
(1987) 01 MAD CK 0036
In the Madras High Court

George Thangiah, M/s. Deccan Studios, Bangalore	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 01-01-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 15 ECC 13 : (1988) 15 ECR 201 : (1987) 32 ELT 627

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : N. Ganapathy and P. Narasimhan, for the Appellant; P. Narasimhan, Senior Central Government Standing Counsel, for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner is a proprietor of a Sound Recording Studio. He filed an application before the third respondent for

registration of a contract with his suppliers under the Project Imports (Registration of Contracts) Regulations 1965. The petitioner wanted to

import certain items of machinery, which according to him were meant for the initial setting up of a Unit to manufacture Master Tapes. He wanted

to say that the activities of the Unit will bring it within the Industrial Plant so as to have the levy as per Heading 84.66 of the First Schedule to the

Customs Tariff Act, 1975 (51 of 1975). The case for registration as above was advanced before the third respondent in the following lines as I

could see from the order of the third respondent :-

They have stated in the application that the equipment is being imported in connection with the initial setting up of a Recording Studio for

manufacture of Master Tapes in Bangalore. The capacity of the Unit is stated to be 300 Master Tapes a year. The Master Tapes as recorded are

required for the manufacture of pre-recorded cassettes and gramophone records

and in addition they are also used by Commercial Broadcasting

Radio stations of All India Radio, Television systems, as these sports, jingles and other programmes which are used in Commercial Broadcasting

radio are produced in the Recording Studios. They have also explained in detail the processes involved in the recording of music by making use of

the various equipment, which inter alia include recorders, Amplifiers, Head Phones, Mixing consoles etc. All of which contribute in perfect

recording of either music or speech and ensure perfect reproduction of the original music. They had further stated that the material used for the

manufacture of Master Tapes is a blank magnetic tape of 1 "" width which will be imported in length of 2500 feet in spools and the music is

recorded on this type by multi track recording in 8 tracks at a speed of 15"" per second. After recording on this 1"" tape, the music is transferred to

a 2 track 1/4"" separate tape for supply to the end-users. In these processes, various equipments would be simultaneously used for proper

recording and blending of the music, so as to get a harmonious blending. They have claimed that all this activity constitutes manufacturing activity

and cited various court judgments to support this contention. Further they had also cited the Department of Industries letter dated 26.7.1977,

Electronic Commissioner's letter dated 16.8.1979 and Development Commissioner's (SSI's letter dated 26.7.1980 to impress their view point

that theirs is a manufacturing Unit, entitled to the benefit of concessional customs duty as a project. They have also placed reliance on the

endorsement by the Joint Chief Controller of Imports and Exports for extending to them the benefit of assessment as a project import under

Heading 84.66 of the CTA 1975.

The third respondent rejected the application of the petitioner for registration of the contract under the Project Imports (Registration of Contracts)

Regulations, 1965 by his order dated 12.5.1981. The third respondent after adverting to the contention of the petitioner and the factual features

urged in support of his case that the Unit for manufacturing Master Tapes will come within the meaning of an Industrial Plant, opined the other way

about. The petitioner appeals to the second respondent, and the second respondent by order dated 4.8.1981, did not find reasons to take a

different view and rejected the appeal. The petitioner agitated the matter by way

of a revision before the first respondent. The first respondent dealt with the two revision applications ; one by the petitioner and the other by one Messrs. Suresh Productions, Messrs. Suresh productions were involved in the production of sound tracks on the films already processed. Their activities were apparently different from the activities of the Unit proposed to be set up by the petitioners. The nature of the activities of Messrs. Suresh Productions as put forth by them was summed up by the first respondent as point No. 1 in his order as follows : -

The imported machinery is required for the production of sound tracks on the films already processed. The entire operation is done in a specially constructed theatre in sound proof studios and the sound recording is done synchronising the sequence that has come up on the file. The contention is that without sound recording film production cannot be completed and that the recording of sound is an industrial activity and accordingly the Studio will come in the category of an Industrial Plant"".

2. The first respondent did not at all advert to discuss and consider the factual features relating to the activities of the Unit proposed to be set up by the petitioner for manufacture of master tapes. There were two points in common both for the petitioner and of Messrs. Suresh Productions. They were discussed by the first respondent in his order. The first respondent in his order gave reasons for not accepting the activities of Messrs. Suresh Productions as coming within the ambit of an Industrial Plant, to attract Heading 84.66. Ultimately the first respondent rejected both the revision applications.

3. Mr. M. Ganapathi, learned counsel for the petitioner, would urge the following points, seeking interference at the hands of this Court in writ powers :-

(i) The petitioner was granted import licence, after all the formalities therefore were satisfied and an endorsement was made on the import licence that the items of machinery covered by the import to be made would come under Heading No. 84.66; and that is binding on respondents 1 to 3 and one Wing of the Government having given a categoric opinion on the subject, another Wing of the Government cannot express a different opinion nullifying the other to the prejudice of the petitioner and the rule of estoppel must certainly come to the rescue of the petitioner. In this

behalf, he placed reliance on the Pronouncement in Robertson vs. Minister of Pensions 1949 1 K B 227.

(ii) Factually, the Unit to be set up by the petitioner for manufacturing Master Tapes will come under Heading 84.66 as an Industrial Plant. Profuse

literature and authorities on the subject were relied on and placed before me by the learned counsel for the petitioner in support of this submission

of his.

(iii) The other Customs Houses have extended the benefit of Heading 84.66 to similar items of Machinery and respondents 1 to 3 without any

warrant have denied the said benefit to the petitioner and this would amount to discrimination; and

(iv) The first respondent committed an error in not advert to, discussing and considering the factual features urged by the petitioner to say that

the proposed Unit is an Industrial Plant and this aspect vitiates the order of the first respondent. 4. Points (i) and (iii) are technical in nature, but

point No. (ii) is factual. Point No. (iv) is only with reference to point No. (ii) On going through the order of the first respondent I find that the

grievance of the petitioner on point No. (iv) is justifiable. If the factual features urged by the petitioner do warrant the bringing in of the unit

proposed to be set up by the petitioners as an Industrial Plant to have the benefit of Heading 84.66, the petitioner can certainly succeed on that

point. But unfortunately, the first respondent has not at all adverted to, discussed and considered the factual features of the case of the petitioner.

The first respondent was dealing with a statutory revision. He is duty bound to advert to the points factually and legally urged before him in the

revision. If he was on the factual features opined one way or the other, certainly this court can assess the propriety and tenability of the reasonings

and then consider the question of passing the appropriate orders, if there is warrant for it. But, where there is a total omission on the part of the first

respondent to advert to, discuss and consider the factual features urged by the petitioner in the revision, it will not be proper for this Court to

convert itself into a court of revision examine the case of the petitioners on merits and decide what is the proper order to be made. It is a well

settled rule that however extensive the jurisdiction of this Court may be under Article 226 of the Constitution of India, it is not so wide or large as

to enable this Court to convert itself into a Court of appeal or revision and examine for itself the merits of the case when there has been an omission

on the part of the appellate or the revisional authority to do so. In such a contingency, this court will only be obliged to delete the non - speaking

order, which exposed non-application of mind to the points urged and remit the matter back to the Appellate or Revisional authority for a fresh

consideration on merits. In a similar contingency, a Bench of this Court to which, I have been a party in the Managing Director, Indian Oil

Corporation Madras v. Ramchandran and others W. A 117 to 121 of 1984 judgment dated 3.2.1986 observed as follows :-

The appellate authority, while dealing with the appeals preferred by the respondents, should have borne in mind that it was dealing with first

appeal on facts preferred by the respondents and as such, it should consider the evidence and assess the value to be given to the evidence and

render its own findings on the basis of its appreciation of the evidence. Instead of doing so, the appellate authority has passed a very cryptic order

which does not reveal the reasons which impelled it to concur with the findings of the disciplinary authority. In such circumstances, the orders of the

appellate authority has to be set aside and it must be called upon to dispose of the appeals afresh. The learned counsel for the respondent pleaded

that a remand of the appeals for fresh consideration would mean further delay and the respondents would greatly suffer further by the prolongation

of the proceedings. We have to point out that whatever may be the hardship felt by the respondents, this court cannot convert itself into an

appellate Court and go into the merits of the case and find out whether the evidence on record justifies the findings rendered by the disciplinary

authority or not. This Court, while exercising its powers under Art. 226 of the Constitution of India, does not function as a trial Court or as an

appellate Court but only as a court of supervisory jurisdiction. We are, therefore, unable to accede the request of Mr. Sundaram that we should

not rest content with setting aside the order of the appellate authority, but we should go a step further and evaluate the evidence ourselves and

render a finding in favour of the respondents, as the learned single Judge has done. Once it is found that the appellate authority has passed a non-

speaking order, the necessity to quash the proceedings arises in the writ jurisdiction. After that it will not be proper for this court to substitute itself

in the place of the appellate authority and render its judgment in the place of the appellate authority and render its judgment and the proper course,

in our view, will be to remit the appeals to the appellate authority to decide them afresh.

4. Keeping in mind the above principles, I feel obliged to allow this writ petition to the extent of quashing the order of the first respondent and

remitting the matter for fresh consideration to the revisional authority which at present I am told is the Custom Excise Gold Control Appellate

Tribunal, Special Bench, New Delhi, to which also a copy of this order shall be marked. The said revisional authority will certainly hear the

petitioner in the matter and avoid the infirmities taken out by this court, which alone constrained to interfere in writ powers. I make no order as to

costs.