

(1993) 12 MAD CK 0043

In the Madras High Court

Case No : W.M. No. 31506 of 1993 in Writ Petition No. 20170/93

Tamil Nadu Chromates Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-12-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 9

Central Excises and Salt Act, 1944 — Section 11D

Citation : (1994) 70 ELT 512

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri G. Ramaswamy, for the Appellant; Shri K. Jayachandran, Additional C.G.S.C., for the Respondent

Judgement

1. The writ petition is for the issue of a writ of certiorarified mandamus to quash the order of the third respondent dated 27-10-1993 and to

forbear respondents 1 to 3 from insisting on payment of the Central Excise Duty on the products of the petitioner's company while they are

removed from the factory, until the operation of the scheme framed by the Board of Industrial and Financial Reconstruction constituted under the

Sick Industrial Companies (Special Provisions) Act, 1985, (hereinafter called ""The Act"").

2. Though I am concerned only with the miscellaneous petition seeking an interim injunction restraining the respondents from insisting on such

payment, pending disposal of the writ petition, a few facts may be necessary to understand the scope of the prayer in the injunction petition. The

petitioner company is manufacturing Sodium Bichromate which in turn is used in the manufacturer or paints and certain other industries. Due to

financial and other difficulties the Company approached the Board under the said Act and it was duly declared as a Sick Unit within the meaning of

Section 3(1)(b) of the Act. The Industrial Reconstruction Bank of India was appointed as the operating agency to finance the scheme of

rehabilitation for reviving the company. After considerable labour and other problems, the factory was working intermittently between August,

1992 and July, 1993. During the course of this period the Company had paid all the Central Excise Duty. The factory commenced production

from 18-10-1993 onwards. On 27-10-1993 the petitioner wrote a letter to the third respondent, referring to the scheme framed by the Board and

Section 22 of the Act and consequently requesting the third respondent to permit removal of the goods manufactured without payment of Central

Excise Duty for a period of two years and undertaking to pay the duty in a phased manner thereafter. The third respondent passed an order on the

same day expressing inability to grant permission. It is under these circumstances that the writ petition has been filed for the prayer already referred to.

3. The writ petition was admitted on 11-11-1993 and an interim order was granted permitting the petitioner company to furnish Bank Guarantee

for the amount of duty incurred in respect of the removal of the goods. Learned counsel for the respondents argues that the interim order cannot be

continued and that the petitioner company is not entitled to the relief sought for either in the writ petition or in the miscellaneous petition. According

to him, Rule 9 of the Central Excise Rules provides for the manner of collection of duty at the time of removal of the goods. Section 11D of the

Central Excise Act says that the manufacturer who collects duty from his buyer cannot keep it with himself and has to pay the same to the

Government. According to him, Section 22 of the Act will not come to the aid of the petitioner-company in the matter of collection of excise duty

at the time of removal of the goods.

4. The short and interesting question of law is whether Section 22 of the Act would include the action of the Central Excise Authorities in collecting

excise duty at the time of the removal of the manufactured goods. The important words in Section 22 which have to be construed for the purpose

of this case is as follows :-

.... no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial

company or for the appointment of a receiver in respect thereof shall like or be proceeded with further, except with the consent of the Board, or,

as the case may be, the Appellate Authority.

The words "'or the like'" have come up for interpretation in certain judgments of the High Court and the Supreme Court of India. In *Vijay Mills Co.*

Ltd. v. State of Gujarat (1990) 68 Comp. Cas. 597, the High Court, while considering the question whether proceedings to prosecute sick

company were barred u/s 22 of the Act, observed.

The aforesaid provisions clearly show that the section does not take within its sweep the criminal prosecution against the company. This stands to

reason. The amount of Sales Tax is recovered by the dealer from the purchaser. The dealer is required to make payment thereof to the appropriate

Government within the stipulated time. Meanwhile, the dealer holds the amount not as the owner of the same he is holding it in trust for being

passed over to the Government. This money does not belong to the dealer nor does it belong to the members of this company or directors of the

company.

This decision is strongly relied upon by the learned counsel for the respondents.

5. Similarly in *Modi Spinning and Weaving Mills Co. Limited Vs. U.P. State Electricity Board and others*, , it was held that stopping of a electricity

supply cannot be any stretch of imagination, be said to be taking steps for recovery of arrears which have already fallen due. It was held that the

disconnection of electricity supply for non-payment of electricity charges, would amount to "'execution or any coercive process initiated for the

realisation for the dues of the Electricity Board, from the properties of the company.

6. On the other hand strong reliance is placed by the petitioner on the recent judgment of the Supreme Court in *Maharashtra Tubes Ltd. Vs. State*

Industrial and Investment Corporation of Maharashtra Ltd. and Another, . This case relates to the action taken by a State Financial Corporation

under Sections 29 and 31 the State Financial Corporation Act, 1951. It was held that the word "proceedings" in Section 22(1) of the Act must be

widely construed. The apex court has observed as follows :-

We are, therefore, of the opinion that where an inquiry is pending under Sections 16/17 appeal is pending u/s 25 of the 1985 Act there should be

sensation of the coercive activities of the type mentioned in Section 22(1) to permit the AIR to consider what remedial measures it should take with

respect to the sick industrial company.

6A. In spite of all the above helpful decisions, I am still left with the duty of finding out whether the collection of excise duty under Rule 9 of the

Central Excise Act, is an action which can termed at ""coercive process"". One other aspect which has to be noticed is that the words ""winding up,

execution, distress"" ""or for the like"" are all related to the ""properties of the industrial company"" or for the appointment of a Receiver in respect

thereof. Is the collection of the Excise Duty at the time of removal of the manufactured goods, either for sale or after the sale, be deemed to be an

action against the properties of the industrial company ? I am of the opinion that it is not an action against the properties of the industrial company.

The whole idea that one gets from reading of Section 22 of the Act, is that the Parliament was concerned with the salvaging of the productive

aspects of the sick company. Therefore, when the goods are manufactured for sale and the final products are removed from the site, it cannot be

said the action relates to the liquidation of or even the depreciation of the assets of the sick company. In my opinion therefore, Section 22 of the

Act, cannot have the effect of preventing the Central Excise Authorities from demanding and collecting excise duty at the time of the removal of the

manufactured goods, I make it clear that I am not concerned with a case of arrears of excise duty accumulated over a period of years. Therefore,

the interim order of the Supreme Court of India referred to in the affidavit of the petitioner in Civil Appeal No. 1028 of 1990, would not, in my

opinion, apply to the present facts of the case.

7. The only other argument of Mr. G. Ramaswamy learned Senior Counsel appearing for the petitioner is that it was open to the respondents to

approach BIFR and seek their consent for recovering the excise duty at the time of removal of the goods. On the other hand the counsel for the

Revenue argues that it is for the petitioner to approach the Board and get a clarification. I am not deciding this question because I have already

held that Section 22 of the Act will not come to the aid of the petitioner. Central

Excise Authorities seek to recover the duty at the time of removal of the manufactured goods. In this connection the judgment of the Gujarat High Court in relation to the sales tax arrears collected from the purchasers, by the Government seems to be apposite. Section 11-D of the Central Excise Act, also is to the same effect.

8. For all the above reasons, I am not satisfied that the petitioner-company has made out a prima facie case for the grant of injunction.

Consequently, W.M.P. is dismissed. The interim order granted on 11-11-1993 is vacated.