

**(1990) 11 MAD CK 0055**

**In the Madras High Court**

**Case No :** Writ Appeal No's. 1688 and 1808 of 1987; Writ Petition No's. 9535 to 9553, 9563 to 9573; 9587 to 9590; 9603 to 9606; 9657, 9728 and 9291 of 1987; 11564, 13303 and 13305 of 1990

Rajarathinam Fire Works

APPELLANT

Vs

Superintendent of C. Ex.

RESPONDENT

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**Date of Decision :** 01-11-1990

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1993) 44 ECC 259 : (1991) 52 ELT 8

**Hon'ble Judges :** Thanikkachalam, J; Nainar Sundaram, J

**Bench :** Division Bench

**Advocate :** Shri R. Krishnamurthy for R. Janakiraman, for the Appellant; Shri A.S. Venkatachala Moorthy, Addl. Central Govt. Standing Counsel, for the Respondent

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**Judgement**

Nainar Sundaram, J.

Writ Petition Nos. 9535, 9536, 9537, 9553, 9657 and 9605 of 1987 :

1. The controversy in this batch of Writ Petitions is as to whether the petitioners are entitled to total exemption of levy of excise duty on fire works

manufactured by them until the Notification of exemption was withdrawn. The petitioners faced orders of detention of the goods manufactured on

the ground that there had been user of power in the manufacturing process, and they came to this Court to quash the orders of detention and for

the consequential relief of total exemption from levy of excise duty on the goods manufactured by them during the period of exemption, or for

passing orders on the show causes issued considering their replies sent.

2. There having been no stay with reference to the investigation into the question, by the departmental authorities, that has been completed and the

result of the investigation is that further proceedings have been dropped since there is no evidence to prove that the petitioners violated the condition for exemption, namely, not to use power in the manufacturing process. Further, we are told that the goods detained have also been released. In the said circumstances, these Writ Petitions have become infructuous and they are dismissed. No costs.

Writ Petition Nos. 9570 and 9571 of 1987 :

3. In these two Writ Petitions, the petitioners have prayed for a writ of certiorari mandamus to quash the orders of detention of the goods manufactured by them during the period of exemption, and for the ancillary relief of permit the petitioners to clear the said goods without payment of excise duty.

4. The Controversy in these Writ Petitions also is as to whether the petitioners are entitled to total exemption of levy of excise duty on fire works manufactured by them during the period in question. The petitioners faced orders of detention of the goods, on the ground that the condition for exemption, namely, not to use power in the manufacturing process, was violated; and they came to this Court to quash the orders of detention and for the ancillary relief with regard to total exemption from levy of excise duty on the goods concerned.

5. There having been no stay with reference to the investigation into the question by the departmental authorities, that has been completed. The result of the investigation in these two cases is, adjudications are over and the demands already raised have been confirmed. In Writ Petition No.

9570 of 1987, we are told that the appeal preferred by the petitioner is pending. That can be proceeded with on merits and depending upon the

results in the appeal, the petitioner in that Writ Petition can work out its rights. With regard to the Writ Petition No. 9571 of 1987, we have been

informed that the investigation is over and the demand already raised has been confirmed and the appeal filed by the petitioner has also been

dismissed. It is for this petitioner to prosecute further remedies available to it in accordance with law as against the decision of the appellate

authority. In the said circumstances, it is not proper for this Court at this juncture to go into the controversy in writ jurisdiction and these two Writ

Petitions are dismissed. The dismissal of the Writ Petitions is not adjudicating the

controversy on merits, and it is open to the petitioners to urge the points available to them before the concerned forums. No costs.

Writ Appeal Nos. 1688 and 1808 of 1987 :

6. These two Writ Appeals are directed against the orders of dismissal of the learned Single Judge of two Writ Petitions. The appellant in Writ

Appeal No. 1688 of 1987, preferred the Writ Petition No. 8894 of 1987 to quash the order of detention of the goods manufactured by it and to

direct the respondent to pass orders on the show cause notice issued after considering the reply thereto. The appellant in Writ Appeal No. 1808 of

1987 by filing W.P. No. 9386 of 1987, questioned the order of detention of the goods manufactured by it and further wanted a direction to the

respondent to permit the petitioner to clear the goods concerned without payment of excise duty. In these two cases also, the controversy is as to

whether the petitioners violated the condition for exemption, namely, not to use power in the manufacturing process. The learned Single Judge was

of the view that this controversy has got to be adjudicated upon by the departmental authorities. There having been no stay of the investigation, we

are told that the investigations are over in these two cases and orders on adjudication have not yet been passed. We are further told that pursuant

to orders made by this Court pending the Writ Appeals, the goods subject-matter of the orders of detention, have also been released. To examine

the propriety or otherwise of the orders of detention at this juncture, taking note of any of the points urged on behalf of the appellants, will not be

proper for us in writ jurisdiction. The authorities can prosecute the adjudication proceedings and pass orders thereon on merits. Before orders of

adjudication are passed, the appellants shall be given adequate opportunity to make their full say on the question involved. The authorities

concerned shall certainly do the consideration of the question involved and pass orders without reference to the dismissal of the Writ Appeals and

without in any manner being influenced by whatever has been said in the orders of detention. The appellants, if they are to be aggrieved by the

orders to be passed as a result of the investigation, can resort to the remedies available to them in law.

7. Under these circumstances, these two Writ Appeals are dismissed and the appellants are at liberty to prosecute their remedies available to

them in law depending upon the orders to be passed as a result of the investigation as stated above. No costs.

Writ Petitions Nos. 9538, 9539, 9540, 9541, 9542, 9543, 9544, 9545, 9546, 9547, 9548, 9549, 9550, 9551, 9552, 9563, 9564, 9565, 9566,

9567, 9568, 9569, 9572, 9573, 9587, 9588, 9589, 9590, 9603, 9691, 9604, 9606 and 9728 of 1987 :

8. In this batch of Writ Petitions, some of the petitioners challenge the orders of detention and they further want a direction to clear the goods

manufactured by them without payment of excise duty. Some of the petitioners pray to quash the orders of detention and to direct the passing of

orders on the show cause notices issued in the context of the replies given by them.

9. There having been no stay with regard to prosecution of the investigation we are told that the investigation is over, but orders of adjudication

could not be passed in view of the pendency of the Writ Petitions. We are further told that the goods, subject-matter of the orders of detention,

have also been released. It will not be proper for us in writ jurisdiction to adjudicate the controversy involved in this batch of Writ Petitions at this

juncture, and authorities seized of the matters can adjudicate them on merits. The authorities are entitled to pass adjudication orders on merits in

the matters concerned and if the petitioners are to be aggrieved by them, it is open to them to have recourse to the remedies available to them in

law. Before orders of adjudication are passed, the petitioners in this batch of cases, shall be given adequate opportunity to make their full say on

the question involved. The authorities concerned shall certainly do the consideration of the question involved and pass orders without reference to

the dismissal of the Writ Petitions and without in any manner being influenced by whatever has been said in the orders of detention. Subject to the

above directions, these Writ Petitions are dismissed. No costs.

Writ Petition Nos. 11564, 13304 and 13305 of 1990 :

10. In these three Writ Petitions, the challenge is of the show cause notices issued. We do not think that we should examine the tenability or

otherwise of the contentions raised by the petitioners in writ jurisdiction at this juncture and they can certainly work out their remedies as may be

available to them in law after orders of adjudication are passed. We are told that

the petitioners have submitted their explanations and investigations are over and final orders of adjudication could not be passed in view of the pendency of the Writ Petitions. In the said circumstances, these Writ Petitions are dismissed relegating the petitioners to have recourse to the process of law available to them after orders of adjudication are passed and in case they should go against them. Before orders of adjudication are passed, the petitioners in this batch of cases, shall be given adequate opportunity to make their full say on the question involved. The authorities concerned shall certainly do the consideration of the question involved and pass orders without reference to the dismissal of the Writ Petitions and without in any manner being influenced by whatever has been said in the orders of detention.