**(1999) 02 MAD CK 0018**

**In the Madras High Court**

**Case No :** Writ Petition No. 8353 of 1991

S.B. Steels APPELLANT

Vs

Collector of Central Excise RESPONDENT

**Date of Decision :** 18-02-1999

**Acts Referred:**

Central Excise Rules, 1944 — Rule 230, 230(1), 230(2)
Central Excises and Salt Act, 1944 — Section 11A, 11A(1)

**Citation :** (2000) 68 ECC 264 : (2000) 115 ELT 287

**Hon'ble Judges :** P. Sathasivam, J

**Bench :** Single Bench

**Advocate :** R. Thiagarajan for T. Muthuraman, for the Appellant; T.L.L. Ramakrishnan, Additional Central Government Standing Counsel, for the Respondent

**Final Decision :** Dismissed

# Judgement

P. Sathasivam, J.—Aggrieved by the proceedings of the Superintendent of Central Excise, Podanur Range, third respondent herein, in O.C.

No. 1083/91, dated 2-5-1991 and O.C. No. 2094/91, dated 20-5-1991, the petitioner has filed the above Writ Petition to quash those orders on

various grounds.

2. The case of the petitioner is briefly stated hereunder :-

The petitioner firm was manufacturing M.S. Bars, M.S. Angle, M.S. Plates classified under sub-headings 7209.90; 7210.10 and 7209.10

respectively of the Schedule to the Central Excise Tariff. On 1-4-1987 the petitioner leased out its plant, Machinery and Building to M/s. Modern

Steel Industries, Coimbatore for manufacturing the above said item. The lease period came to the end on 1-4-1990. On the expiry of the said period, the lessees surrendered the possession of the plant, machinery and building to the petitioner on 10-1-1991. The handing over and taking

over of possession are vouched by records. After the petitioner made arrangements for running the factory itself, it wrote on 20-4-1991 to the

Superintendent, Central Excise, Podanur Range, Coimbatore-23 of its detention to resume manufacture in the said factory. It also informed the

Superintendent that they were not going to manufacture any excisable items. To its surprise, it received a communication dated 2-5-1991 from the

Superintendent, Central Excise, Podanur Range, 3rd respondent herein, that by order dated 7-2-1991 of the 3rd respondent, the plant and

machinery in the premises were detained under Rule 230(1) of the Central Excise Rules, that the lease cannot hand over the plant and machinery to

the petitioner and unless a sum of Rs. 2,82,201.57 duty liability of the lessee Modern Steel Industries and penalty of Rs. 2,000/- is paid, they

cannot permit the petitioner to commence manufacturing activity. This was followed by a further communication dated 20-5-1991 by which the

Superintendent of Central Excise, Podanur Division called upon the petitioner to pay the arrears of Rs. 2,84,201.57 due from Modern Steel

Industries, failing which action would be initiated against the petitioner. Aggrieved by the communication dated 2-5-1991 and 20-5-1991 of the

Superintendent of Central Excise, Podanur Division, the petitioner has filed the above writ petition as there is no other alternative effective legal

remedy available.

3. On behalf of the respondents, the second respondent has filed a counter affidavit disputing various averments made by the petitioner. The

present writ petition is only an off shoot of the order passed by this Court in Modern Steel Industries Vs. Union of India, . Modern Steel

Industries, having its factory at Myleripalayam, Coimbatore, are manufacturing iron and articles of iron. By an order dated 25-8-1989, the

Additional Collector of Central Excise, Coimbatore demanded duty of Rs. 2,82,201.57 from the said industries in respect of wrong availment of

the benefit under Notification No. 208/83. On 7-2-1991, the Assistant Collector of Central Excise, Pollachi ordered detention of goods and Plant

and Machinery under Rule 230 of Central Excise Rules, 1944 pending payment of demand confirmed. On 13-2-1991, the detention order was executed by the Superintendent of Central Excise, Podanur and a copy of the detention Mahazar was served on the partner of the said Steel

Industries, who was present at the time of detention at the factory. Meanwhile, the said Industries filed Writ Petition No. 4830/91 Modern Steel

Industries Vs. Union of India, in this Court and this Court dismissed the writ petition confirming the order of detention passed by the Assistant

Collector on 10-4-1991. After the dismissal of the said petition within ten days the petitioner sent a letter to the Superintendent, Podanur on 20-4-

1991 stating that the building and Plant and Machinery under detention are the properties of M/s. S.B. Steels and M/s. Modern Steel Industries

were only the lessee; that the lease period had already expired on 1-4-1990; that the lessor had already taken possession of the properties on 10-

1-1991 (i.e., before the date of detention). It is further stated that only to circumvent the detention order dated 7-2-1991 and subsequent refusal

of this Court to interfere with the detention order, the petitioners as well as the lessees, M/s. Modern Steels have devised the theory of leasing of

the factory. They have not disclosed it even in the Court of law at the time of contesting the Assistant Collector''s detention order in Modern Steel

Industries Vs. Union of India, . Neither the petitioner nor M/s. Modern Steel Industries so far produced any documents relating to the lease

transaction to the Range Superintendent. Notwithstanding the above, not only M/s. Modern Steels but also the petitioner are liable to discharge the

duty demanded in terms of Rule 230(2) of Central Excise Rules, 1944. In such circumstances, they prayed for dismissal of the writ petition.

4. In the light of the above pleadings, I have heard Mr. R. Thiagarajan, learned Senior Counsel for the petitioner and Mr. T.L.L. Ramakrishnan,

learned Additional Central Government Standing Counsel for the respondents.

5. On 1-4-1987 the petitioner leased out its Plant, Machinery and Building to Lessor. Modern Steel Industries, Coimbatore for Manufacturing

M.S. Bars, M. S. Angle and M. S. Plates. It is the definite case of the petitioner that on the expiry of the lease period, the lessees surrendered the

possession of the Plant, Machinery and building to the petitioner on 10-1-1991. It is also their case that the handing over and taking over of

possession are vouched by records. After the petitioner made arrangements for running the factory itself, it wrote on 20-4-1991 to the

Superintendent, Central Excise, Podanur Range, third respondent herein of its intention to resume manufacture in the said factory. It also informed

in the same letter that they were not going to manufacture any excisable items. In response to the said letter, the third respondent in his

communication dated 2-5-1991 inform that by order dated 7-2-1991, the plant and machinery in the premises were detained under Rule 230(1)

of the Central Excise Rules. Accordingly the lessee cannot hand over the plant and machinery to the petitioner and unless a sum of Rs.

2,82,201.57 duty liability of the lessee-Modern Steel Industries and penalty of Rs. 2,000/- is paid, they cannot permit the petitioner to commence

manufacturing activity. Mr. R. Thiagarajan, learned Senior Counsel appearing for the petitioner, has submitted that the lease granted on 1-4-1987

in favour of M/s. Modern Steel Industries, Coimbatore came to an end on 1-4-1990, and the plant, machinery and building surrendered by the

lessee in favour of the lessor, petitioner herein, on 10-1-1991. When the petitioner informed the third respondent on 20-4-1991 of their intention

to resume manufacture in the said factory, the third respondent wrote back by order dated 7-2-1991 saying that the plant and machinery in the

premises were detained under Rule 230(1) of the Central Excise Rules, as the lessee was having a liability of Rs. 2,82,201.57 and penalty of Rs.

2,000/- to the third respondent. Further, the Superintendent, Central Excise, by his proceedings dated 2-5-1991 and 20-5-1991 called upon the

petitioner to pay the arrears of Rs. 2,84,201.57 due from M/s. Modern Steel Industries. Mr. R. Thiagarajan, learned Senior Counsel for the

petitioner, would contend that inasmuch as after the expiry of the lease period, the plant, machinery and building were surrendered to the petitioner

on 10-1-1991, the order of the Superintendent of Central Excise dated 7-2-1991 detaining the plant and machinery under Rule 230(1) of the

Central Excise Rules cannot be sustained, since on the relevant date the plant and machinery were not in hands of the petitioner. No doubt, he has

brought to my notice the correspondences between the petitioner and the lessee regarding surrendering of plant, machinery and building as well as

payment of arrears of lease amount, electricity charges etc. All those documents have been included in the typed-set of papers.

6. In such circumstance, according to him, it is not open to the third respondent to claim the duty payable by M/s. Modern Steel Industries in

 

respect of wrong availment of the benefit under Notification No. 208/83 from the petitioner much later to the taking back of plant and machinery

from the lessee. It is seen from the records that on 7-2-1991, the Assistant Collector of Central Excise, Pollachi ordered detention of goods, Plant

and Machinery under Rule 230 of Central Excise Rules, 1944 pending payment of demand. The said detention order was executed by the

Superintendent of Central Excise, Podanur on 13-2-1991 and a copy of the detention Mahazar was served on the partner of M/s. Modern Steel

Industries (lessee) who was present at the time of detention at the factory. It is further seen that in the meanwhile, M/s. Modern Steel Industries

filed Writ Petition No. 4830/91 before this Court challenging the detention order of the Additional Collector. There is no dispute that the said writ

petition filed by the lessee was dismissed on 10-4-1991 confirming the order of detention passed by the Additional Collector of Central Excise,

Coimbatore. As rightly contended by the learned Additional Central Government Standing Counsel, within a period of ten days from the order of

this Court i.e., on 20-4-1991, the petitioner herein, sent a letter to the Superintendent, Central Excise, Podanur stating that the buildings, Plant and

Machinery under detention are their properties and M/s. Modern Steel Industries were only the lessee. They also informed therein that the lease

period had already expired on 1-4-1990 and that the lessor had already taken possession of the properties on 10-1-1991 (i.e., before the date of

detention). Thereafter only the Superintendent informed the petitioner by letter dated 2-5-1991 (which is one of the orders impugned) that unless

the dues are paid, the plant and Machinery should not be used by the petitioner.

7. One important factor to be noticed is that though the detention Mahazar was served on M/s. Modern Steel Industries at the place and time of

the execution of the detention order which were in actual possession of the said properties on that date, admittedly they did not disclose anything

about the leasing out of the factory to the departmental Authorities. Likewise, they have not disclosed the said lease arrangement even before this

Court at the time of contesting the detention order passed by the Assistant Collector in Modern Steel Industries Vs. Union of India, . Even though

M/s. Modern Steel Industries stated that the surrender of factory to the petitioner with effect from 10-1-1991 have been referred to in their letter dated 20-3-1990 addressed to the petitioner, no such letter of intimation was sent to the Superintendent, Central Excise, Podanur.

7. Another important feature as pointed out by the respondents is that even though W.P. No. 4830/91 Modern Steel Industries Vs. Union of

India, filed by M/s. Modern Steel Industries, lessee and W.P. No. 8355/91 filed by the petitioner herein, lessor of the said factory came up for

final hearing on 10-4-1991, for the reasons best known to them, they failed to bring it to the notice of this Court regarding surrender of plant,

Machinery and Building on 10-1-1991 in favour of the petitioner. In such circumstances, as rightly contended by the learned Additional Central

Government Standing Counsel, either of the parties could have brought to the notice of this Court about the leasing out of the factory in

Myleripalayam. The fact remains that no one made any statement regarding the said surrender on 10-1-1991. It is also the definite case of the

respondents that neither M/s. S.B. Steels nor M/s. Modern Steel Industries produced any document relating to the lease transaction to the

Superintendent of Central Excise, Podanur Range. Accordingly they are right in assuming that the transaction as a whole does not appear to be a

bona fide one.

8. In terms of Rule 230(2) of Central Excise Rules, 1944, nor only M/s. Modern Steel Industries, but also M/s. S.B. Steels are liable to discharge

the duty demanded. The said Rule is reproduced hereunder :-

RULE 230 : Goods, Plant and Machinery chargeable with duty not paid :-

(1) When the duty leviable on any goods in owing from or by, any person carrying on trade or business, whether as a producer, manufacturer or as

dealer in such goods, all excisable goods, and all materials and preparations from which any such goods, are made, and all plant, Machinery,

Vessels, utensils, implements and articles for making or manufacturing or producing any such goods, or preparing any materials, or by which trade

or business is carried on, in the custody of possession of the person carrying on such trade or business, or in the custody of possession of any

agent or other person in trust for or for the use of the person carrying on such trade or business, may be detained for the purpose, or exacting such

duty; and any officer duly authorised by general or special order of the Central Board of Excise and Customs or the Collector may detain such goods, materials, preparations, plant, machinery, vessels, utensils and articles until such duties or any sums recoverable in lieu thereof are paid or

recovered.

(2) Where any such person transfers or otherwise disposes of his business in whole or in part, or effects any change in the ownership thereof, in

consequence which he is succeeded in the business or trade or part thereof by any other person or persons, all excisable goods, materials,

preparations, plant, machinery, vessels, utensils, implements and articles in the custody or possession of the person or persons succeeding may also

be detained for the purpose of exacting duty due from the producer, manufacturer or dealer up to the time of such transfer, disposal or change,

whether such duty has been assessed before such transfer, disposal or change, but has remained unpaid, or is assessed thereafter.

In the light of the said statutory provision and inasmuch as no legal document evidencing the ownership of the factory as on the date of detention

was produced either at the time of execution or detention order under Rule 230 of Central Excise Rules on 13-2-1991 or at the time of contesting

the detention order by the lessee in Modern Steel Industries Vs. Union of India, in this Court, I am unable to accept the argument of the learned

Senior Counsel for the petitioner. Mr. R. Thiagarajan, learned Senior Counsel has very much relied on a decision reported in 1989 (24) ECR 1 34

and contended what the Scheme of the Act and the Rules contemplates that the person actually manufacturing the goods is the manufacturer of the

goods and liability to pay duty will be on the manufacturer. There is no dispute with regard to the above proposition of law with reference to the

statutory provision. As stated earlier, owing to the wrong availment of the benefit under Notification No. 208/83, the manufacturer of the goods,

namely, M/s. Modern Steel Industries (lessee) was demanded duty of Rs. 2,82,201.57 and since the lessee failed to pay the amount of duty, the

Assistant Collector of Central Excise passed a detention order on 7-2-1991 detaining the goods, Plant and Machinery under Rule 230 of the said

Rules pending payment of demand. If really the Plant and Machinery were not in the hands of the lessee, the same could have been brought to the

notice of the third respondent at the time of passing the detention order. Likewise, as stated above, the same was also not brought to the notice of this Court when the said detention order was challenged. In such a circumstances, the said decision is not helpful to the petitioner''s case and the

respondents are justified in passing the impugned order.

9. Regarding the other contention that as per Section 11A of the Central Excise Act, 1944, recovery of duties not levied or not paid, it is stated

that the period of limitation is six months from the relevant date. By pointing cut the said clause regarding the limitation for taking action to recover

the said amount, Mr. R. Thiagarajan, learned Senior Counsel for the petitioner, would contend that in any event, in view of the said provision, the

action taken by the respondents in the year 1991 is clearly barred and on that ground, the impugned orders are liable to be quashed. The relevant

section is as under :-

11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. - (1) When any duty of excise has not been

levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant

date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to

whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of

fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made

thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words

six-months"", the words ""five years"" were substituted.

In this regard, it is relevant to note that I have already concluded that in the absence of any information to the concerned Authority in the Mahazar

statement or before this Court when the detention order was challenged regarding the surrender of Plant and Machinery on 10-1-1999, as rightly

contended by the respondents, absolutely there is no bona fide action. In other words, it is clear that the transaction as a whole does not appeal to

be a bona fide one. If that is so, as per Proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944, the period of limitation prescribed is five years. Accordingly, the action taken by the respondents cannot be interfered with on the ground of limitation. Hence the

contention on this score is also liable to be rejected.

10. In the light of what is stated above, I do not find any error or infirmity in the impugned proceedings; consequently the writ petition fails and the

same is dismissed. However, there shall be no order as to costs.