under Section 139(2) of the Income Tax Act are concerned.

63. Another simple test to determine whether a time limit stipulated in a rule is directory or mandatory, is to see whether there is any indication in the Rule itself about the consequences of non-compliance with the same. If a statutory provision contains a prescription and also stipulates the consequences of non-compliance with the condition, it would normally be taken to be mandatory. If the consequences of non-compliance are not indicated, then, the provision has to be seen only as directory.

64. This test can be applied as a litmus test in the very case on hand. Section 9-A(5) prescribes a period of five years as the period of validity of anti-dumping duty imposed under this provision. The first proviso to Sub-section (5) which enables the Central Government to extend the period of validity, makes it clear that such extension would commence only from the date of the order of extension. If the expression "extension" used in the first proviso to Sub-section (5) of Section 9-A is to be given the very same meaning as the petitioner wants me to give, there is no necessity for the Parliament to state in the last line of the first proviso that "such further period shall commence from the date of the order of such extension". If an extension, to be valid, has to be ordered before the expiry of the original period, the commencement of the extended period, will be the day following the date of expiry of the first period. Therefore, if the word "extension" had been used in the provisos to Sub-section (5) of Section 9A, in the sense as projected by the petitioner, the last line of the first proviso would become otiose. The very fact that the last line of the first proviso to Sub-section (5) of Section 9A speaks about the date of commencement of the order of extension, shows that the Parliament understood and used the expression "extension", in a manner diametrically opposite to what is pleaded before me by the petitioner.

65. If the Parent legislation uses a word or expression, to mean something, the subordinate legislation cannot be taken to use the very same word or expression, to mean a different thing. The word "extension" used in the first proviso to Section 9-A(5), gives an indication that if an order of extension is passed after sunset review, the extended period will commence only from the date of the order of extension. By specifically providing for a situation, under the second proviso, where a sunset review commences "before the expiry of the period of five years", but fails to conclude before the said date, the interpretation to be

given to the word extension is made as clear as a crystal. Therefore, I am of the view, on the first issue that the extension granted under the first proviso to Rule 17(1), after the expiry of the original period, was perfectly valid.

7. The same reasonings will hold good, for the present case also. Therefore, the only contention raised in this writ petition is also liable to be rejected and the writ petition liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected M.Ps. are also dismissed.