(1992) 04 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 11446 of 1983

Master Recording Company APPELLANT

Vs

Asstt. Collector of C. Ex. RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:

Citation : (1993) 63 ELT 60

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Shri N.S. Nandakumar for M/s.K.P. Jagadeesan and N.S. Kasiviswanathan, for the Appellant; Shri K. Jayachandran, ACGSC, for the Respondent

Judgement

1. This Writ Petition coming on for hearing on Thursday the 23rd day of April 1992 and on this day, upon perusing the petition and the affidavit

filed in support thereof the order of the High Court, dated 27-1-1984 made herein and the counter and reply affidavits filed herein and the records

relating to the order in (1) File C. No. V/68/18/70/82-R.C. dated 17-3-1983 on the file of the first respondent. (2) A. No. 227/83(M), dated 1-

7-1983 on the file of the 2nd respondent comprised in the return of the respondents to the writ made by the High Court, and upon hearing the

arguments of Mr. N. S. Nandakumar for M/s. K. P. Jagadeesan and N. S. Kasiviswanathan, Advocates for the petitioner and of Mr. K.

Jayachandran, Additional Central Government Standing Counsel on behalf of the Respondents, the court made the following order :

The above writ petition has been filed for a Writ of Certiorarified Mandamus calling for the records of the first respondent on his File C. No.

V/68/18/70/82-R.C. and of the second respondent on his file A. No. 227/83(M) and quash the orders of the Assistant Collector of Central

Excise, VII Division, Madras, passed on 17-3-1983 as confirmed by the Collector of Central Excise (Appeals), Madras under Order-in-Appeal

No. 227/83(M), dated 1-7-1983 and pass orders directing the respondents to refund the sums of money claimed by the petitioners by their claim,

dated 15-6-1982 and 21-10-1982.

2. The first respondent by his order dated 17-5-1983 confirmed the proposal contained in the show-cause notice dated 28-1-1983 that the rates

of duty, tariff valuation, if any, applicable to any excisable goods shall be the rate and valuation in force in the case of goods cleared from a factory

or a warehouse, subject to sub-rules (2), (3) and (3A) on the date of actual removal of such goods from such factory or warehouse and that

therefore the claim for revision cannot be countenanced. On further appeal the second respondent also confirmed the order of the first respondent.

Aggrieved the petitioners have filed the above writ petition. On the question as to the criteria for the levy, the Apex Court has held while reiterating

the view earlier taken in Collector of Central Excise, Madras Vs. Newman Press and Others, that the Central Excise Authorities are competent to

apply the rate prevailing on the date of removal of goods even though the production or manufacture may have been completed at a point of time

when the goods were exempt from tax. In the light of the categorical pronouncement of the Apex Court there is no scope for the petitioners

contending differently while challenging the orders of the authorities below which only took the very same view as that of the Apex Court.

3. Learned counsel for the petitioners sought to contend that the recording made on the pre-recorded cassettes does not involve any manufacturing

process and the same did not involve production of any new or marketable commodity, attracting excise duty and that therefore the impugned

orders could not be sustained and consequently the refund has to be ordered as prayed for. I am afraid I can countenance such a plea taken for

the first time and not taken before any of the authorities below. The decision on such a claim would depend upon verification of factual details. The

writ petition therefore fails and it is dismissed. But in the circumstances there will be no orders as to costs.