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**(1992) 01 RAJ CK 0041**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4766 of 1990**

Renu Tandon

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 24-01-1992

**Acts Referred:**

Central Excise Rules, 1944 — Rule 174, 178  
Central Excises and Salt Act, 1944 — Section 4(4)  
Constitution of India, 1950 — Article 226

**Citation :** (1993) 66 ELT 375

**Hon'ble Judges :** S.N. Bhargava, J

**Bench :** Single Bench

**Advocate :** Paras Kuhad, for the Appellant; Sudhir Gupta, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.N. Bhargava, J.—As per the facts mentioned in the writ petition, the petitioner is the sole owner of an industrial unit situated at A-14-A, Industrial Estate, 22 Godown, Jaipur, engaged in the manufacture of copper wire from ingots of wires of higher gauge to thinner gauges. Wire drawing machines were installed in the month of August, 1989 when the Unit was established. The petitioner filed an application before the Joint Director, Industries Deptt. Jaipur and obtained provisional registration certificate dated 30th May, 1989 (Annexure-1). The petitioner took on rent a portion of an industrial shed owned by M/s. Tandon Brothers on a monthly rent of Rs. 715/-, vide rent note (Annexure-2) which was duly approved by the Rajasthan Industrial and Development Investment Corporation Limited, Jaipur (hereinafter referred to as the "RICCO"), on 11-10-1989. Thereafter, the petitioner filed an application before the Supdt, Central Excise on 15-9-1989 for the grant of licence to manufacture copper wire of thickness as mentioned in the Schedule appended to the application which showed the address of the petitioner's unit as "A-14-A, 22 Godown, Jaipur." The site was inspected and after a thorough enquiry, a licence (Annexure-4) was issued under Rules 174 and 178 of the Central Excise Rules, 1944 (hereinafter

referred to as the "Rules of 1944") wherein also, the location of the unit was specifically mentioned as "A-14-A, Industrial Estate, 22 Godown, Jaipur". The petitioner also applied for electric connection on 23-9-1989 to the Rajasthan State Electricity Board for giving a separate electric connection, which was allowed and a sanction letter was issued on 15-12-1989 but the connection could not be given and therefore, arrangements had been made by the neighbour for the consumption of electricity, by the unit of the petitioner. A sub-meter had been installed in the premises. The manufacturing process started from September, 1989 and the return in Form RT-12 was sent to the Supdt. Central Excise Deptt. in triplicate on 7-10-1989. One copy was returned to the petitioner after verification, one copy was retained by the Supdt. Central Excise and the third copy was sent to the Assistant Collector, Divisional Office of the Central Excise Department. Similar returns were filed every month and the last statement was sent on 7-8-1990. The petitioner also opened a bank account in the name of the unit, in the State Bank of Travancore, M.I. Road, Jaipur, to be operated by her alone. The said bank sanctioned the limits as well - Cash Credit hypothecation and bills discount. To avoid frequent visit to the Excise Department, the petitioner has given Power of Attorney to her husband Shri Avinash Tandon. For Small Scale Industries the excise rate on goods manufactured upto the value of Rs. 75 lacs is 10% and beyond this limit, the excise duty is levied at the rate of 20%. The petitioner had manufactured goods worth Rs. 45,08,151.74 in the year ending on 31-3-1990 whereas the turn-over from 1-4-1990 to 2-9-1990 was less than Rs. 30 lacs and therefore, her manufacturing limit being less than Rs. 75 lacs, she was required to pay excise duty only @ 10%. On 29th August, 1990, the petitioner received a notice (Annexure 8) to show cause as to why the classification list effective from 1-4-1990 should not be approved taking into consideration the value of clearance of both the Units M/s. Mani Sales and M/s. Tandon Brothers, as clubbed together giving various grounds therein. It is against this show cause notice that the present writ petition has been filed by the petitioner on 13-9-1990, praying that the show cause notice be quashed and if not the whole notice, then, para 6 of the notice demanding execution of bond and the security bond be quashed.

2. The writ petition was admitted on 13-9-1990 and notices were ordered to be issued to the respondents. On the stay petition, it was ordered that in the meanwhile, the petitioner shall deposit excise duty at the rate of 10% as she was doing earlier. As regards para No. 6 of the notice (Annexure-8), it was directed that the petitioner may file only bond B-13 equal to differential duty as mentioned in Annexure-8 and she will not be required to produce any security.

3. After service of the notices, reply has been filed on behalf of the respondents on 14-2-1991 wherein a preliminary objection has been raised that the writ petition is not maintainable against the show cause notice and should be dismissed on this ground alone. It has been submitted that the petitioner should submit the objections before the authority and if the authority passes an order against her, she has got an alternative remedy by way of filing an appeal under

the provisions of the Central Excises and Salt Act, 1944 (hereinafter referred to as the "Act"). It has further been submitted that since there is an alternative remedy, the writ petition should not be entertained, more so when there are several disputed questions of fact.

4. On merits, it has been submitted that both the units - M/s. Mani Sales and M/s. Tandon Brothers are situated at A-14, Industrial Estate, 22 Godown, Jaipur. They have common electric connection and the relation between the two concerns is so close that both the concerns belong to the same family. It is only a method of reducing one's liability to pay excise duty that the manufacture is being done in two units. The petitioner is using the same premises, management, office, labour and electric connection of M/s. Tandon Brothers.

5. The petitioner has submitted a rejoinder to the reply filed by the respondents, on 29-3-1991, controverting the facts mentioned in the reply and has also produced a photostat copy of the rent note written by the petitioner in favour of Shri Sri Krishna Tandon, Proprietor of M/s. Tandon Brothers and a copy of the letter dated 11-3-1991 written by the Bank.

6. Arguments have been heard.

6A. Learned counsel for the respondents has pressed his preliminary objection and has placed reliance on Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, wherein a bench consisting of three Hon"ble Judges has observed as under :-

"Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extra-ordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters."

7. The above observations have been made after relying on Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others,

8. Reliance has also been placed on a division bench decision of this Court in Writ Petition No. 732/90 Dalmia Industries Ltd. and Ors. v. Union of India (decided on 3-1-1991) wherein it has been observed that since an equally effective and efficacious remedy is available to the petitioners under 1944 Act, this Court will not ordinarily interfere in such matters unless the aggrieved party has exhausted alternative remedies available under the statute. Most of the taxing statutes, contain a complete Code containing machinery for deciding the disputes relating to levy and collection of taxes or imposition of penalties. Hierarchy of authorities is provided and even Tribunals have been constituted for adjudication of disputes

in such matters. This Court cannot substitute itself in place of various authorities and the Tribunals, constituted under the Act. After relying on a decision of this Court in *Sikha Footwear v. C.C.E.* (Writ Petitioner No. 4203/89 decided on 18-12-1990), it has further been held that there is no warrant for exercise of extraordinary jurisdiction of this Court at the stage of show cause notice or where the remedy of appeal or revision is available to the party concerned.

9. On the other hand, learned counsel for the petitioner has placed reliance on *Laxmindra Theertha Swamiar v. Commissioner, Hindu Religious Endowments* AIR 1952 Madras 612 wherein it has been observed that a writ of prohibition lies to prevent any inferior tribunal from exceeding its jurisdiction or even from assuming a jurisdiction which does not vest in it under law. In deciding the question whether a writ of prohibition should be issued or not, the existence of an alternative remedy is, in our opinion, an irrelevant consideration when the complaint is that an inferior tribunal is exceeding its jurisdiction or is assuming a jurisdiction not vested in it by law. If the Tribunal is permitted to exercise that jurisdiction which is objected to, if it exercises it wrongly, the mischief would be done before the alternative remedy is availed of. It is unnecessary to insist upon a party complaining that he should first suffer and submit himself to the jurisdiction which is being wrongly exercised or is wrongly exceeded and then take advantage of the alternative remedy.

10. He has further placed reliance on *Raj Pack Well Ltd. Vs. Union of India (UOI)*, wherein it has been observed that existence of an alternative remedy is not a bar in exercising writ jurisdiction under Article 226 of the Constitution of India when order conveying higher rate of duty is based on incorrect interpretation of tariff entry.

11. Learned counsel for the petitioner has further placed reliance on a division bench decision of the Madhya Pradesh High Court in *Hindustan Electro Graphites Ltd. Vs. Union of India (UOI)*, wherein it has been observed as under :-

"It is now well settled law that if a notice issued by a Tribunal or authority threatening to initiate proceedings prejudicial to a person is in excess of jurisdiction, the Tribunal or Authority can be prohibited from further proceedings in the matter under Article 226 of the Constitution to save unnecessary harassment of the person concerned."

12. Reliance has also been placed on *Universal Cables Ltd. v. Union of India* [1978 (2) E.L.T. (J 632)] wherein it has been observed that if a notice issued by a Tribunal or authority threatening to initiate proceedings prejudicial to a person is on admitted facts in excess of jurisdiction, the Tribunal or authority can be prohibited from proceeding further in the matter by way of writ under Article 226 of the Constitution to save unnecessary harassment of the person.

13. My attention has also been drawn to *N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd.*, wherein a single Judge of the Bombay High Court had

interfered at the stage of notice in a writ petition under Article 226 of the Constitution of India and the Supreme Court had upheld the order of the High Court.

14. My attention has further been drawn to Bhasir Oil Mills Vs. Union of India, wherein it has been held that where the question of validity of the enactment itself is raised or where the orders are per se without jurisdiction, it is open to the High Court to entertain a writ petition notwithstanding the fact that there is an alternative statutory remedy.

15. Reliance has further been placed on L. Hirday Narain Vs. Income Tax Officer, Bareilly, wherein the petitioner filed a writ petition instead of availing the statutory remedy. The writ petition was entertained and was heard on merits. The Supreme Court held that the petition cannot thereafter be rejected on the ground that the statutory remedy was not availed of.

16. On merits, Mr. Kuhad, learned counsel for the petitioner has very vehemently submitted that merely because two concerns are owned by different members of the family, they cannot be held to be one establishment. In this connection, he has placed reliance on Khoja Lime Udyog v. R.P.F. Commissioner 1990 (1) RLR 130 . In Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen, it was observed that two units cannot be considered as forming one industrial unit merely because it is owned by the same person.

17. Reliance has also been placed on Shree Syntex v. Union of India and Ors. 1989 (2) RLR 623 wherein it has been observed that if two units do not have any functional integrity and there is no evidence of unity of employment, unity of ownership does not by itself make them one establishment.

18. The case of 1992 (40) ECR 1 13 has also been brought to my notice wherein it has been held that close relationship between Directors of two units belonging to two limited companies and situated in adjacent plots is not sufficient for clubbing their clearances.

19. Learned counsel for the petitioner further brought to my notice Mahipal Singh v. R.P.F. Commissioner 1972 LabIC 1202 wherein it has been held that an employer having two or more establishments and employing less than twenty persons in each of them, would not attract liability to contribute the provident fund.

20. My attention has also been drawn to 1990 (29) ECC 157

21. He has further placed reliance on International Dyestuff Mfg. Co. v. Collector of Central Excise 1991 (53) ELT 85 (Tri) : 1991 (33) ECR 31 wherein CEGAT has held that where there is no common funding or financial flow-back and separate statutory records are being maintained mere blood relationship among the partners and use of some common staff by two independent units are not adequate reasons for clubbing the value of their clearances to deny exemption.

22. Reliance has also been placed on Shree Packaging Corporation, Hyderabad v. Collector of Central Excise, Hyderabad 1987 (32) ELT 94 (Tri) : 1988 (16) ECR 227 wherein also the CEGAT held that common interest is not established merely because the goods are stored in a common place nor on common employment so long as separate accounts are kept. Common funding or flow-back must be proved.

23. Reliance has been placed on Jagjivandas & Co. v. Collector of Central Excise, Bombay-II [1985 (19) ELT 441 (Tri) : 1985 ECR 17 (CEGAT)] wherein it has been held that the Department should conclusively prove that the firms were not distinct and separate before clearances of separate firms can be clubbed together.

24. He has further placed reliance on B. Ganapathy Bhandarkar v. Regional Provident Fund Commissioner [1990 (60) FLR 143] wherein it has been held that unless an inter-connection between the two units is established, of mutual dependence of one over the other, so that one cannot function together in the absence of the other, two units should be held to be different and distinct. My attention has also been drawn to 1989 (59) FLR 288 (Orissa) wherein it has been held that though the partners were carrying the same business individually and separately, both cannot be regarded same or continuation of same business.

25. My attention has further been drawn to Jaswant Sugar Mills Ltd., Meerut Vs. Union of India and others, and Majestic Trading House and Anr. v. Union of India and Anr. [1990 (60) FLR 793] wherein Allahabad High Court (Hon"ble Shri K.C. Agrawal, as he then was) held that unless the mutual independence amongst the three units of the same owner is established, they cannot be held to be one.

26. Learned counsel for the petitioner has drawn my attention to the following cases in connection with the interpretation of the words "related person", within the meaning of Section 4(4)(c) of the Central Excises and Salt Act, 1944.

27. Union of India (UOI) and Others Vs. Atic Industries Ltd., wherein it has been held that a person who is so associated with the assessee that they have interest directly or indirectly in the business of each other and one company holding shares in another and also buying goods from such a company, the shareholder cannot be a related person.

28. Atic Industries Ltd., Bulsar Vs. Union of India and Others, wherein the Gujarat High Court has held that it must be shown that they have mutuality of business interest.

29. Cibatul Ltd. P.O. Atul Vs. Union of India and Others, wherein it has been held that a manufacturer and the buyer must have interest, directly or indirectly in the business of each other to fall within the mischief of Section 4(4)(c). The mutuality of business interest between the manufacturer and his buyer cannot be established by merely showing that they have business dealings between them. It must also be shown that one has special interest in the promotion or development of the business of another.

30. Ceam Electronics Pvt. Ltd. Vs. Union of India, wherein a division bench of the Bombay High Court has held that the expression "related person" means person who is so associated with the assessee, that they have interest, directly or indirectly, in the business of each other.

31. 1990 (30) ECR 412 in which it has been held that where there is only technical collaboration and royalty has not been paid, where there is no evidence to show any mutual interest, it cannot be held that these two parties are related persons.

32. John Shalex Paints Pvt. Ltd. Vs. Union of India, wherein it has been held that where goods produced with customer's brand name and the entire production was sold to him, such sales cannot be treated as to related person in absence of financial control by customer.

33. On the other hand, learned counsel for the respondents has submitted, on merits, that merely because the petitioner has got its unit registered separately and has taken a portion of the premises of the other unit on rent with the permission of RIICO or that she has applied separately to RSEB for separate power connection or that she has opened a separate bank account or has filed separate returns, it cannot be considered as an independent unit because of the relations between the petitioner and Shri S.K. Tandon, Proprietor of M/s. Tandon Brothers and in this connection, reliance has been placed on 1989 (43) ELT 775

34. Learned counsel for the respondents has further submitted that questions of evidence are involved in the present case and the petitioner will have ample opportunity to prove that it is a separate unit before the excise authorities and if the excise authorities decide against it, she will have a right of appeal provided under the Act itself and therefore, no interference should be made at this stage.

35. I have given my thoughtful consideration to the whole matter and have also gone through the record of the case as well as the authorities relied by learned counsel for the parties at the bar.

36. The petitioner is a lady entrepreneur and has passed M.Com. She decided to start a unit for manufacture of copper wire and installed wire drawing machines in August, 1989 over a portion of the land taken on rent from M/s. Tandon Brothers, on a monthly rent of Rs. 715/-. The petitioner has filed a copy of the rent deed duly executed with the approval of the RIICO who had given the land on lease to M/s. Tandon Brothers. The petitioner also obtained a provisional certificate of registration from the Directorate of Industries, Jaipur and thereafter applied to the Supdt. Central Excise, for grant of a licence to manufacture copper wire of thickness entered into the Schedule attached with the application, giving the address of the premises as "A-14-A, 22 Godowns". The officers of the excise Deptt. inspected the site and after a thorough enquiry, issued a licence under Rules 174 and 178 of the Central Excise Rules, 1944. It may be noted here that M/s. Tandon brothers is also carrying on a similar business of drawing copper wires on a nearby plot "A-14, Industrial Estate, 22 Godown, Jaipur" which is also

registered with the Excise Department and the Department was fully aware of this fact before issuing licence under the Central Excise Rules to the petitioner. The petitioner also applied for a separate electric connection from the Rajasthan State Electricity Board and since connection was not given, she had made arrangements from M/s. Tandon Brothers situated nearby and installed a sub-meter for calculation of the actual consumption to be paid to M/s. Tandon Brothers. The petitioner also opened a separate bank account in the name of the unit and obtained limits from the bank. She has been operating the bank account herself. After starting manufacture of copper wires she submitted return in Form RT-12 to the Supdt. Customs and Central Excise. The first return was submitted on 7-10-1989. It was only on 29th August, 1990 that a notice was issued to the petitioner to show cause as to why the classification list effective from 1-4-1990 should not be approved taking into consideration the value of clearances of both the units" as clubbed together. The only ground to issue such a notice was that the two factories are located adjacent to each other and that the proprietor of M/s. Tandon Brothers happens to be the father-in-law of the petitioner and that the work of both these units is being looked after by Shri Avinash Tandon who is the husband of the petitioner and son of Shri S.K. Tandon and that she has been consuming electric power from M/s. Tandon Brothers. These facts which have been mentioned in the show cause notice, in no way, can give rise to a presumption or even an inference that the two units should be treated as one unit. I have already quoted above the various authorities cited by the learned counsel for the petitioner, of various High Courts and the Tribunal wherein it has been held that the value of clearances of the two units cannot be clubbed together and the two units cannot be treated as one unit merely because of proximity of relationship or the situation of the two factories or because there are some common employees unless there is a clear and specific evidence that there is mutuality of business interest between the two units and that both have interest in the business of each other or they have common funding and financial flow-back. In the present case, the most important aspect about having common funding and financial flow-back is missing and therefore, to withdraw the assessment or club the clearances is wholly unjustified and illegal and without jurisdiction. Reference in this connection may be made to *International Dyestuff Mfg. Co. v. Collector of Central Excise, Baroda* 1991 (53) ELT 85 (Tri) : 1991 33 ECR 31. The petitioner has asserted on oath that she had opened a separate bank account, she is herself operating the same and obtained limits and that the impugned notice is conspicuously silent and there is no allegation worth the name that they have any common funding or financial flow-back. Mere blood relationship or sharing of staff, some temporary common employment, similarity of product is also not sufficient to draw an inference that the two units should be clubbed together. Since I have already quoted extracts of decisions in detail, of various Tribunals and the courts, in the earlier part of this order, I am not reproducing them here again. Unless there is some basis and material available with the Department, it has no right or jurisdiction to issue a show cause notice and it will be wastage of energy and time if the petitioner is directed to appear

before the Department to get this aspect decided as on the face of the notice itself read as a whole, the department has not been able to gather any material to come to that conclusion.

37. It is true, ordinarily, the High Court in its extra-ordinary writ jurisdiction, should not interfere in such matters and the parties should be left to deal the matter as provided under the Act itself but all the same, there is no bar to interfere in such matters when the court feels that it is not necessary to insist upon a party that it should first suffer and submit itself to the jurisdiction which is being wrongly exercised without any basis or material. There are numerous cases both of High Courts and the Supreme Court wherein such matters have been interfered and found that the petitioner is being harassed for no fault of his or her and without any substance and material in possession of the Department, in spite of the fact that an alternative remedy was available to the petitioner. These are all self imposed restrictions by the court itself and there is no legal bar provided under Article 226 of the Constitution of India, particularly in the present case when the petitioner is a lady entrepreneur and has taken the courage of establishing a small scale unit and merely because she happens to be daughter-in-law of Shri S.K. Tandon who owns the other factory M/s. Tandon Brothers, situated nearby and also engaged in manufacture of similar product, should not be taxed so as to discourage her.

38. In the result, this writ petition is allowed, the show cause notice dated 29-8-1990 (Annexure-8) is hereby quashed. The petitioner will be entitled to exemption as provided under the Rules and in accordance with law. The parties are left to bear their own costs.