

(2012) 08 GUJ CK 0023
In the Gujarat High Court

Case No : Special Civil Applications No's. 5201 of 2001 and 6691 of 2002

Sanjay Medical Store

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Contract Act, 1872 — Section 72

Evidence Act, 1872 — Section 114

Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 60(3), 60(4)

Citation : (2013) 20 GSTR 463

Hon'ble Judges : Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Mehul S. Shah and Suresh M. Shah, for the Appellant; Maithili Mehta, Additional Government Pleader, for the Respondent

Judgement

Akil Kureshi J.

1. These petitions arise out of similar background. They have been heard together and would be disposed of by this common judgment

For the purpose of the judgment, we may record the facts as emerging in Special Civil Application No. 5201/2001:

The petitioner is a partnership firm. The petitioner has challenged the orders annexure B, E and G, dated February 22, 1995, August 28, 2000 and March 16, 2001, respectively, by which the request of the petitioner for refund of duty paid under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 ("the said Rules", for short), was rejected.

The petitioner at the relevant time was engaged in manufacturing a compound called "mixture carminative prop.". The question of collecting the duty under the said Rules became a centre of legal controversy. The case of the petitioner and other manufacturers of same or similar compound was that such final product should be charged at reduced duty under Item No. 1(ii)(a) under the Schedule to

the said Rules whereas the Government held an opinion that same was chargeable at higher rate under Item No. 1(ii)(b) of the Schedule to the Rules.

A group of petitions being Special Civil Application No. 4116/1982 and connected matters came to be decided on March 14, 1985. The court noticed that under Item No. 1(ii)(a), the excise duty prescribed was at 20 per cent, ad valorem or Rs. 13.20 per litre of pure alcohol content in such substance whichever is higher. Clause (a) covered medicinal preparations which contained any active ingredients in therapeutic quantities whereas clause (b) was residuary clause and covered all those which were not included in clause (a). Under sub-item (b) of Item No. 1(ii), the rate of duty prescribed was 20 per cent, ad valorem or 52.80 per cent, per litre of alcohol content whichever is higher. The court noticed the provisions contained in rule 60 and in particular, sub-rule (3) thereof under which the Central Government had to decide whether the preparation should be declared to be a restricted preparation or an unrestricted preparation. The court was of the opinion that as per such procedure, the decision was to be taken on the basis of the opinion of High Powered Standing Committee, within whose purview came two subject-matters, namely, whether preparation in question was unrestricted preparation or restricted preparation and secondly, to advise as to whether the preparation contained any known active ingredient in therapeutic quantities. The court noted that barring one or two cases before the court that too after filing of the petitions, the Central Government had not declared the category in which the respective preparations fell and whether the same should be included in sub-item (a) or (b) of Item No. 1(ii). Even in those cases where such decisions were taken by the time petitions came up for hearing, the court was not satisfied with the manner in which the same was taken. We are however, not concerned with this later portion of the judgment. Primarily, on the ground that higher duty could not have been collected without categorising the preparations, the court struck down the levy of duty in case of all the petitioners. The court passed the following order:

8. The result is that all these petitions are allowed. The demands made from these petitioners or the orders made against them and confirmed in appeal are all set at naught. The respondent authorities are restrained from demanding and recovering from the petitioners the excise duty on the assumption that their products do not contain known active ingredients in therapeutic quantities and, therefore, fall under Item No. 1(ii)(b) of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. However, if law permits fresh classification, it may be resorted to. Rule is accordingly made absolute in each of these petitions with costs. It follows as a corollary that whatever has been recovered so far from these petitioners, who paid the same under protest, will be required to be refunded.

2. The above order thus had three elements. Firstly, that the authorities were restrained from demanding or recovering excise duty on the assumption that the product did not contain any active ingredient in therapeutic quantities. Secondly,

if law permitted fresh classification, the respondents were granted liberty to resort to the same. Thirdly, it was also directed that whatever duty has been recovered which has been paid under protest shall be refunded.

3. Though the present petitioner was not before the court in the said group of petitions which came to be decided by the judgment dated March 14, 1985, three separate petitions came to be filed by the petitioner being Special Civil Application No. 15/1983, 1353/1984 and 1460/1984. From the record it is not clear to us why separate petitions were filed by the same petitioner with the same grievances. However, all the petitions were disposed of by different orders in line with the judgment dated March 14, 1985. We may reproduce the relevant portion in one such case being an order dated March 14, 1985 passed in Special Civil Application No. 15/ 1983, which reads as under:

For the reasons stated in the common oral judgment recorded in Special Civil Application No. 4116/1982, the court allows the petition and sets at naught the demands made from this petitioner or the orders made against him and confirmed in appeal. The court restrains the authorities from demanding and recovering from the petitioner the excise duty on the assumption that his products do not contain known active ingredients in therapeutic quantities and, therefore, fall under Item No. 1(ii)(b) of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. The court however directs that if law permits fresh classification, it may be resorted to. The court accordingly makes the rule absolute with costs. The court accordingly clarifies that it follows as a corollary that whatever has been recovered so far from the petitioner, who paid the same under protest, will be required to be refunded.

4. Despite the judgment of the Bench dated March 14, 1985, challenge was carried by the Government before the Supreme Court. The Supreme Court however, dismissed the SLP by passing an order which reads as under:

Special leave petition is dismissed since we are of the view that under rule 60(4) of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, the standing committee was bound to issue notice to the manufacturer who has sent two samples manufactured by him under rule 60(3) for determination of the category of item and sub-item in which the preparation falls and the notice shall state that if the manufacturer wishes to be heard he may appear on a particular date so that he may have an opportunity of being heard in the matter if he so desires. The respondent-manufacturer will file its statement along with two of the samples of preparations before the standing committee within four weeks from today and the State Government or the Central Government will file its reply to the statement within a further period of two weeks thereafter and the standing committee will after giving the hearing to the parties proceed to determine the item or sub-item in which the preparation falls and such decision shall be given by the standing committee within three months from today.

5. Despite such judicial pronouncements, for some strange reasons, the

petitioner continued to deposit the excise duty with the State Government at a higher rate. The petitioner, it appears supplied the necessary sample to enable the Central Government to take a decision regarding appropriate categorisation for its preparation only on August 7, 1987. We may recall that the Supreme Court in its order dated March 14, 1985 had specifically provided that the manufacturer will file the statement along with two of the samples for preparation before the standing committee within four weeks from the date of the order. To this aspect, we will revert to at a later stage. Suffice it to note that even after the judgments and orders of this court, the petitioner continued to deposit excise duty with the State Government at a higher rate.

6. On the basis of the samples supplied by the petitioner, albeit after considerable delay, the Central Government took a final decision on its categorisation by a notification dated July 9, 1990. The preparation was categorised as one not containing any ingredients of therapeutic quantities. In other words, they were to be charged at a higher rate of duty under Item No. 1(ii)(b). It appears that upon such final decision, the petitioner discontinued its business. Such decision has not been challenged. The same has been accepted by the petitioner and the classification has thus become final. However, for the period between 1987 and 1990 during which period the petitioner deposited duty with the Government at a higher rate, the petitioner moved the authority in July, 1994 for refund. Such refund application came to be dismissed by the Commissioner of Prohibition and Excise Department, Bhavnagar by order dated February 22, 1995. Aggrieved by such decision, the petitioner preferred an appeal. Such appeal was dismissed by an order dated August 28, 2000. In such order, it was recorded that the petitioner had applied for refund on July 25, 1994 for a sum of Rs. 8,81,032.55. Such application was rejected relying on the notification of the Central Government, despite which, the petitioner applied again on January 4, 1995 which came to be rejected by the Commissioner on September 22, 1995 relying on earlier observations made in the order dated January 4, 1995. The authority observed that since the duty paid earlier was in tune with the ultimate decision of the Central Government and notifications issued pursuant thereto, the duty paid was not required to be refunded. On such grounds the appeal was dismissed. The petitioner thereupon approached the Government. The Government also rejected the request for refund by an order dated March 16, 2001, inter alia, on the ground that there was no provision for refund of duty under the said Rules. The preparation of the petitioner was anyway categorised as one covered under Item No. 1(ii)(b) and therefore, also refund was not required to be granted. These orders, the petitioner has challenged in the present petition.

7. Special Civil Application No. 6691/2002 also arises out of similar background except that in such case, the Commissioner had in his order dated September 8, 2000 rejecting the appeal of the petitioner, also observed that as per the Commissioner of Bhavnagar, the incidence of excise duty was already passed on to the consumer.

8. Appearing for the petitioners, learned counsel Shri S.M. Shah vehemently contended that the very collection and retention of the duty at the higher rate was totally illegal. Particularly, after this court declared its judgment dated March 14, 1985, the Government could not have collected duty at the higher rate without categorising the preparation of any manufacturer. In particular, when the petitioners had themselves approached the court and in their own case, such levy was struck down and provided that same was not to be collected till fresh process is undertaken, the respondents gravely erred in continuing to charge duty at higher rate which the petitioners were compelled to deposit under protest. The counsel further submitted that such duty should be refunded following the principles laid down in section 72 of the Contract Act. The counsel submitted that the Commissioner who decided the application for refund was not the one who had heard it and on such ground also the decision was vulnerable on the principle of one who hears must decide. In support of such a contention, the counsel relied on the decision of the Division Bench of this court in the case of *Shree Ram Packaging v. Union of India* reported in (1990) 2 GLH 343 (Guj). The court set aside the order passed by the Assistant Collector and directed fresh decision finding that the hearing was granted by one Assistant Collector and the final decision was taken by another. The counsel submitted that the respondents can support the orders only on the basis of reasons recorded in such order and not on other external grounds.

9. On the other hand the learned AGP Ms. Maithili Mehta opposed the petitions contending that the petitioners had made refund applications after much delay. The authorities had examined the cases but found that the preparations of the petitioners were not containing the ingredients in therapeutic quantities. On such basis, the petitioners were liable to pay higher excise duty. She submitted that the question of unjust enrichment would also arise.

10. Having thus heard learned counsel for the parties and having perused the documents on record, it is undoubtedly true that in the earlier round of litigation this court had ruled in favour of the present petitioner and other similar manufacturers to the effect that in the absence of any categorisation of medicinal preparations, the Government cannot collect excise duty at a higher rate treating such preparations as not containing ingredients of therapeutic quantities. In such order, while holding that the Government shall not collect such higher duty, the court still permitted fresh classification if allowable under the law. The court also provided for refund of duty already collected under protest.

11. Though this judgment was carried in appeal, the Supreme Court rejected the special leave petition. However, while doing so, observing that the SLP was dismissed since the court was of the view that under rule 60(4) of the said Rules, the Standing Committee was bound to issue notice to the manufacturers who has sent two samples manufactured by him under rule 60(3) for determination of the category of item and sub-item in which the preparation fell. On that basis while providing that the manufacturer will file such statement along with two of the

samples of the preparation before the Committee within four weeks and that the State and the Central Government shall proceed thereafter, the SLP was dismissed. It would thus emerge that though this court declared that duty at higher rate cannot be recovered without categorisation of the preparations, such order was to some extent modified by the Supreme Court providing that the manufacturer shall supply samples within four weeks. Such order was passed way back on September 20, 1983, despite which, it has come on record that samples being supplied by the petitioner only on August 7, 1997. Thus there was considerable delay on the part of the petitioners in supplying such samples. In the absence of such samples supplied by the petitioner, it was not possible for the Committee to proceed further to examine as to under which category the preparation would fall and make necessary recommendations in this respect.

12. Additionally, we also find that for refund of duty paid up to year 1990 (we may recall that after 1990, upon notification being issued for categorising of the preparations, the petitioner discontinued its manufacturing activity), the refund application came to be filed only on July 25, 1994. Thus there was clear delay of four years in making the refund application. Additionally, we also notice that despite the judgment of this court, the petitioners continued to deposit the duty at a higher rate. It has not come on record that such deposit was under compulsion by the respondents. Even if it were so, the petitioners could have and ought to have taken legal recourse instead of continuing to suffer silently despite a clear judgment from the court. Instead of doing so, the petitioners supplied the samples after much delay. Once while the final decision was rendered, the petitioner discontinued the preparation all together, and long many years thereafter, made refund claim which came to be rejected for various reasons.

13. In addition to the above impediments, we were also conscious of principles of unjust enrichment. The Commissioner in the order challenged in Special Civil Application No. 6691/2002 had also indicated that as per the Superintendent such burden of duty was already passed on to the consumer. Under the circumstances, we had in our order dated June 29, 2012 finding that certain additional documents were produced without any affidavit, while permitting the petitioner to place the same on affidavit, also permitted in such affidavit to state whether the ultimate burden of the duty was passed on to the consumer or not. In the affidavit dated August 3, 2012 filed by the petitioner in Special Civil Application No. 5201/2001, it is stated that while selling the product, the petitioner has charged a fixed rate and not charged excise duty in addition to the price fixed from any customer. We are however, not satisfied with such simple statement. We had therefore, called upon the counsel for the petitioner to produce documents in support of such stand and also permitted time on couple of occasions, despite which, no documents have been produced before us. On the last occasion the counsel for the petitioner tried to show some xerox copies of documents across the bench without any supporting affidavit which we did not permit.

14. The principles of unjust enrichment is firmly established while examining the case of refund particularly of indirect taxes. Present is a case of indirect tax is not in dispute. It would not be possible to lightly presume that the petitioner went on depositing the duty at a higher rate while collecting the duty from the consumers at a lower rate. In other words, the factum of not passing on the incidence of duty on consumers cannot be lightly presumed. In the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , the Supreme Court in the majority opinion highlighted the concept of unjust enrichment, particularly, when a citizen invokes writ jurisdiction which is discretionary in nature making the following observations (pages 527, 547 of 111 STC):

We are, therefore, of the opinion that equitable considerations cannot be held to be irrelevant where a claim for refund is made u/s 72. Now, one of the equitable considerations may be the fact that the person claiming the refund has passed on the burden of duty to another. In other words, the person claiming the refund has not really suffered any prejudice or loss. If so, there is no question of reimbursing him. He cannot be recompensated for what he has not lost. The loser, if any, is the person who has really borne the burden of duty; the manufacturer who is the claimant has certainly not borne the duty notwithstanding the fact that it is he who has paid the duty. Where such a claim is made, it would be wholly permissible for the court to call upon the petitioner/plaintiff to establish that he has not passed on the burden of duty to a third party and to deny the relief of refund if he is not able to establish the same, as has been done by this court in Union of India and others Vs. I.T.C. Limited, . In this connection, it is necessary to remember that whether the burden of the duty has been passed on to a third party is a matter within the exclusive knowledge of the manufacturer. He has the relevant evidence--best evidence-- in his possession. Nobody else can be reasonably called upon to prove that fact. Since the manufacturer is claiming the refund and also because the fact of passing on the burden of duty is within his special and exclusive knowledge, it is for him to allege and establish that he has not passed on the duty to a third party. This is the requirement which flows from the fact that section 72 is an equitable provision and that it incorporates a rule of equity. This requirement flows not only because section 72 incorporates a rule of equity but also because both the Central excise duties and the customs duties are indirect taxes which are supposed to be and are permitted to be passed on to the buyer. That these duties are indirect taxes, meant to be passed on, is statutorily recognised by section 64A of the Sale of Goods Act, 1930 (which was introduced by the Indian Sale of Goods (Amendment) Act, 1940 and substituted later by Act 33 of 1963)...

Sub-section (2), it may be noted, expressly makes the said provision applicable to duty of customs and duties of excise on goods. This fact was also recognised by the Federal Court in The Province of Madras Vs. Boddur Paidanna and Sons, and by this court in R.C. Jall Vs. Union of India (UOI), . In such a situation, it would be legitimate for the court to presume, until the contrary is established,

that a duty of excise or a customs duty has been passed on. It is a presumption of fact which a court is entitled to draw u/s 114 of the Indian Evidence Act. It is undoubtedly a rebuttable presumption but the burden of rebutting it lies upon the person who claims the refund (plaintiff/petitioner) and it is for him to allege and establish that as a fact he has not passed on the duty and, therefore, equity demands that his claim for refund be allowed. This is the position de hors 1991 (Amendment) Act--and as we shall point out later, the said Amendment Act has done no more than to give statutory recognition to the above concepts. This is the position whether the refund is claimed by way of a suit or by way of a writ petition. It needs to be stated and stated in clear terms that the claim for refund by a person who has passed on the burden of tax to another has nothing to commend itself; not law, not equity and certainly not a shred of justice or morality. In the case of a writ petition under article 226, it may be noted, there is an additional factor: the power under article 226 is a discretionary one and will be exercised only in furtherance of interests of justice. This factor too obliges the High Court to enquire and find out whether the petitioner has in fact suffered any loss or prejudice or whether he has passed on the burden. In the latter event, the court will be perfectly justified in refusing to grant relief. The power cannot be exercised to unjustly enrich a person...

(iii) A claim for refund, whether made under the provisions of the Act as contemplated in proposition (i) above or in a suit or writ petition in the situations contemplated by proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.

15. We further find that a similarly situated manufacturer had approached this court by filing Special Civil Application No. 4889/1989. Relying on the judgment of the Division Bench dated March 14, 1985, it was also contended that higher rate of duty under Entry 1(ii)(b) without categorisation of the product was not permissible. The court in a judgment dated July 18, 1994 while upholding the contention and quashing the levy provided that refund can be claimed only after the classification is done. It was observed:

We therefore, allow this petition and quash the order at "annexure E" dated August 3, 1987 demanding the payment of excise duty in terms of their product. However, it will be open for the respondents to take appropriate action for the classification of the product manufactured by the petitioner-company in accordance with law and raise the demand of excise duty. It may further be made clear that since we have not decided upon the classification under which item manufactured by the petitioner falls, it will not automatically result in claim of refund by the petitioner, of the excise duty, on the ground of its having been paid in excess of what was authorised by law. The question of refund can be decided only after classification under which head the product of the petitioner is determined by the appropriate authority and the liability under the Act is determined. It will only thereafter be open for the petitioner to make a claim in accordance with law of refund of excise duty already paid. Rule made absolute accordingly with no order as to costs.

16. Under the circumstances we are of the opinion that the petitioners have not made out any case for interference.

17. Before closing, we may briefly deal with the contention that one who hears must decide. In the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , the apex court applied the principle that one who hears must decide. It was a case wherein the decision was taken by the Chief Minister, but hearing was granted by the Secretary. In such context while striking down the decision by a majority view, the said opinion was expressed. However, such principle has since been seen in different light in different subsequent situations.

18. In the case of General Manager, Eastern Railway and Another Vs. Jawala Prosad Singh, , the apex court noted that an inquiry committee consisting of three persons was constituted to inquire into the charges levelled against the railway servant. After the proceedings had progressed for sometime and witnesses were examined, one of the members was transferred. His place was taken by his successor in the office. The proceedings continued from the stage where they had stopped. The Committee submitted a report holding that the respondent was guilty of charges levelled against him. On the basis of such report, the disciplinary authority dismissed the delinquent from service. Such decision was questioned, inter alia, on the ground that the same was in breach of the principles of one who hears must decide. The apex court did not accept such contention and observed as under:

6. In our opinion, the above procedure does not leave any scope for the guidance of a member of an Inquiry Committee consisting of more than one person by the impression formed by him about the truthfulness or otherwise of a particular witness examined during the inquiry. From the stage antecedent to the framing of the charges everything is recorded in writing: the allegations on which the charges are based are made known to the railway servant and he is called upon to file his written statement after looking into all the relevant records. The oral evidence of all the witnesses tendered during the enquiry is recorded in writing. Whereas here the oral evidence is recorded in the presence of three persons constituting the Inquiry Committee, any impression created by the demeanour of a particular witness on the mind of any one member cannot affect the conclusion afterwards arrived at jointly by them. It cannot be suggested that all the three persons would record their impressions separately about the demeanour of a witness and it is quite possible that a particular witness may appear to one member of the committee to be untruthful without his being considered so by the others. The members of the Inquiry Committee cannot record their findings separately but it is their duty to record findings on each of the charges together with the reasons therefor. It is to be noted that the duty of the Inquiry Committee ends with the making of the report. The disciplinary authority has to consider the record of the inquiry and arrive at its own conclusion on each charge. Whatever may be the impression created by a particular witness on the mind of one member of the committee, the same is never translated into writing and the disciplinary committee merely goes by the written record after giving a personal hearing to the railway servant if he asks for it. Even if the Inquiry Committee makes a report absolving the railway servant of the charges against him, the disciplinary authority may, on considering the entire record come to a different conclusion and impose a penalty. This is amply borne out by a judgment of this court in *Union of India (UOI) Vs. H.C. Goel*, where it was said that neither the findings nor the recommendations of the Inquiry Committee are binding on the Government.

7. In such a state of affairs a change in the personnel of the Inquiry Committee after the proceedings are begun and some evidence recorded cannot make any difference to the case of the railway servant. The record will speak for itself and it is the record consisting of the documents and the oral evidence as recorded which must form the basis of the report of the Inquiry Committee. The committee is not the punishing authority and the personal impression of a member of the committee cannot possibly affect the decision of the Disciplinary Authority. In a state of affairs like this, we cannot see any reason for holding that any known principles of natural justice is violated when one member of the committee is substituted by another.

19. In the case of *Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another*, , the apex court held that the fact that the officer other than who heard the case had passed the order would not be fatal where question was of the approval by the Government and not by

any particular officer statutorily designated and further that entire record and minutes were seen before passing the order. It was observed as under:

6. There was some discussion before us on a larger question as to whether the requirements of natural justice can be said to have been complied with where the objections of parties are heard by one officer but the order is passed by another. Sri Salve, referring to certain passages in *Local Government Board v. Alridge* (1915) AC 120, *Ridge v. Baldwin* (1964) AC 40, *Regina v. Race Relations Board*, *Ex parte Selvarajan* (1975) 1 WLR 1686, and in *de Smith's Judicial Review of Administrative Action*, (4th Edn. p. 219-220) submitted that this was not necessarily so and that the contents of natural justice will vary with the nature of the enquiry, the object of the proceeding and whether the decision involved is an "institutional" decision or one taken by an officer specially empowered to do it. Sri Divan, on the other hand, pointed out that the majority judgment in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , has disapproved of *Alridge's* case and that natural justice demands that the hearing and order should be by the same officer. This is a very interesting question and *Alridge's* case has been dealt with by *Wade* (*Administrative law* 6th Edition page 507 et seq). We are of opinion that it is unnecessary to enter into a decision of this issue for the purposes of the present case. Here the issue is one of grant of approval by the Government and not any particular officer statutorily designated. It is also perfectly clear on the records that the officer who passed the order has taken full note of all the objections put forward by the petitioners. We are fully satisfied, therefore, that the requirements of natural justice have been fulfilled in the present case.

20. We are not oblivious that the apex court in the case of *Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others*, in the context of imposition of antidumping duty, held that when personal hearing was granted by the previous designated authority, the final decision could not have been taken by his successor without fresh hearing. However, such decision was rendered in the background of statutory provision for deciding imposition of antidumping duty. In the present case, we find that the Commissioner who had succeeded the earlier Commissioner had taken into account the representation of the petitioner contained in the appeal memo and taken a decision. We are doubtful whether the petitioner had a right of personal hearing as a matter of course. Be that as it may, only on such ground we are not inclined to remand the proceedings at this distant point of time when we find that the petitioner has not made out a case for interference. In the result, both the petitions are dismissed. Rule is discharged.