**(1985) 07 MAD CK 0022**

**In the Madras High Court**

**Case No :** Write Appeal No. 268 of 1980

Inspector of Central Excise, Sivakasi and Another APPELLANT

Vs

S. Sornam RESPONDENT

**Date of Decision :** 31-07-1985

**Acts Referred:**

**Citation :** (1987) 12 ECC 382 : (1986) 24 ELT 279

**Hon'ble Judges :** M.N. Chandurkar, C.J;Venkataswami, J

**Bench :** Division Bench

**Advocate :** T. Somasundaram, Addl. Central Standing, for the Appellant; R. Janakiraman, for the Respondent

# Judgement

M.N. Chandurkar, C.J.—This is wholly a frivolous appeal directed against the order of the learned Single Judge, who had quashed a

demand made by the Excise department on the footing that for the purpose of excise duty, the quantity of ''Bengal Lights'' (which are also matches)

manufactured have to be clubbed together with safety matches. Admittedly, the Union Government has issued two notifications prescribing

different rates of duty in respect of safety matches and ''Bengal Lights''. The notification in respect of matches is Notification No. 162/67 dated 21-

7-1967 and the notification with regard to ''Bengal Lights'' is Notification No. 45/61 dated 1-3-1961. Under the latter notification, the Central

Government has exempted matches of the type known as ''Bengal lights'' when manufactured in a factory whose output does not exceed 500

million matches per year and packed in boxes containing on an average not more than 10 such matches, from the payment of so much of the excise

duty leviable thereon as is in excess of 77 paise per gross of boxes. The effective duty under this notification in respect of ''Bengal lights'' manufactured, the output of which does not exceed 500 million matches per year, is 77 paise per gross of boxes.

2. Under the Notification No. 162/67, dated 21-7-1967, though the rate prescribed in respect of matches is Rs. 4.30 per gross of boxes of 50

matches each, the proviso in the Notification reduces the duty and the duty is levied on the basis of clearance of matches. In case the matches are

cleared for home consumption during the financial year from the factory from which the total clearance of matches during that year is not so much

as to exceed 75 million, the matches are allowed to be cleared at the rate of Rs. 3.75 per gross of boxes of 50 matches each upto 75 million

matches. If any matches are cleared in excess of 75 million matches, then upto 100 million matches, the rate charged is Rs. 4.40 per gross of

boxes of 50 matches each and if the clearance in such factory exceeds 100 million matches during the financial year, then the rate of duty is Rs.

4.30 per gross of boxes of 50 matches each on the entire quantity cleared.

3. Now, in the year in question, the manufacturer cleared 95.57 million matches and 34.81 million ''Bengal lights''. The Department issued a

demand on 22-7-1984, for a sum of Rs. 5728.25 stating that the petitioner had cleared 32,379,200 matches over and above 100 million matches

during the financial year 1973-74, and, therefore, the petitioner was liable to pay excise duty at the rate of Rs. 4.30 per gross on the first 75 million

matches. This demand was confirmed by the Assistant Collector of Central Excise as well as by the Appellate Collector and the revision

application filed by the petitioner was also dismissed.

4. Now it is obvious to us that the authorities were in error in clubbing together the quantity of safety matches and the ''Bengal lights'' in order to

raise a demand at the rate of Rs. 4.30 on the ground that the total manufacture exceeded 100 million matches. The two Notifications referred to

above by us will clearly indicate that in so far as the excise duty was concerned, ''safety matches'' and ''Bengal lights'' were treated differently. The

liability to pay at the rate of Rs. 4.30 if the clearance exceeds 100 million matches arises only on the basis of Notification No. 162/67. This

notification can be effective only in respect of safety matches. The duty of ''Bengal lights'' is exclusively governed by Notification No. 45/61. The

two notifications being entirely independent of each other, the authorities were clearly in error in clubbing the quantity of ''Bengal lights'' with the

quantity of ''safety matches''. There is, therefore, no error in the view taken by the learned Judge that the authorities were in error in clubbing the

two different kinds of matches for the purpose of making an additional demand of excise duty. In view of this, the writ appeal must fail and is

dismissed with costs; counsel''s fee Rs. 500.

 