

(1990) 10 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No's. 4181, 4182 and 4183 of 1990

Tata Iron and Steel Co. Ltd

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 46 ECR 506 : (1991) 53 ELT 294

Hon'ble Judges : S.C. Pratap, J;A.V. Savant, J

Bench : Division Bench

Advocate : Mr. F.H.J. Taleyarkhan and Mr. D.J. Khambata, instructed by Messrs.Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; Mr. R.V. Desai, Mr. A.S. Khan, Mr. Suraj M. Shah and Mr. A.S. Khan, for the Respondent

Judgement

S.C. Pratap, J.—This group of petitions challenges the show cause notice dated 19th/22nd January, 1990 issued under the Central Excises and Salt Act, 1944.

2. Hearing Counsel on either side and going through the impugned notice we are satisfied that this is not a case warranting interference in our jurisdiction under Article 226 of the Constitution. Indeed, this Court rarely interferes at the show cause notice stage. However, in view of the arguments advanced in extenso by Mr. Taleyarkhan, we have gone through the detailed show cause notice, including the annexures thereto. The notice is based on collection of intelligence as also upon the petitioners' officers' statements recorded in the course of investigation. Questions of fact as also mixed questions of fact and law would arise for determination before the authority hearing the proceedings pursuant to this notice. It is not possible nor open for this Court in its writ jurisdiction to go into the merits and demerits of the facts and circumstances set out therein. And, which way on merits the proceedings ultimately conclude is of but little relevance at this show cause notice stage. Suffice it to note that the notice is not vitiated by either lack of jurisdiction or legal authority in issuing the same.

3. In the circumstances, we see no good reason why the petitioners, if

aggrieved, should not avail the provided opportunity of showing cause against the notice and raising in reply thereto all such contentions as advised. We refrain from touching the merits of the dispute or make any observations thereon, lest the same affect, one way or the other, the proceedings hereafter pursuant to the said notice.

4. Mr. Taleyarkhan submitted that in the event the adjudication order goes against the petitioners and occasion arises for filing appeal therefrom, the question of depositing the amount of duty will arise. He requests that instead of depositing the amount, the petitioners should, in the facts and circumstances, be permitted to furnish bank guarantee or guarantees in that behalf. We are inclined to accept this request.

5. In the result, the following order is passed :-

(a) The petitions fail and the same are dismissed.

(b) In the event, however, the adjudication order goes against the petitioners and if occasion arises for filing appeal therefrom, the appellants instead of depositing the adjudicated amount, will be at liberty to furnish in favour of the Collector of Central Excise, bank guarantee or guarantees of a nationalised bank of amount equivalent to the amount of duty (excluding penalty, if any) together with interest thereon at the rate of 15 per cent. per annum from the due date till actual payment. The bank guarantee or guarantees, as the case may be, shall be kept alive and operating till the hearing and final disposal of the proceedings under the Central Excises and Salt Act and for a period of sixty days thereafter.