

**(2002) 05 DEL CK 0243**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1973 of 2001

Jindal Industries

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 10-05-2002

**Acts Referred:**

Central Excise Rules, 1944 — Rule 173(G)(1), 173G, 173G(I), 47, 49  
Central Excises and Salt Act, 1944 — Section 11A  
Customs Act, 1962 — Section 25

**Citation :** (2002) 100 DLT 406 : (2003) 85 ECC 802 : (2002) 145 ELT 508

**Hon'ble Judges :** Vikramajit Sen, J; Dalveer Bhandari, J

**Bench :** Division Bench

**Advocate :** R.K. Aggarwal and L.G. Singatha, for the Appellant; Manmohan, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dalveer Bhandari, J.—The petitioner is aggrieved by the order dated 17.3.2001 passed by the Deputy Commissioner of Central Excise, Hissar. He has also prayed that the demand vide letter dated 14.3.2001 of the Department directing the petitioner to debit the P.L. Account by an amount of Rs. 24,15,688/- be quashed. It is incorporated in the petition that prior to 1.4.2000 under the Central Excise Act the petitioner was required to deposit the amount of excise duty due with the department on consignment basis, i.e. the duty had to be paid on the basis of each consignment of the manufactured goods cleared through Account Current i.e. in cash or through the credit balance lying in Cenvat Account.

2. The Central Government, however, amended the Central Excise Rules 49 & 173-G from April, 2000 and introduced a scheme for payment of excise duty in Installments, by which the excise duty for the first fortnight of the month became payable by the 20th day of the month and the duty for the second fortnight of the month became payable by the 5th day of the succeeding month instead of paying duty on each consignment. On default, the assessed would be

liable to pay the outstanding amount along with the interest at the rate of 24% per annum. Rule 173G of the Central Excise Rules, 1944 reads as under:

RULE 173G, Procedure to be followed by the assessed. - 1(a) Every manufacturer, other than a manufacturer who is availing of the exemption under a notification based on value of clearance in a financial year, shall discharge his duty liability in respect of clearances of excisable goods from the place or premises specified under Rule 9 or from a store room or other place of storage approved by the Commissioner under Rule 47 made:

- (i) during the first fortnight of the month, by the twentieth day of that month;
- (ii) during the second fortnight of the month, other than the month of March, by the fifth day of the succeeding month; and
- (iii) during the second fortnight of March, in the following manner, namely:
  - (I) the manufacturer shall pay, by the 31st day of March, a sum equal to the aggregate of-
    - (A) the amount of duty payable on actual clearances made up to the twenty fifth day of March; and
    - (B) an amount calculated, for the remaining six days of march, pro-rata of the actual duty payable under (A) above;
  - (II) Where the payment made in the manner specified in Sub-clause (I) above,-
    - (A) is less than the actual duty liability for the second fortnight of March, the manufacturer shall pay the balance amount of the duty by the twentieth day of April of that year;
    - (B) is more than the actual duty liability for the said second fortnight of March, the excess amount may be adjusted against the duty liability for the first fortnight of the month of April of that year and where such adjustment is not possible for any reason, against the duty liability for any subsequent fortnight...."

3. It is incorporated in the petition that if the assessed defaulted in payment of duty of any one Installment on the due date, and that such default continued for a period of 30 days or that there was default in payment of Installments on three occasions in a financial year, whether in succession or otherwise, then the proper officer could pass an order forfeiting the facility of paying the duty in Installments for a period of two months, starting from the date of communication of the order, and during this period the assessed shall be required to pay excise duty for each consignment by debit to the Account Currently only, i.e. in cash only and not through Cenvat account.

4. It is further incorporated in the petition that the Central Government has introduced a scheme of Cenvat in order to avoid the incidence of double taxation. Under the Cenvat scheme, the duty paid by the assessed on the inputs received by him, is credited to Cenvat Account. The inputs are used in the manufacture of

final products, which is excisable and when the final product is cleared from the factory premises, then the assessed is allowed to pay the duty livable on such final product by debiting from the Cenvat account.

5. The Ministry of Finance issued Notification No. 48/2000 dated 18.8.2000 by which a proviso was inserted to Central Excise Rules 57-AB, Sub-rule 1B, by which it was made clear that the Cenvat credit available on 15th day of the month for payment of duty relating to the first fortnight of the month and the Cenvat credit available on the last date of the month for payment of duty relating to the second fortnight of the month could only be utilised for discharging the duty liability of the assessed for that particular fortnight.

6. It is submitted that the Official Gazette consisting of notification dated 18.8.2000 was not available for sale to the general public and thus the notification could not be said to be effective from such date. The Ministry of Finance vide its Circular No. 542/38/2000/CX dated 25.8.2000 also clarified and publicised the said amendment under the Central Excise Rules. It is mentioned by the petitioner that it submitted RT-12 return for the month of August, 2000 on 6.9.2000 to the Central Excise Department specifically showing the accrual of Cenvat credit and the payment of duty. It is alleged in the petition that the petitioner has received a letter dated 14.3.2001 from the Superintendent of Central Excise, Hissar asking the petitioner to debit the Account Current (PLA) by an amount of Rs. 24,15,688 along with interest at the rate of 24% from 21.8.2000 till date as the duty amount deposited by the petitioner for the first fortnight of August, 2000 included the amount of Cenvat credit of Rs. 24,15,688/- which had accrued to the petitioner after 15.8.2000. It was further stated in the said letter that in absence of debit to the Account Current, action would be taken against the petitioner under Rule 49 and Rule 173(G)(1). It is stated that the petitioner debited under protest the Account Current (PLA) by Rs. 24,15,688 along with Rs. 1588 being one day's interest @ 24% and also reversed the entry into the Cenvat Account by the said amount.

7. The petitioner is aggrieved by the order dated 17.3.2001 passed by the Deputy Commissioner of Central Excise, Hissar.

8. The learned counsel for the respondent in reply submitted that the petitioner, without exhausting the statutory remedy of filing an appeal, approached this Court for issuance of a Writ of Certiorari for quashing the demand of the Deputy Commissioner of Central Excise, Hissar dated 17.3.2001.

9. In the counter affidavit it is denied that the petitioner has been prompt in payment of excise duty. It is submitted that the petitioner wrongly utilised Cenvat credit for the days 17-19, August, 2000 for the payment of excise duty due for the first fortnight of August, 2000. It is stated that the utilisation of the said credit was not permissible under the notification dated 18.8.2000. According to the respondents no corrective steps were taken by the petitioner despite the notification dated 18.8.2000.

10. In the reply it is mentioned that the fact that Commissioner of Central Excise issued Trade Notice No. 30/2000 dated 24.8.2000 or that the Finance Ministry issued its Circular No. 542/38/2000/CX dated 25.8.2000 does not absolve the petitioner from its defaults and in view of the same the petitioner cannot feign ignorance of law. It is stated that the said notice and circular did not change or modify the restriction of not utilising the Cenvat credit, credited to the account after the 15th of each month for the payment of excise duty due for the first fortnight. It is stated that though the notification dated 18.8.2000 was clear and unambiguous. The petitioner company debited duty on 19.8.2000 without having adequate balance amount in its Cenvat account.

11. Section 11A of the Central Excise Act stipulates that the objection can be raised within 6 months from the relevant date in normal circumstances and within 5 years in case the assessed has not paid the excise duty, as is in the present case, by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of the Central Excise Act or of the rules made there under with the intent of evading the payment of duty. Section 11A of the Central Excise Act reads as under:

"11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of any provisions of this Act or of the rules made there under with intent to evade payment of duty, by such person or his agent, the provisions, of this sub-section shall have effect....

PROVIDED FURTHER where the amount of duty which has not been levied or paid or has been short levied or short paid or erroneously refunded is one crore of rupees or less a notice under this sub-section shall be served by the Commissioner of Central Excise or with his prior approval by any officer subordinate to him:

PROVIDED ALSO that where the amount of duty which has not been levied or paid or his been short levied or short paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served without the prior approval of the Chief Commissioner of Central Excise."

12. In the reply it is mentioned that according to the Trade Notice No. 39/2000 dated 6.10.2000 if the duty payable is not paid by the specific date, in terms of Rules 173 G(I) of the Central Excise Rules, 1944 there would be no case for issue of a show cause notice u/s 11A of the Central Excise Act. Therefore, the Deputy Commissioner, Customs and Central Excise has acted within the four corners of law in passing the order dated 17.3.2001.

13. In the reply it is submitted that the object of Notification No. 48/2000-CE was to grant the facility of fortnightly payment to the assesseds to facilitate the discharge of their liability and not to encourage the assesseds to misuse the same and harm the interest of the revenue. Notification No. 39/2000 dated 6.10.2000 has declared that no show cause notice u/s 11A of the Central Excise Act, 1944 is required to be issued, if the assessed acts in contravention of the notification dated 18.8.2000.

14. Mr. Aggarwal, the learned counsel for the petitioner placed reliance on Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune, . In this judgment it is laid down that the notification can be said to have been duly published when it is made known to the public. In the present case the letter from the Assistant Collector (Periodicals) dated 2.1.1986 indicates that the date of the gazette containing the Notification dated 30.9.1985 after printing became available for public sale only on 1.11.1985. It must, Therefore, be held that the effective date of Notification dated 30.9.1985 was 1.11.1985.

15. Mr. Aggarwal also placed reliance on Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., . In this case the Court observed that unless the gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

16. In this sequence reliance has also been placed on Excise Superintendent, Warangal Distt. Warangal and Ors. v. Deluxe Bar, Kazipet, Warangal and Ors., (2001) 9 SCC 497 .

17. Learned counsel appearing for the respondents placed reliance on a judgment by a three Judge Bench of the Supreme Court in Union of India and Others Vs. M/s. Ganesh Das Bhojraj, . In this case their Lordships of the Supreme Court discussed the number of earlier judgments and came to the conclusion that the decision rendered in Collector of Central Excise v. New Tobacco Co. and followed in Garware Nylons Ltd. does not lay down the correct law. The counsel for the appellant ought to have been more careful before citing these judgments which were overruled by the subsequent judgment of three Hon"ble Judges of the Supreme Court.

18. The Court observed that it is plain and clear that the decision in B.K. Srinivasan and Others Vs. State of Karnataka and Others, also reiterates that the notification will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette. The Court also approved the reasoning of the earlier judgment in State of Maharashtra Vs. Hans George, .

In this case their Lordships of the Supreme Court held that absence of knowledge of notification is not a valid defense. In this judgment it is held that the notification u/s 25 of the Customs Act would come into operation as soon as it is published in the official gazette and no further publication is required. Ganesh Das Bhojraj (Supra) represents the correct exposition of law on the subject. In this case their Lordships of the Supreme Court held that the notification comes into force from the date of its publication. It is further not necessary that the notification be made known or broadcast in some recognizable way to make it enforceable.

19. In view of the later judgment of the three Hon"ble Judges of the Supreme Court, we find no merit in the contention of the petitioner that the notification in question was not made public.

20. We have heard learned counsel for the parties at length and perused all relevant documents and judgments cited at the bar. We find no infirmity in the order dated 17.3.2001 passed by the Deputy Commissioner of Central Excise, Hissar. The impugned order has been passed in consonance with the provisions of the Act and the rules. This petition is devoid of any merit and is accordingly dismissed. We direct the parties to bear their own costs.