

(1990) 12 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 15531 of 1986

Vikrant Tyres Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1991) 4 KarLJ 301

Hon'ble Judges : S. R. Rajasekhara Murthy, J

Judgement

The first petitioner is a company registered under the Companies Act. The second petitioner is the Secretary of the company and a shareholder. The petitioner-Company manufactures tyres, tubes and flaps in its factory at Mysore, which are exigible to excise duty under Tariff Item No. 16 of the I Schedule of the Central Excise and Salt Act. ("the Act" for short).

The case of the petitioners is that Notification No. 88/1984, dated 6-4-1984 was issued by the Central Government in exercise of the power conferred on it by Rule 8(1) of the Central Excise Rules ("Rules" for short), under which the petitioner-Company is entitled to a concessional rate of excise duty leviable on tyres. For availing the exemption/concessional rate of duty extended by the Central Government, the manufacturer has to satisfy the conditions laid down in the notification.

Under Notification No. 88/1984 the petitioner-Company is entitled to the concessional rate of excise duty on tyres manufactured by it for a period of 7 years from the date of first-clearance of tyres from its factory. In order to avail of the concession, the petitioner-Company is required to produce a certificate issued by the Development Officer of the Directorate General of the Technical Development ("DGTD" for short), of the Government of India attached to the Ministry of Industries.

Prior to the issue of Notification No. 88/1984 the Central Government had issued similar notifications under Rule 8(1) reducing the excise duty on the manufacture

of tyres, from time to time, as an incentive to manufacture more and more tyres for domestic consumption for which there was great scarcity. Such incentive was being extended in several stages-starting from 1-4-1976 and the earliest of the notifications issued by the Central Government is, Notification No. 198/1976, dated 16-6-1976. This was followed by other notifications issued chronologically:

- (i) Notification No. 142/1978, dated 14-7-1978;
- (ii) Notification No. 107/1981, dated 24-1-1981;
- (iii) Notification No. 268/1982, dated 13-11-1982; and (iv) Notification No. 88/1984, dated 6-4-1984.

For purposes of this case, it would be sufficient to start with Notification No. 107/1981 under which the exemption equivalent to 30% of the sum total of the value of capital investment was provided. In order to obtain the exemption, production of a certificate of capital investment on plant and equipment was made a condition precedent. A letter dated 25-1-1982 issued by the Rubber Directorate of the Government of India, addressed to the petitioner-Company enclosing a format of a certificate by a Chartered Accountant, is reproduced below:

"Sub: Issue of certificate for obtaining benefit of exemption of duty on clearance of manufactured tyres from your factory in terms of Department of Revenue's Notification No. 107/1981, dated 24th April, 1981.

This has reference to your letter No. Fin 09/29/76, dated 3rd January, 1982 on the subject noted above. In this connection, you are requested to provide a certificate of capital investment in plant and equipment as on 14-9-1979 which is the date of first-clearance of goods i.e., tyres from your factory, duly certified by the Chartered Accountant as per format enclosed herewith. It is needless to mention that the necessary provisional certificate would be issued to you no sooner the certificate duly certified by the Chartered Accountant with regard to capital investment in plant and equipment is received from you.

Yours faithfully,

Sd/- xx xx xx

(M.P. Singh) 23-1-1982

Additional Industrial Adviser.

CERTIFICATE

We have examined the books and records maintained by M/s. in the usual course of their business. On the basis of such examination and on the basis of the information and explanations furnished to us by the Company, we certify that the Company has made a capital investment of the value of Rs.....(in words) as on 14-9-1979 for plant and machinery for the manufacture of tyres.

We also certify that the above amount of Rs.....includes the value of electrical installation amounting to Rs.....(in words) and the value of water supply installation amounting to Rs.....(in words).

We further certify that the above sum of Rs. does not include the value of plant and machinery for manufacture of tubes and flaps which amounted to Rs. (in words).

We also certify that no plant and machinery has been removed permanently from their said factory or rendered unfit till date".

The next notification in the chronological order is Notification No. 262/1982, dated 13-11-1982. All the conditions imposed therein are similar to the earlier Notification No. 107/1981 except with regard to the additional relief granted under the said notification with reference to the percentage of capital investment. In proviso (4) of the notification, the percentage was enhanced to 50%, whereas it was 30% in Notification No. 107/1981.

Then we come to Notification No. 88/1984, which is the subject-matter of this writ petition. The relief granted to the manufacturers of tyres, from time to time, under the various notifications is to be worked out by carrying over the short-fall having regard to the additional benefit intended to be granted either in rate of tax or extending the duration of the benefit.

Under Notification No. 88/1984 such exemption was extended upto 7 years from the date of first-clearance of tyres from the petitioners' factory. The exemption from duty payable which had been enhanced to 50% by Notification No. 262/1982 was extended upto 7 years instead of 31-3-1984 which was the outer-limit fixed by the earlier notifications. In all other respects, the conditions specified and the explanations etc., there is no deviation from the earlier two notifications. Notification No. 88/1984 was rescinded by Notification No. 159/1985 with effect from 16-7-1985 and after that, the manufacturers of tyres ceased to enjoy concession in payment of central excise duty.

The petitioner-Company submitted its application for exemption in the proforma prescribed by the DGTD, accompanied by a certificate issued by their Chartered Accountants as to the value of capital investment; Respondent-3, being satisfied with the compliance of the requirements, issued a certificate dated 10-7-1984, as per Annexure-"C".

On 11-2-1985, the DGTD, addressed a letter to the petitioner-Company, as per Annexure-"D", prescribing a new format and calling for additional information to be furnished with reference to the capital investment on plant and machinery made between the period 23-10-1979 and 31-3-1984.

The said information in the new format was required to be furnished as per the new guidelines referred to therein and in the format sent along with the letter. The DGTD, also warned the petitioner-Company that the certificate issued on 10-7-1984 would be treated as cancelled if the necessary information was not

furnished on or before 28th February, 1985.

The petitioner-Company replied to the said letter on 18-2-1985, as per Annexure-"E" and the authority to prescribe new guidelines was questioned. The propriety in calling for fresh information in the light of the new guidelines was also challenged by the petitioner in its reply.

When the matter stood thus, to the shock of the petitioners they received a communication dated 27-1-1986 (Annexure-"F"), from the Assistant Collector of Central Excise, Mysore which is reproduced below:

"OFFICE OF THE ASSISTANT COLLECTOR OF CENTRAL EXCISE, MYSORE
DIVISION, MYSORE

C. No. V/16/3/139/84 MP I Dated: 27-1-1986

To

M/s. VIKRANT TYRES LIMITED,

KRS Road, Metagalli, Mysore-1.

Sirs,

Sub: C.Ex.-Tyres-Determination of investment of plant and machinery-
Notification No. 88/1984, reg.

Please refer to your letter Ref. No. Fin/01/29, dated 18-2-1985 addressed to Development Officer, Rubber Directorate, New Delhi.

In view of the fact that you have not furnished the required information, the DGTD has treated the certificate issued by it in terms of Notification No. 88/1984, dated 6-4-1984 as cancelled. In the said circumstances you are hereby directed to produce a fresh certificate within 2 months from the date of receipt of this letter failing which the concession under Notification No. 88/1984, dated 6-4-1984 will not be available to you.

Yours faithfully,

Sd/- xx xx xx

Assistant Collector".

Having come to know through the said letter that the DGTD, had treated the certificate dated 10-7-1984 issued by it under Notification No. 88/1984 as having been cancelled, the petitioner addressed the DGTD, by its letter dated 7-2-1986 to reconsider the matter and suitably advise the Excise Department that they should not be deprived of the concession/relief already availed of under the said notification. It was also brought to the notice of the DGTD, that the cancellation of the certificate had not been communicated to the petitioner-Company at all, and it should not be put to irreparable hardship and loss as a result of the alleged cancellation. Since there was no response from the DGTD, to the said

letter, and the Assistant Collector threatened withdrawal of the concession granted under Notification No. 88/1984, the petitioner approached this Court in this writ petition, which was filed on 19-8-1986 challenging the actions of the DGTD, and the Assistant Collector.

This Court granted stay of operation of Annexures-"D" and "F" i.e., DGTD's letter calling upon the petitioner to furnish information in the new format and the letter of the Assistant Collector threatening to withdraw the concession granted. This Court directed that notwithstanding the interim-order, the authorities may collect the excise duties for the future in accordance with law.

Several contentions are advanced on behalf of the petitioner-Company by Sri Arshad Hidayatullah, appearing for M/s. King and Patridge, challenging the action of the respondents.

The propositions formulated by the learned counsel as arising out of the pleadings in the case are these:

(i) that the certificate issued to the petitioner-Company in accordance with Notification No. 88/1984 must be taken as valid and subsisting for the full period of 7 years as stipulated in the notification, since no order cancelling the certificate was communicated to the petitioner-Company;

(ii) that it cannot be withdrawn unilaterally without issuing any show-cause notice and by a mere change of opinion of the DGTD;

(iii) the DGTD, has no jurisdiction to prescribe new guidelines and call upon the petitioner-Company to furnish fresh valuation of investment as per the new format;

(iv) that the DGTD, has no power to review the certificate issued in accordance with the notification and recalculate the reliefs availed of by the petitioner-Company retrospectively;

(v) the guidelines issued by the DGTD, have no statutory backing either under the notification or under any other law;

(vi) the DGTD, is not justified, either in law or on facts, in giving new interpretation to the expression, "capital investment" and his action to revise the certificate issued should be struck down as arbitrary; and (vii) the Assistant Collector's communication to withdraw the concession, unless a fresh certificate is produced, is without authority of law and should be declared as unenforceable.

A statement of objections is filed on behalf of the respondents justifying the action taken by the DGTD, in cancelling the certificate. The case of the DGTD, as stated in the statement of objections is that the certificate issued by him was not based on proper appreciation of facts involved in the case and was issued without application of mind, and that, therefore, he decided to withdraw the certificate. It is also the case of the DGTD, that the new guidelines only supplement the expressions in the notifications and do not supplant the meaning

and ambit of "capital investment" and are only supplementary in effect.

But, in the course of the arguments, Sri Ashok Harnahally, the learned Standing Counsel for the Department, submitted that by the new guidelines, Explanation-IV to the notification was being interpreted in the correct perspective, and that, therefore, the DGTD, was within his powers to review the certificate in the light of the new guidelines. It was also submitted by the learned counsel that the capital investment on plant and machinery should only be "the face value" of the capital investment and cannot include all other expenses incurred by the petitioner-Company, as enumerated in the new guidelines. According to the new format, the original price paid for the indigenous and imported machinery only should constitute the face value of the investment. It was also argued by Sri Ashok Harnahally that the failure on the part of the petitioner-Company to furnish the information as per the new guidelines resulted in automatic cancellation of the certificate and no formal order was required to be made and communicated. An alternative submission made by the learned counsel was, that the petitioner would be afforded an opportunity to be heard, if this Court comes to the conclusion that the deemed cancellation should be set aside and the authority is directed to hear the petitioner-Company.

A rejoinder is filed on behalf of the petitioners meeting the case of the Department, as set-out in the statement of objections.

It is pointed out and contended on behalf of the petitioners that the statement of objections in this case is filed by the Assistant Collector of Central Excise (Legal), Bangalore for on behalf of the DGTD, also. The grounds of attack raised in the writ petition are mainly directed against the third respondent-DGTD, and it is his action in directing the Assistant Collector to withdraw the concession availed of by the petitioner-Company by virtue of the certificate granted by respondent-2, that is challenged in this writ petition. It was, therefore, argued by Sri Hidayatullah that the Assistant Collector is not competent to traverse any of the allegations made by the petitioner-Company against the DGTD, and file the statement on his behalf also. It is, therefore, argued that in the absence of any counter-affidavit by the DGTD, the averments made in the writ petition must be accepted as correct and taken as uncontroverted and the necessary reliefs granted to the petitioners. It was, therefore, submitted by the learned counsel that the Assistant Collector cannot ignore the certificate issued by the DGTD, as long as it continues to be a valid and subsisting certificate and the Assistant Collector cannot act on the assumption that the certificate is deemed to have been cancelled and he should be prohibited for taking any further action.

Arguing without prejudice to the contention as to the competency of the DGTD, to prescribe new guidelines retrospectively, it was submitted by the learned counsel that as per the well accepted principles of accountancy the certificate issued by the petitioner-Company's chartered accountants, should be accepted as final and binding and any new interpretation as to what is "capital investment" cannot be permitted to be advanced to affect the certificate granted in

accordance with the Notification No. 88/1984 and reverse the concessions granted.

One other important argument advanced was, that the DGTD, cannot be permitted to take a stand as a respondent in the writ petition, that the issue of certificate by him to the petitioner-Company was a bona fide mistake. It was argued, that even this statement made by the Assistant Collector on his behalf and it should be ignored. The learned counsel has listed the significant admissions made in the statement of objections:

(i) that the certificate issued by the 3rd respondent-DGTD, was not based upon proper appreciation of the facts involved in the case;

(ii) that the certificate had been issued without any application of mind to the relevant factors by the DGTD;

(iii) that the wordings in the notification "face value of the capital investment" were not considered in its proper light at the time of issue of certificate;

These admissions made on behalf of the DGTD, it is argued, support the petitioners' contention that the DGTD, a statutory-authority, cannot be permitted to take a stand that his own order is wrong.

In support of this contention, two decisions are relied upon by the learned counsel:

(i) Indian Leaf Tobacco Co. Ltd. v Union of India, (1984)16 ELT 234, Madras;

(ii) State of Assam v Raghavendra Rajagopalachariar, C.A. Nos. 1561 and 1562/1966, dated 6-10-1967.

In Indian Leaf-Tobacco Co. Ltd. the Madras High Court held that the statutory authority has no inherent power of revising his own order, and, it was held on the facts of that case, that the order made under Section 25(2) of the Customs Act did not confer any power upon the first-respondent, the Union of India, to review the order passed under the Customs Act. His Lordship Sri Padmanabhan, J., relied upon the observations made by the Supreme Court in an unreported Judgment in State of Assam v Raghavendra Rajagopalachariar, C.A. Nos. 1561 and 1562/1966, dated 6-10-1967. The observations made by the Supreme Court in the said Judgment that the respondent to a writ petition cannot be allowed to attack his own order were relied upon. Though the observations made by the Supreme Court were in a service matter, the Supreme Court did not permit the State of Assam, on principle, to take a stand that its earlier order made was bad in law.

The next argument of the learned counsel deals with the propriety and correctness of the new guidelines.

The new concept of the expression, "face value of capital investment" that is sought to be introduced by the new guidelines is opposed on two grounds, viz.,

- (i) that it is contrary to the normal accepted principles of accountancy, and;
- (ii) the DGTD, was not competent to issue administrative instructions to interpret it differently and the certificate issued after due application of mind to the requirements of the notification, cannot be interfered with nor revised.

Accepting the interpretation sought to be placed by the DGTD, on this issue for argument sake and without prejudice, it was demonstrated with reference to the several clauses of the notification, that the DGTD, had rightly understood the meaning of "capital investment" while issuing the certificate, to mean and include not only the actual cost of plant and machinery, but also other incidental expenses incurred by the company upto the stage of commissioning of the plant for the manufacture of tyres, such as cost of installation, transportation, shipping and customs clearance charges, etc., sales-tax and other taxes. The certificate granted by their Chartered Accountant, it was argued, cannot now be rejected, as if they did not know the meaning and connotation of "capital investment" as per the accountancy principles and as understood in the industrial world. It was also pointed out that the form in which the certificate was issued itself shows what are the items to be excluded for purposes of arriving at the value of capital investment and that this format was supplied by the DGTD, himself.

It was, therefore, contended with some emphasis, that whatever may be the understanding of the DGTD, on this issue, he cannot apply the new guidelines retrospectively putting the petitioner-Company in a most precarious and difficult situation by the cancellation of the certificate resulting in a huge liability of excise duty. The action of the DGTD, resulting in deemed cancellation of the certificate virtually amounts to review or revision of his order, which ex-facie, is without authority of law.

In support of this contention the learned counsel has relied upon the following decisions:

- (i) East India Company v Collector of Central Excise, AIR 1962 SC 1893.

It was held in that case by Sri Subba Rao, J., (as he then was) that the licence issued under the Sea Customs Act, once granted, though obtained by fraud, is valid until it is avoided. Relying on this ratio, it was argued for the petitioners, the valid and subsisting certificate issued by the DGTD, is bound to be acted upon by the Central Excise Department and the Assistant Collector had no jurisdiction to withdraw the concession in the absence of any order cancelling the certificate.

- (ii) Bombay Chemicals Pvt. Ltd. v Union of India, 1982 ELT 171, Bombay.

The observations of Justice Pendse made in the said Judgment in paragraphs-16 and 17, are relied upon by the learned counsel. The contention of the Department that the certificate issued by the DGTD, in the said case was issued under a mistake and the Department was competent to revise the same, was rejected by the High Court. It was observed that the DGTD, a High-powered

Officer familiar with the production of varieties of articles in the country, had issued the certificate after ascertaining the requisite facts. It was also ruled, by the Bombay High Court that the customs authorities were bound and concluded by the certificate and were not justified in refusing the refund claim of the petitioners. Reliance placed by the learned counsel for the petitioners on the decision of the Supreme Court in the case of *M.C. Abrol v M/s. Shantilal*, AIR 1966 SC 197, was upheld as appropriate to the facts of that case.

M.C. Abrol's case was a case of seizure by the customs authorities. The question that arose was, whether the certificate issued by the Iron and Steel Controller was binding on the customs authorities. It was held by the Supreme Court that in case of a conflict between two jurisdictions, the licence issued by the Appropriate Authority, namely, the Iron and Steel Controller should prevail and the Customs Authority had no jurisdiction to confiscate the scrap on the ground that the same was a mis-description.

On the question as to the non-communication of the cancellation certificate, the learned counsel relied upon the decisions in:

- (i) *Harla v State of Rajasthan*, AIR 1951 SC 457;
- (ii) *Modi Rubber v Union of India*, 1978 ELT 127, Delhi.

The observations made by Sri Vivian Bose, J. in paragraph-8 in *Harla*'s case AIR 1951 SC 457, are relevant. It was a case of non-publication of a resolution passed by the Council of Ministers and the question was whether without the promulgation or publication in the Gazette, whether it could be considered as law. The Supreme Court held, it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by the laws of which they could not even, with the exercise of reasonable diligence, had acquired any knowledge.

In *Modi Rubber* case 1978 ELT 127, the Delhi High Court held that no administrative instructions can be issued contrary to statutory notifications. In that case the exemption notification was interpreted against the assessee on the ground that the benefit of exemption should not be extended to the assessee, unless the benefit of exemption is not passed on to the consumer. The Delhi High Court held, this was not one of the conditions imposed by the Government while issuing statutory notification granting exemption and that, therefore, the Government had no authority to issue administrative instructions to the Collector which was not contained in the statutory notification.

In reply, the submissions of the learned Standing Counsel for the Central Government are these:

That under Explanation-V of the Notification 88/1984 only the face value of the capital investment of the plant and machinery should have been considered for purposes of issuing certificate by the DGTD, and the certificate issued by the Chartered Accountants of the petitioner-Company was not in accordance with

Explanation-V. He also relied on Section 21 of the General Clauses Act under which the issuing authority, viz., the DGTD, has also the power to revoke the certificate.

It is also the case of the Department that the new guidelines do not add anything new to the notification, but the DGTD, was only correctly interpreting the requirements under the notification. The learned counsel also argued that the letter issued by the DGTD, calling for additional information cannot be quashed as without jurisdiction.

In support of his contention, the following decisions were cited:

(i) Ram Bali Raj Bali v State of West Bengal, AIR 1975 SC 623.

The Supreme Court was dealing with the implied power of the Government under the Maintenance of Internal Security Act to refer representation by a detenu to the Advisory Board, more than once, on the basis of fresh materials.

(ii) Navabkhan v State of Gujarath, AIR 1974 SC 1471.

That was a case of externment proceedings under the Bombay Police Act. His Lordship-Sri Krishna Iyer, J., held, the order which was made without hearing the party affected, is a void order.

(iii) State of Karnataka v M.V. Chandrasekhara Murthy & Others, (1984)2 Kar. L.J. 48.

That was a case of a modification of a scheme by the Government under the Motor Vehicles Act. It was held, the Government has power to modify the scheme before its publication or communication.

This argument of the Department was met by Sri Arshad Hidayatullah, thus:

He submitted that Section 21 of the General Clauses Act can have no application to the issue of a certificate by an Executive Authority and can only apply to notifications, orders and rules which take the form of a delegated legislation or subordinate legislation.

I have carefully considered the neat and thorough submissions made by Sri Arshad Hidayathullah for the petitioners and the learned Standing Counsel for the Central Government Sri Ashok Harnahally.

The main question that arises for decision on the arguments of the learned counsel is, whether the DGTD, was justified in law and on facts in cancelling the certificate granted by him on 10-7-1984, on the basis of the new guidelines applying them retrospectively?

The other important question is, while there is no order of cancellation of the certificate issued by the DGTD, whether the Assistant Collector of Central Excise, Mysore is bound by a mere communication directing him to withdraw the concession availed of by the petitioner.

After giving a careful thought to all these aspects, I am of the opinion that the petitioners must succeed for the following reasons:

The DGTD, is the statutory authority authorised to issue a certificate by the Central Government for purposes of availing the concessional duty of central excise extended by the Central Government to tyre manufacturers. It cannot be disputed that the DGTD, issued the certificate on due application of his mind and on the basis of the certificate issued by the Chartered Accountants of the petitioner-Company. The contention of the petitioners that the DGTD, cannot be allowed to review his own order on a change of opinion deserves to be accepted. The more substantial point canvassed by the learned counsel for the petitioners, that the DGTD, cannot plead, as a respondent in the case, that his own order was wrong, is supported by the decisions cited in support of this proposition. To this argument of law, there is no answer by the respondents.

The other contention that goes in favour of the petitioners is, that there is no order of cancellation made by the DGTD, and in those circumstances it is not open to the Assistant Collector to withdraw the concession acting only on a letter of the DGTD. The order granting the certificate by the DGTD, is a statutory order, which has the characteristics of a quasi-judicial order. The issue of a certificate cannot be construed as a mere administrative order made on the subjective satisfaction of the issuing authority. The DGTD, who is a statutory authority has to exercise his mind and examine the application with reference to the relevant material and information furnished by the applicant and objectively consider whether it calls for an issue of a certificate in the light of the requirements of the notification. Any issue of a certificate would entitle the tyre manufacturer, such as the present petitioner, to a concessional rate of excise duty under several notifications issued by the Central Government in exercise of the powers conferred under Rule 8(1) of the Central Excise Rules. One of the requirements to extend the benefits under the notification is the certificate by the DGTD. Such being the case, the DGTD, having once issued the certificate cannot now go back and stipulate new conditions and lay down new guidelines for obtaining a fresh certificate. What is more, such stipulation of new guidelines cannot be applied retrospectively to the petitioner's case, who had obtained exemption from the Central Excise Department from the year 1979 to the extent permitted by the Central Government.

As stated in the certificate itself, the capital investment on plant and machinery between 23-10-1979, the date of first-clearance and 31-3-1984, the outer-limit fixed by the earlier notification was Rs. 1,922.6 lakhs. For the purpose of extending the benefit for a period of 7 years from the date of first manufacture, as provided under the Notification No. 88/1984, the value of capital investment as on 31-3-1984 was certified as Rs. 4,263.05 lakhs. This represents the total investment made on plant and machinery prior to 24-10-1979, viz., a sum of Rs. 2,340.99 lakhs plus the investment made between 23-10-1979 and 31-3-1984, viz., Rs. 1,922.6 lakhs. The certificate (Annexure-C) was issued by the DGTD,

accepting the certificate issued by the Chartered Accountant in the format supplied by the Development Officer attached to the DGTD.

Apart from the other formidable points which the Respondents have to meet, it passes one's comprehension how a high-statutory authority as the DGTD, could now resile from his earlier view and seek to impose new guidelines. This is nothing but after-thought, and there was absolutely no justification to change the basis for the issue of a certificate on a mere change of opinion.

Even in Administrative Law, the well accepted position is, that any order which results in civil-consequences should be construed as a quasi-judicial order and to all such orders, the rules of natural justice automatically apply.

The Supreme Court's observations in a recent case, arising out of Court marital proceedings in *S.N. Mukherjee v Union of India*, AIR 1990 SC 1984 at para 38, is worthy of being noted in support of the argument that the DGTD, has violated all principles of natural justice in unilaterally cancelling the certificate issued to the petitioner-Company:

"38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement."

It cannot be disputed, in the present case, that the withdrawal of the certificate results in huge-liability to pay excise duty for the earlier years. The steps taken by the DGTD, to reverse or recalculate the concessions availed of by the petitioners and redetermine the concessions, in the light of the new guidelines, results in putting the petitioner to great hardship and inconvenience, besides being unreasonable and arbitrary. The DGTD, has acted in excess of the scope of the notification and the action now taken to withdraw the certificate is, therefore, liable to be struck down, since it cannot be deemed to be done in pursuance of any law.

The cases relied upon by Sri Arshad Hidayafhullah support each one of his

contentions raised and argued. Therefore, the petitioners are entitled to succeed in the writ petition and it is declared that the action taken by the 3rd respondent-DGTD, as per Annexure-"D", dated 11-2-1985 to cancel the certificate issued vide his letter bearing No. RC/11(4)/1983, dated 11-7-1984 is illegal, and without authority of law. The letter No. TC/11(4) 184/12, dated 11-2-1985 issued by the Development Officer of the Directorate of Technical Development (Rubber Directorate), (Annexure-"D"), impugned in this writ petition, is quashed.

As a consequence, the letter dated 27-1-1986 issued by the 4th respondent-Assistant Collector of Central Excise, Mysore (Annexure-F), is also declared as not enforceable in law, and he is restrained from taking any action in furtherance of the said letter.

The writ petition is accordingly allowed.