
(1992) 02 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 2451 of 1982

Tata Metals and Strips Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-02-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1992) 3 BomCR 487 : (1992) 62 ELT 700

Hon'ble Judges : K. Sukumaran, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Shri T.R. Andhyarujina and Mr. D. Shroff, instructed by Messers Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; Shri J.P. Deodhar and Shri K.C. Sidhwa, for the Respondent

Judgement

K. Sukumaran, J.—The Petitioners, engaged in the manufacture of cold rolled High Carbon & Alloy Steel & Special Steel strips and other special steel products in India. They assail the Notification Exhibit "A", issued by the Government on 15/01/1982, as violative of Article 14 of the Constitution of India. The prayer is not to strike it down, but to project the beneficial element of the Notification to the Petitioner as well.

2. The Petitioner Company had been in the field for quite some time. It was initially having its activities at Nawasari in 1969. It had extension of activities in 1974, in Special alloy steel division.

3. On the basis of representations made before the Government by various authorities including the Petitioner, and the Steel Authority of India, the Government issued a Notification of 15-1-1982. Its duration was for a year, and was to expire on 15-1-1983. Under the Notification, hot rolled stainless steel coils of a width exceeding 500 mm. when imported into India for cold rolling, had been given exemption in the manner indicated therein.

4. According to the Petitioner, the benefit of the Notification enured only to the

3rd Respondent - the steel plant set up by the Steel Authority. The Petitioner has also imported hot rolled stainless steel coils, but, of a width of 460 M.M. The prescription of the width of 500 mm. in the notification disabled the petitioner from deriving any benefit whatever under the notification. The Petitioner thought that it was slip on the part of the Governmental mechanism. This was brought to the notice of the authorities by repeated representations of the Petitioner. The Government did not change its stand notwithstanding the repetitive exercises in making representations highlighting the unfortunate situation in which the Petitioner was placed, as a result of the operation of the notification with that wording.

5. Counsel for petitioner submitted before us that when the Government was satisfied that an exemption was deserved by the Steel Industry in the circumstances then obtaining, it was patently discriminatory to have classified the imported steel into those having a width of 500 mm. and above, and those below that width. The very purpose of granting an exemption, in the background of the factual situation, is frustrated and inequality is brought into existence by such an arbitrary classification introduced in the notification - so goes the argument.

6. Counsel was certainly not interested in striking down the notification, as going beyond the permissible areas of Governmental functioning. Such a contention would not promote the interest of the petitioner. It may, at the most, enable the Government to take some more money from the Salem Steel Plant, which will not in any way swell the pocket of the Petitioner. The Petitioner, therefore, bargained for an expansion of the beneficiary grant of exemption to all persons importing the steel coils irrespective of its width. The question is, whether functioning as a constitutional Court, this Court could grant such a prayer to the Petitioner.

7. Learned Counsel relied on the decision of the Supreme Court contained in *Ayurveda Pharmacy and Another Vs. State of Tamil Nadu*, . That was a case where *Arishtams* and *Asavas*, famous Ayurvedic medicinal preparations, were found to come within the Entry 95 of the First Schedule of the Tamil Nadu General Sales Tax Act, 1974. The question was whether, once they come within the category of medicinal preparations, this could be taken out of that Entry and subjected to a higher rate of tax, as was attempted by introducing the Entry No. 135 of the Schedule. The Supreme Court, way back in 1963, had, on a consideration of the attendant facts relating to the manner in which such medicinal preparations were manufactured, the utility thereof, and the larger qualities of the preparations, taken a view, that they fell within the category of medicinal preparations. In that situation, to treat them to a higher and harsher rate of duty was found to be discriminatory. The Entry was struck down. Be it noted that this was the surgical exercise performed by the Supreme Court when it found that a Governmental levy was found to exceed the permissible limits.

There, however, is no justification for projecting the benefit of exemption to an

area where exemption was felt to be unnecessary or undeserved, by the Government on a conscious decision reached by it.

8. We feel that the notification is not discriminatory as was contended on behalf of the Petitioner. It was in relation to a specific and specified category of goods. As regards the notification, it did not bring about any policy which is discriminatory. The notification was general in its character. All those who satisfied the conditions contained therein could derive the benefit of exemption. In that situation, we do not find any discrimination in the notification. The presumption of constitutionality available for a legislative provision or an exercise of such a delegated power could certainly be drawn by the Union in that situation. Notwithstanding the default on the part of respondents, particularly respondents 1 to 3 and its law officers to place relevant materials through a proper affidavit and this attempt to justify the validity of the notification, we uphold the validity of the notification in the light of our above discussion.

9. The general principles which have been expressed by the Supreme Court in the Indian Express case *Indian Express Newspapers (Bombay) Pvt. Ltd. and Others v. Union of India and Others*, , or in the Pension's case. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , would not be of any help as far as far as the Petitioner is concerned having regard to the facts of the case.

10. Counsel referred to the decision in *Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others*, , where an inadvertent omission in applying the benefit to a larger group was remedied. As noted earlier, we cannot come to the conclusion that in the present case, there it was an inadvertent slip on the part of the Government. The repeated representations and the refusal of the Government to change its stand, notwithstanding those repetitions, clearly rule out a case of inadvertent omission. We have thus come to the conclusion that on application of the well-known principles, the notification does not suffer from any discrimination.

11. A copy of the judgment shall be forwarded to the Secretary, Ministry of Finance, New Delhi so that appropriate action about the grievous default in the defence of Respondents 1 to 3 may be duly taken and to ensure that such lapses do not recur.

12. We accordingly dismiss the Writ Petition.

13. Counsel for the petitioners sought stay of the operation of the Judgment.

14. We are not satisfied that any ground exists for granting stay of the operation of our judgment.

15. The prayer for stay is declined.