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**(2010) 10 P&H CK 0132**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 16796 of 2010**

Saviton Metplast (P) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 05-10-2010

**Acts Referred:**

Central Excise Rules, 2002 — Rule 12CC  
Central Excises and Salt Act, 1944 — Section 11AC, 37  
Constitution of India, 1950 — Article 14, 21

**Citation :** (2011) 263 ELT 519

**Hon'ble Judges :** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of notification dated 30-12-2006, adding Rule 12CC to the Central Excise Rules, 2002 (for short, "the 2002 Rules") and order dated 4-8-2010, Annexure P-8, passed under the said rules, withdrawing facility of paying excise duty on monthly basis and also stopping utilization of CENVAT Credit under the CENVAT Credit Rules, 2004 apart from taking other actions.

2. Case of the Petitioner is that a search was conducted on the premises of the Petitioner by the Directorate General of Central Excise (DGCEI) on 3-12-2009. It was alleged by a Show Cause Notice dated 8-4-2010 that the Petitioner was found engaged in evasion of Central Excise Duty by way of clandestine manufacture of goods, as goods worth Rs. 59 lacs were found unaccounted for in the records. The goods seized were released against a bond of the value of goods and bank guarantee for 25% of the value of the goods. Further Show Cause Notice dated 1-6-2010 was issued u/s 11AC of the Central Excise Act, 1944 (for short, "the Act"), proposing recovery of duty of Rs. 2.87 lacs, confiscating the seized goods of the total value of about Rs. 1 crore and proposing penalty. This was followed by order under Rule 12CC of the 2002 Rules, as mentioned above.

3. In the writ petition, main contentions are:

- (i) Rule 12CC is given the rule making power u/s 37 of the Act, as the Rule can be framed only for confiscation of goods or for imposition of penalty;
- (ii) The Rule confers arbitrary power, as the alleged evasion of duty can be dealt with by confiscation of goods and levy of penalty and withdrawal of facility by way of a preventive action will be a drastic power which could be exercised on pick and choose basis;
- (iii) Under the scheme of the Rules, while opportunity of hearing is to be granted by the Chief Commissioner, order is to be passed by the members of the Board without giving an opportunity of hearing;
- (iv) No guidelines have been prescribed for exercise of power by laying down minimum or maximum period for which restrictions are to operate;
- (v) Even though the notification was valid exercise of power, by passing the impugned order, there under, was arbitrary being in violation of principles of natural justice and without there being a time limit for completion of proceedings. Thus, the preventive action resulted in penal action;
- (vi) Under any fair procedure, penal action should succeed and not precede adjudication of fault;
- (vii) There is also mechanism for post-decisional hearing and restoring the loss suffered in case a person is found to be innocent.

4. In the reply filed, the impugned Rule as well as the impugned action has been defended by submitting that provision for preventive action was necessary to adjudicate evasion and to act as a deterrent for evaders. The action is permitted only when there was massive evasion of more than Rs. 10 lacs. The power was conferred on the members of the Board of Central Excise and Customs. As regards the impugned order, it has been stated that as a result of search, followed by scrutiny of documents seized, evasion of more than Rs. 1 crore was found. Thus, deterrent action was justified.

5. We have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the Petitioner in addition to invalidity of the Rules, in support of contentions raised in the petition submitted that on admitted facts, the evasion of duty alleged, is not more than Rs. 2.87 lacs and on such an admitted case, the provision for preventive action could not be invoked in view of monetary limit of Rs. 10 lacs of alleged evasion. It was further submitted that the interest of revenue having been duly secured, the impugned restrictions were arbitrary. Deterrent preventive action taken in the present case is also hit by the principle of proportionality. The extent of action taken should be justifiable to the extent of fault. Disproportionate harsh action was violative of Articles 14 and 21 of the Constitution.

7. Learned Counsel for the Respondents could not dispute that monetary limit of evasion of Rs. 10 lacs, which may justify action under the impugned rules, do not fulfill evasion as per allegations in the Show Cause Notice, Annexure P-7.

8. In view of admitted position, preventive action under the impugned order cannot be justified. Accordingly, the impugned order, Annexure P-8, is liable to be quashed. This will, however, be without prejudice to any other or further action in accordance with law.

9. Even though it may not be necessary to go into other questions, since the question of validity and scope of Rule 12CC of the 2002 Rules are being repeatedly raised, we consider it appropriate to deal with certain aspects. The impugned provision was upheld by Gujarat High Court in Dhariyal Chemicals Vs. Union of India (UOI) and Others, on the ground that summary power under the Rules will act as a deterrent against tax evaders by withdrawal of facilities. The power provided there under had nexus with the object, in view of monetary limit, restricting action only against a specified class where evasion is of higher magnitude or more than Rs. 10 lacs. It was further observed that exercise of power was permissible by complying with principles of natural justice.

10. Any taxing power carries the incidental power to effectuate the levy by providing penal consequences of evasion of tax. Nature of penal consequences which may be specified may also include the preventive action. This being the settled legal position, mere fact that a provision was made for a preventive action, cannot be held to be arbitrary or beyond the scope of the Statute. Even so, exercise of any penal power has to be by a fair and reasonable procedure. Giving of hearing, consideration of defense and adjudication, final or prima facie action being proportionate to default are parts of fair procedure under Article 21 of the Constitution. Under the scheme of the Rules, the power to pass orders is with the Board while opportunity of being heard is granted by the Chief Commissioner. Normal principle of law is that the authority which takes a decision should itself give a hearing and even if such procedure is deviated from, the authority hearing must consider the view point of the affected parties with regard to recommendations made to it, which implies that the adverse material which is made foundation of the order is confronted to the affected parties. Whether or not in advancing such procedure, any prejudice is caused, may be seen from case to case. This procedure, in absence of any prohibition under the Rules, cannot be held to be part of the natural justice.

11. In view of above, we allow this petition and quash the impugned order, Annexure P-8.