

(1999) 07 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No"s. 17458 to 17460 of 1991 and W.M.P. No"s. 26266 to 26268 of 1991

Madura Coats Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-07-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 1
Constitution of India, 1950 — Article 226

Citation : (2000) 70 ECC 616

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Judgement

Y. Venkatachalam, J.—These writ petitions and W.M.P"s coming on for hearing on Tuesday the 22nd day of June, 1999, upon perusing

the petitions and the affidavits filed in support thereof the order of the High Court, dated 13.12.1991 and made herein and the counter-affidavit

filed herein and the records relavant to the aforesaid prayer comprised in the return of the respondents herein to the writ made by the High Court,

and upon hearing the arguments of Mr. N.S. Sivam, Advocate for the petitioner, in all the W.P."s and W.M.P"s and of Mr. R.M. Kannappa

Rajendran, Additional Central Government Standing Counsel on behalf of the respondents in all the W.P."s and W.M.P."s and having stood over

for consideration till this day, the Court made the following order:

In all these writ petitions, since the parties involved and also the subject-matter are one and the same, all these writ petitions were taken up

together and are disposed of by this common order with the consent of the parties concerned.

2. W.P. Nos. 17458 & 17459/91 have been filed seeking for a writ of Certiorari to call for the records of the respondents and to quash the show

cause notice C. No. V3905/15/68/91-Adjn., dated 1.11.1991 (in W.P. No. 17458/91) and C.No. V3912.31 /15/67/91-Adjn., dated

30.10.1991 (in W.P. No. 17459/91) issued by the second respondent. W.P. Nos. 17460/91 has been filed seeking for a writ of Declaration to

declare the Chapter Note-6 of the Chapter 39 of the Central Excise Tariff Act of 1985 as not valid in law and unconstitutional.

3. In support of the writ petitions, the petitioner herein has filed separate affidavits wherein they have narrated all the facts and circumstances that

forced them to file the present writ petitions and requested this Court to allow the writ petitions as prayed for. Per contra, on behalf of the

respondents a counter-affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have

requested this Court to dismiss the writ petitions for want of merits.

4. Heard the arguments advanced by the learned Counsel appearing for the parties. I have perused the contents of the affidavits and the counter-

affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into

consideration the various points raised by the learned Counsel appearing for the parties during the course of their arguments.

5. In the above facts and circumstances of the case, the only point that arises for consideration is, as to whether there are any valid grounds to

allow this writ petition or not.

6. The brief facts of the case of the petitioner as seen from the affidavits are as follows: At Tuticorin Mills of the petitioner company, sewing and

embroidary threads are manufactured and sold in the market under different trade names. These threads are wound on paper tubes and cones and

then sold in the market under different trade names. The paper tubes besides being manufactured by the petitioner company for internal

consumption are purchased from other manufacturers also. On job work basis M/s. Devi Paper tubes, Coimbatore prepare the paper tubes out of

the kraft paper, labels and cepol powder supplied by the petitioner company. The paper tubes are manufactured in a continuous mechanical

process. The kraft paper of 18 cms width in roll form is fed into cepol powder

solution, which has certain special qualities other than normal gums.

The cepol gum is uniformly spread over the paper and rolled mechanically. When required diameter is obtained the paper gets cut automatically.

Thereafter the 18 cms is cut into 3 pieces and dried. In the dried paper tubes, threads are wound. The cepol solution spreads easily and has better

adhesive qualities. More than that it never stains the machines. The cepol powder is like ordinary gum powder or granules. Like the ordinary gum

powder or granules made into paste by mixing with water, the cepol powder is also mixed with water to make into a solution. After some time, if

the water gets evaporated, the mixed cepol powder returns back to its original form. Cepol powder is a purified Carboxy Methyl Cellulose

Powder. As per the manufacturers specifications it has very low moisture content. Depending upon the chemical specifications grades of cepol

powder are manufactured and sold by Cellulose products of India Ltd. The cepol powder is extensively used for its excellent film forming,

thickening and binding properties. Unlike ordinary gum powder cepol powder needs no cooking and solution is readily prepared by sprinkling

powder on cold or hot water under stirring. However, the petitioner company adopts different method to make the cepol solution to suit their

requirements. Unlike ordinary gums the cepol solution spreads evenly leaving a film coating. "Unwanted harshness normally produced by starches

and gums is not with this product. Since by mechanical process the paper tubes are prepared, the petitioner company and like them several others

in the industry are using cepol solution. The Central Excise Authorities are aware of the preparations of Cepol solution and captively consumed by

the petitioner company in the manufacture of paper tubes ever since 1986. The authorities have all along accepted that preparation of cepol

solution is not a manufacturing process. Since the cepol powder has to be used only by mixing with water, like cement and washable wall

decorative paints, the authorities remained prudent till recently. However, after the Central Board of Excise fixed enhanced revenue target for the

Madurai Collectorate, the Central Excise Authorities of Madurai Collectorate shedding all reasoning and legal basis, have stated to classify all

products without any reasonable basis to impose excise levy on 10.4.1991 the officers of City Range Tuticorin came to the Mills and recorded that

they have detected that M/s. Madura Coats are manufacturing a solution called CMC Solution (Carboxy Methyl Cellulose Solution), which is

cepol solution. After recording statements from the officers of the petitioner company and obtaining all documents required by the Department, the

Collector of Central Excise, Madurai the second respondent, arriving at a conclusion that CMC solution is liable to be classified under chapter

sub-heading 3912.31 of Central Excise Tariff Act, 1985 and during the period 1.10.1986 to 9.4.1991 the petitioner company has wilfully and

wantonly suppressed the manufacturing of the above excisable product, has issued show cause notice C. No. V/391231/15/67/91-Adjn., dated

30.10.1991. Relying upon Note 6(b) of Chapter 39 of the Central Excise Tariff Act, 1985 the second respondent has stated that the cepol solution

is an excisable product. Relying upon the above Chapter Note 6 of Chapter 39, the second respondent has issued the show cause : Jutice C. No.

V/3912.31/15/6791-Adjn., dated 30.10.1991 concerning cepol solution and C. No. V/3905/15/68/91-Adjn., dated 1.11.1991 concerning PVA

solution According to the petitioner the said show cause notices are not valid in law and the same are liable to be quashed.

7. In W.P. No. 17450/91 for the above-said reasons, the petitioner is seeking for a writ of declaration that the Chapter Note. 6 of the Chapter 39

of the Central Excise Tariff Act of 1985 as not valid in law and unconstitutional. Further in these cases it is the contention of the petitioner that

without realising that the cepol powder can be used only by making into solution and without making into solution, cepol powder cannot be used as

such and the purpose of purchasing the cepol powder will become useless and cepol solution is not a marketable product or available in the

market the second respondent has come to the erroneous conclusion that Chapter Note 6(b) empowers him to levy duty on the cepol powder

solution. According to them this conclusion is contrary to law, laid down by the Supreme Court of India. It is also contended by the petitioners that

the interpretation given by the respondents to Chapter Note 6 of the Chapter 39 of the Central Excise Tariff Act, 1985 renders the said Chapter

Note 6 unconstitutional and is liable to be struck down. The Chapter Note 6(b) that stipulates another incidence of excise duty on the solutions of

bought cepol powder and PVA powder even though the same have suffered duty under Chapter Heading 39 at the hands of the manufacturers of

the above powders is unconditional and contrary to the law laid down by the Supreme Court of India. The Section 1 of Central Excise and Salt

Act, 1944 empowers the authorities designated under the Act to impose duties specified in the Schedule of the Central Excise Tariff Act, 1985 on

the excisable goods which are manufactured at the rates specified. When the goods that have sustained excise duty have not undergone any further

process or physical change and retain their physical properties, the Central Excise authorities have no authority in law to impose another incidence

of duty on the very same Tariff Heading on the products which have already suffered an incidence of excise duty. Another incidence of duty cannot

be levied again on the manufactured product under the very same Heading because of the charge of primary form, when the physical

characteristics continue to remain same and no process has taken place, altering the characteristics of products and changing the same into different

category. It is also contended by the petitioners that in this regard the law laid down by the Supreme Court is unambiguous and explicit. The

change of primary forms, solid to liquid or liquid to solid, can never be reckoned ""manufacture"" unless there is transformation into a new

commodity commercially known as a distinct and separate commodity having its own character, use and name. According to them the cepol

powder or PVA powder on being added with water are not transformed into a new commodity, commercially known as a distinct and separate

commodity having Its own character use and name. There is no product known as cepol solution or PVA solution available in the market in a

ready to use state. As per the physical properties, the cepol powder and PVA powder can be used by the purchaser only by mixing the powder

with water and making them into solution. The Chapter Note 6 of Chapter 39 of the Central Excise Tariff Act which contemplates another

incidence of duty because of the change in primary forms even under the very same Heading is illegal, improper and not valid in law and such

incidence of another duty is unconstitutional and without any authority of law.

8. Per contra, in the counter-affidavit it is contended by the respondents that the writ petitions filed challenging the show cause notice is not

maintainable and the decision reported in Loharu Steel Industries Ltd. Vs. Collector of Central Excise, are directly on the issue holding that writ

petition against show cause notice is not maintainable and premature and hence on that sole ground the writ petitions have to be dismissed, that on

the basis of intelligence gathered, the officers of City Range, Tuticorin proceeded to the petitioner's company along with officers of Spic Nagar

Range and visited the General Store room, computer room and finishing department of the Mill, on 10.4.1991 and that they perused the

documents available there and found that the petitioner company had manufactured a solution called PVA (Poly Vinyl Alcohol) solution since

1985. The officers asked the Mill authorities, whether any Central Excise formalities were being followed for manufacture of such solution and

whether any duty of Excise was being paid on the clearance of PVA solution. The Mill authorities replied that, they did not observe any Central

Excise formalities and had not discharged any excise duty on clearance of PVA solution. Consequently the officers seized the documents pertaining

to manufacture and clearances of PVA solution, under a mahazar, on the reasonable belief that the same would be material evidence in the case.

Inter alia it is also contended by the respondents that the said PVA solution is used for the producing Kite Flying Thread, that as per Note 6(b) of

Chapter 39 of Central Excise Tariff Act, Heading 3901 to 3914 shall cover all primary forms of the plastic conversion. In addition conversion of

one primary form to another would amount to manufacture. Based on this principle conversion of PVA powder of PVA solution being conversion

of one primary form to another would amount to manufacture. It is also their case that in the instant case, PVA powder (one primary form) is

converted into PVA solution (another primary form) the activity of converting PVA powder, into solution would amount to "manufacture" and the

same is liable to be classified under Heading 3905.20 and subjected to appropriate duty of excise. They also contend that the fact of production

and clearance of PVA solution had not been brought to the notice of the Excise authorities, Tuticorin as required by the Rules by M/s. Madura

Coats Ltd., for the last six years and thus there has been wilful suppression of facts with an intent to evade payment of duty. Therefore the

impugned show cause notices have been issued and hence the impugned show cause notices are legally valid and the petitioners may be directed to

participate in the adjudication proceedings.

9. Having seen the entire material available on record and in the facts and circumstance of the cases and also from the claims and counter claims

made by the parties, the only grievance of the petitioners herein in two writ petitions is with regard to show cause notices. That being so it is seen

from the records that the said show cause notices that were impugned in the two writ petitions were issued based on the factual information. It is

for the petitioner to rebut the same by evidence and proof, leaving that the petitioner cannot short circuit the issue by filing the present writ

petitions. In this regard it is rightly contended by the respondents that the writ petitions filed challenging the show cause notice are not maintainable.

Further in this regard they also rely upon a decision reported in Loharu Steel Industries Ltd. Vs. Collector of Central Excise, since they are directly

on the issue holding that writ petition against show cause notice is not maintainable and premature. Further in these cases it is not the case of the

petitioner that the respondent is not the authority under Central Excise Act to issue the show cause notice and when the statutory quasi judicial

authority issues a notice for determination or finalisation of an issue, it is the bounden duty of the petitioner to put forth his case and establish his

stand. But, in these cases, without doing it, rushing to High Court and filing writ petition under Article 226 of the Constitution is nothing but to

prolong the issue and stall the finalisation of the issue. Further as rightly pointed out by the respondents by obtaining ex-parte stay, the proposal if

confirmed will result in a demand of Rs. 5.2 lakhs in one case and 7.8 lakhs in another case for the period from 1.10.1986 till this day is stayed

virtually. Further it is a recurring issue which will cause great loss to the exchequer. Apart from that as rightly contended by the respondents a show

cause notice is only a proposal and the Department is going to finalise the issue only after affording full and fair opportunity to the petitioner.

Further even if any order against their interest is passed the petitioner has a right of appeal to the CEGAT which is effective since the said Tribunal

is the highest fact finding authority can go into the facts and decide the issue. Therefore from the above aspects of these cases, I am of the clear

view that since the petitioner herein has enough and effective remedies for redressal and they have not exhausted the case and have rushed to this

Court even at the stage of show cause notice itself. Therefore, I am not inclined to interfere with the matter at the stage of show cause notice itself.

Thus I see no merits at all in these writ petitions.

10. Therefore for all the aforesaid reasons and in the facts and circumstances of the cases and also in view of my above discussions with regard to

the various aspects of these cases and also in the light of the various decisions discussed above, I am of the clear view that the petitioner herein has

failed to make out any case in their favour and that there is no need for any interference with the impugned show cause notice and also the

impugned Chapter note in these writs. Thus all these writ petitions fail and are liable to be dismissed for want of merits.

11. In the result, all these writ petitions are dismissed, no costs. Consequently WMP . 26266 to 26268/91 are also dismissed and the interim

orders already granted therein are hereby vacated.