

(1997) 07 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 7745 of 1988

Sri Sowmya Screen Printers

APPELLANT

Vs

Asstt. Collector of C. Ex., Erode

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 2

Citation : (1998) 59 ECC 126 : (1998) 97 ELT 54

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Shri V. N. Mohan Raj, for the Appellant; Shri K. Jayachandran, A.C.G.S.C., for the Respondent

Judgement

1. Heard both the parties.

2. In the above writ petition, the petitioner has prayed for a writ of Declaration declaring that the proviso to Central Excise Notification No.

253/82-C.E., dated 8-11-1982 are illegal, arbitrary, void, unconstitutional and unenforceable insofar as they affect the petitioner herein.

[Paragraph number as per certified copy.] 2. The impugned notification dated 8-11-1982 runs as follows :

Notification No. 253/82-C.E., dated 8-11-1982

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (3) of section 3 of the

Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notifications of the Govt. of India in

the Ministry of Finance (Department of Revenue and Insurance) Nos. 80/76-Central Excises and 122/76-C.E., dated the 16th March, 1976, the

Central Govt. hereby exempts cotton fabrics, falling under sub-item I of Item No. 19 of the First Schedule to the Central Excises and Salt Act (1

of 1944) when subjected to any process or processes specified in the Table hereto annexed, from the whole of the duty of excise leviable thereon

both under the Central Excises and Salt Act, 1944 (1 of 1944), and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58

of 1957).

Provided that no such exemption shall apply

(i) if unprocessed cotton fabrics, falling under sub-item I(a) of the said Item No. 19, on which the duty of excise leviable thereon under any of the

aforsaid two Acts, either in whole or in part, are subjected to any process or processes specified in the said Table, within the factory in which, the

said unprocessed fabrics have been produced, or

(ii) if cotton fabrics falling under sub-item I of the said Item No. 19, are subjected to any process or processes specified in the said Table within

the same factory in which they have been subjected to any process other than the processes specified in the said Table.

Of course, the petitioner is challenging only the proviso to the said notification dated 8-11-1992.

3. The grievance of the petitioner is that by an impugned proviso, what was exempted under the notification dated 8-11-1992 has been denied

unreasonably and arbitrarily and without any valid reason in law. Hence the petitioner has sought for issue of a writ of Declaration as prayed for.

4. Mr. K. Jayachandran, learned Counsel appearing for the respondents per contra, contends that decision of a Division Bench of Bombay High

Court reported in *Swadeshi Dyeing and Bleaching Mills (P) Ltd. Vs. Union of India*, , while analysing the articles behind the proviso, it is held as

follows :

Shri Kantawala submitted that the Collector has no jurisdiction to construe the two exemption notifications and conclude that the two units are one

and the same. The learned counsel submitted that the two exemption notifications granted exemption from payment of duty in respect of processes

carried out with the aid of power or steam in one case and in other case processes without the aid of power. It was contended that there is nothing

wrong for one person to set up two units, one where the process is carried out

without the aid of power and the other with the aid of power and it is not permissible for the Collector to conclude that the two units are really composite one and can be termed as "factory" within the definition of the Act. We are unable to accede to the submission of the learned counsel. The expression "Factory" has been defined u/s 2(e) of the Act and means any premises including precincts thereof, in which or in any part of which excisable goods other than salt are manufactured. It is necessary to ascertain what was the process carried out in these two units to appreciate the purpose of service of show cause notice on the two units. The customers hand over grey fabrics for the purpose of processing and only the processed fabric has got a saleable value. Initially, it is necessary to carry out the process of bleaching and mercerising. The process of bleaching and mercerising is carried out by non-power aided unit by hand processing and while the grey fabric is still in wet condition, it is transferred to the power operated unit for carrying out the process of finishing, calendering, stentering etc. After completion of these processes, the fabric is packed and returned back to customers, and it is only such processed fabric which can be sold in the market. Now perusal of exemption Notification 253/82, dated November 8, 1982 makes it clear that if unprocessed cotton fabrics are subjected to any processes specified in the said table, that is calendering or stentering within the factory in which the said unprocessed fabric has been produced, then exemption is not available. In other words, the exemption in respect of processes of calendering and stentering is available provided the other process of bleaching and mercerising is not carried out in the same factory. The modus is, therefore, found out by nominally setting up two separate units one for the purpose of bleaching and mercerising while the other for calendering and stentering. The process of bleaching and mercerising does not bring into existence a new article which is of a marketable value, but the wet fabric which has undergone bleaching and mercerising is required to be further processed by calendering and stentering, to make it a final product. It is, therefore, obvious that to secure advantage of both the exemption notifications a method is found out to split up the factory into two units, one run by the private limited company while the other by the partnership firm, but both under the control and care of the same group of persons.

5. Since the proviso in the impugned notification is made only as a policy of the decision, this Court, by exercising the power of judicial review

under Article 226 of the Constitution of India, cannot go into the question of wisdom of the Government's policy.

6. The learned Counsel for the respondents relies upon the decision of the Apex Court reported in Subhash Photographics and Others Vs. Union

of India (UOI) and Others, which reads as follows :

It is not for the Court to question the wisdom of the Government's - or for that matter, of Board's - Policy. Board is a part of the Government. It

is in direct charge of the administration of the Act along with the Government.

7. I have given anxious consideration to the submissions of both sides.

8. The Apex Court has rightly pointed out by the learned Counsel for the respondents, in Subhash Photographics and Others Vs. Union of India

(UOI) and Others, has held as follows :

Moreover, enactment like Customs Act and Customs Tariff Act are not merely taxing statutes but are also Potent instruments in the hands of the

Government for regulating the economy and the industrial development of the country. The "economic" ministries and the establishments allied to

them keep a close watch on the economy, closely monitoring its behaviour. Power of taxation is one of the weapons in the Government's armoury

to regulate the economy. A certain industry may require encouragement while another may not. Yet another sector may require to be controlled -

any, discouraged on some occasions. In an under-developed country like ours, the emphasis is bound to be more on capital goods industry rather

than on consumer goods" industry. The domestic industry has also to be protected and encouraged in certain situations.

The Board is a part of the Government. Probably, it is for this reason that the parliament has, through Chapter Note (2), vested the power to

define the expressions occurring in Chapter 98 in the Board. In this Scheme of things, we cannot accept the argument of Shri Salve with respect to

some kind of an inherent limitation upon the regulation making power of the Board. We cannot say that the said power is confined only to, what

the learned counsel calls, peripheral and/or procedural matters.

9. Therefore, I agree with the contentions of the learned Counsel for the petitioner that it is not open for this Court to test the wisdom of the

Government policy as intended in the impugned provisions.

10. However, as the Government is not any way, prejudiced by the act of setting up two units in the same premises and if the petitioners set up

two units it does not affect the revenue or taxation powers of the authorities in any way inasmuch as the Government is giving exemptions in similar

cases where units placed separately, the petitioner is permitted to make representation to the concerned authorities to relax the said proviso and to

give relief of exemption provided in the notification dated 8-11-1992 if the authorities are otherwise satisfied on the merits of the case.

11. The petitioner, if so advised, shall make such representation to the respondents as permitted above and the same shall be considered on merits

and disposed of by the respondents as directed above within three months from the date of receipt of such representation.

12. In the result, with the above observation, the above writ petition is dismissed. However there will be no orders as to costs.