
(2005) 07 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 39701 of 2004

West Coast Paper Mills Ltd. and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 25

Citation : (2005) 103 ECC 305 : (2007) 212 ELT 305 : (2005) ILR (Kar) 4455

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Habibulla Badsha, for Rukmini Menon, for the Appellant; R.L. Patil, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The petitioner is a company incorporated under the Companies Act, 1956, and claims as a company engaged in the manufacture of paper, paper board and duplex boards of all kinds, falling under Chapter-48 of the Central Excise Tariff Act, 1985 [for short, the Act].

2. The present writ petition is in the context of denial of concession in the rate of excise duty imposed on the paper and paperboards manufactured by the petitioner, though claimed in terms of Excise Notification No. 48/2004 dated 10-9-2004. The petitioner in fact had addressed a communication to the officer concerned of the Central Excise Department in terms of communication dated 20-9-2004, a copy of which is produced at Annexure-D to the writ petition, indicating that the petitioner would avail of the concessional excise duty at the rate of 12% ad valorem as against the normal duty at 16% ad valorem on the produce cleared with effect from 10-9-2004, as the petitioner was of the view that though Condition No. 14A(1), which was required to be complied with for claiming that exemption sought to deny such benefit to the petitioner, the condition was not a just or reasonable condition; that the petitioner is entitled for

the benefit with the condition either excluded or amended in an appropriate manner, under which it claimed the benefit etc., which in terms of the communication received by the petitioners from the excise authorities, having indicated that the petitioner-factory is not eligible, the petitioners are before this Court for the purpose of claiming such benefit by way of challenging that part of the notification, which imposes the condition viz., condition No. 14A, corresponding to entry 86 A of the various entries listing the exempted items and the extent of exemption etc.

3. In fact, the notification granting exemption as at Sl. No. 86 A in terms of the Central Excise Notification No. 48/2004 dated 10-9-2004 was in addition to an existing notification granting exemption to such manufacturing units, in the sense the rate of duty was at 8% as against the normal 16% subject to fulfilling what is known as Condition No. 14 therein. The notification figuring as item No. 86 A in the table appended to the earlier exemption notification No. 52 was subsequent addition granting exemptions in addition to the existing exemption in terms of the notification figuring at Sl No. 86 and on fulfilling certain further conditions as indicated in Condition 14A. The earlier notification granting exemption at Sl No. 86 reads as under:

1	2	3	4	5	6
86	48	Paper and paperboard or 8% - 14 articles made therefrom manufactured starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkande) or rags.			

This was subject to the condition No. 14A, which reads thus:

Condition Conditions No (I) The exemption shall apply only to the 14A paper and paperboard or articles made therefrom cleared for home consumption from a factory in any financial year upto first clearances of an aggregate quantity not exceeding 3500 metric tonnes. (2) The exemption shall not be applicable to a manufacturer of the said goods who avails of the exemption under notification of the Government of, India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) Nos 8/2003- Central Excise, dated the 1st March 2003 or 9/2003 - Central Excise, dated 1st March 2003.

Explanation : For removal of doubts, it is hereby clarified that the first clearance of an aggregate quantity not exceeding 3500 metric tonnes shall not include clearance of any paper and paperboard or articles made therefrom which attract nil rate of duty or are exempt from the whole of excise duty under any other notification.

The latter notification, on which we are concerned, viz., one figuring at Sl No. 86-

A, reads as follows:

86A: - Paper and Rate of Condition paperboard or articles made duty therefrom manufactured, starting from the stage of pulp, in a factory, and such 12% 14A pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkande) or rags.

Condition 14-A reads thus:

Condition No Conditions

14A (1) The exemption shall not be applicable if the factory in which the said goods are manufactured has a plant attached thereto for making bamboo or wood pulp. (2) The exemption shall not be applicable to a manufacturer of the said goods who avails of the exemption under notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) Nos 8/2003- Central Excise, dated the 1st March 2003 or 9/2003 - Central Excise, dated 1st March 2003.

4. It is precisely that the condition No. 14-A, which seeks to extend the benefit of concessional rate of duty only to such of those paper and paperboard manufacturers who do not have a wood based or bamboo based pulp unit attached to their manufacturing unit that has come in the way of the petitioner claiming or not being eligible for the exemption in terms of the subsequent notification and it is such a condition with which the petitioner is really aggrieved. It is questioning the legality of the imposition of such condition, the present writ petition is filed, raising several grounds. The prayer sought for is for quashing of the Condition No. 14-A to the notification figuring at Sl No. 86-A as imposed in notification No. 6/2002 dated 1 -3-2002, by notification No. 48/2004 dated 10-9-2004.

5. While issuing Rule, the respondent had been put on notice and it has entered appearance and also filed statement of objections.

6. The challenge to the notification is mainly on the ground that the classification or distinction sought to be made as between the paper and paperboards manufacturing industries with bamboo and wood based pulp units attached to them and without such units attached to them, is not a valid distinction or classification; that it seeks to make an unreasonable classification; that the classification has no nexus to the object of issuing an exemption notification u/s 5-A of the Act, which is a notification generally issued in public interest; that the subsequent notification, particularly condition No. 14-A is, therefore, an arbitrary condition, violative of Article 14 of the Constitution of India, and accordingly is liable to be struck down.

7. The statement of objections filed on behalf of the respondent generally seeks to defend the notification on the premise that a valid classification has been made; that there is no unreasonable classification; that the classification cannot be construed as one not based on any intelligible differentia; that any exemption

granted by the Government in the matter of levy of duty or rate of duty is inevitably coupled with conditions; that the condition alone cannot be attacked; that on the state of law as declared by the Supreme Court in the context of exemption of the validity of such notifications, present notification and the condition imposed are justifiable and valid and there is no action for quashing of the same and the writ petition is liable to be dismissed. It is also averred that the notification is one that is issued in public interest; that there is no plea or allegation in the petition that it has not been so issued in public interest nor any plea is in public interest and therefore the petitioner cannot succeed.

8. Sri Habibulla Badsha, learned Senior Counsel appearing for the petitioners, has elaborated the grounds urged in the writ petition to submissions at the time of hearing. I have also heard Sri R.L. Patil, learned Standing Counsel, appearing for the respondent.

9. Submission of Sri Habibulla Badsha, learned Senior Counsel appearing for the petitioners is that under the notification No. 48/2004 dated 10-9-2004 while granting exemption, the notification seeks to bring about two classes of persons—one to have the benefit of the notification is extended and the other the benefit is denied; that this classification is the result of imposing condition No. 86 A, corresponding to the exemption extended in terms of the notification inserted at Sl No. 86 A to the General Exemption No. 52 in respect of the specified goods of Chapter 48. Learned Senior Counsel submits that the benefit of the exemption viz., concessional rates of excise duty at 12% ad valorem to paper and paper boards or articles made therefrom manufactured, starting from the stage of pulp in a factory and such a pulp made from materials other than bamboo, hard woods, soft woods, reeds [other than sarkanda] or rags, is confined to such of those factories who do not have a unit manufacturing the pulp based on wood or bamboo is not attached to the factory and if a factory manufacturing paper and paper boards, though satisfied the main requirement of consuming not less than 75% of the raw materials source from conventional pulp manufactured from out of non-conventional materials, still the moment factory has a pulp unit wherein such a pulp is manufactured using bamboo or wood is attached, the benefit of concessional rate is denied. Learned Senior Counsel points out that while the petitioner fulfils the basic requirement of using not less than 75% of the pulp for manufacturing paper and paper boards, starting from non-conventional raw material, still for availing the benefit, in terms of the notification of the year 2004, the petitioner is denied the concession because of the condition; that the condition virtually takes away the benefit sought to be conferred on the persons like the petitioner under the exemption notification; that imposition of the condition of this nature is one which results in making invasive classification akin to class legislation; that the classification is unreasonable and in fact works contrary to the object of granting exemption; that the condition should be held not only unreasonable and bring about discrimination, but also a condition which has in excess to the object of the granting exemption and therefore the condition should be struck down.

10. Learned Senior Counsel appearing for the petitioners elaborating the submissions, draws support from the decision in the case of *I.E. Newspapers (Bombay) Private Ltd. v. Union of India* (1), (1986) 159 ITR 856 (SC) and submits that though the exemption notification of this nature is in exercise of the power for subordinate legislation, it is nevertheless amendable to judicial review; that it also requires to satisfy the Constitutional safeguards; that one it is demonstrated that the notification is one capable to bring about an unreasonable classification and virtually arbitrary condition being imposed, it is liable to be quashed; that in the case of *Indian Express*, the Supreme Court has occasion to quash a notification of this nature, though it was made u/s 25 of the Customs Act and corresponding to the provision of the Customs Act, holding that the notification in the nature of subordinate legislation are nevertheless open to scrutiny not only on the grounds on which plenary legislation can be examined or attacked, but also on the ground of being ultra vires the provisions of the Act, being in the nature of delegated legislation.

11. Sri Habibulla Badsha, learned Senior Counsel appearing for the petitioners, submits that as it is only the condition which is the offending portion of the notification, it is necessary to quash the condition to ensure that the benefit of the notification is available to the petitioner-company also in terms of the very notification itself. Learned counsel also placed reliance on the decision of the Supreme Court in the case of *Dai-Ichi Karkaria Ltd. Vs. Union of India and Others*, wherein the Supreme court had occasion to examine the validity of a subsequent notification where under exemption granted under an earlier notification was sought to be reduced or curtailed and on examination, found that the subsequent notification; though purporting to be in modification of the earlier notification, being not one issued in the public interest, as the respondents were not able to support the argument that the subsequent notification was issued in public interest; that while the subsequent notification deserves to be quashed, it bring back to operation the earlier notification under which full exemption had been v granted in respect of items exempted therein.

12. Sri Habibulla Badsha, learned Senior Counsel, also placed reliance on the decision of the Supreme Court in *Extrusion Processes Pvt. Ltd. and others Vs. Assistant Collector of Central Excise, Bombay and another*, wherein the Supreme Court had occasion to examine yet another notification granting certain exemptions/concessions and on noticing that a proviso which had the effect of creating two classes of manufacturers for the purpose of granting certain exemption, as both classes though similarly situated were provided exemption benefit differently, was therefore discriminatory and accordingly struck down a proviso which created this mischief.

13. Sri R.L. Patil, learned Standing Counsel appearing for the respondent, on the other hand has sought to sustain the validity of the notification, and submits that nothing wrong in the notification; that it has the effect of extending further benefit over and above the existing benefit available under the notification

figuring at SI No. 86; that if the additional benefit is sought, the condition imposed under the very notification should be fulfilled; that the condition is part of the notification extending additional benefit and the person takes the benefits either on complying with the condition or does not take the benefit; that the question of severing the condition does not arise. Learned Standing Counsel also submits that the exemption being in the nature of a concession, no person has a right to seek for exemption; that the concession can be availed by strict compliance and on fulfillment of the condition imposed; that if the petitioner has not fulfilled the condition, there is no question of extending such benefit and therefore the writ petition deserve to be dismissed.

14. Sri R.L. Patil, learned Standing Counsel appearing for the respondent further submits that it is not necessary for the respondent-Government of India to reveal as to what public interest motivated the Government because of which the subsequent notification has been issued and at any rate it is not necessary to recite such public interest in the very notification itself and in support of his submission, placed reliance on the decision of the Supreme Court in *General Fibre Dealers Ltd. and Another Vs. Union of India (UOI) and Others*, Further summation of Sri R.L. Patil, learned Standing Counsel is that the exemptions are granted as a matter of policy by the Government and it is not necessary to keep advertising its policies in such notifications; that non-disclosure thereof really does not make any difference; that the very fact that either the notification does not recite or the statement of objections filed on behalf of the respondent also does not reveal the public interest motivated by which the notification is issued is not a circumstance for quashing the very notification itself. Submission is that the Government enjoys a wide discretion in the matter of policy and it is for the Government to extend or deny the benefit to any particular item depending upon the exigencies, and in support of this submission, the learned Standing Counsel draws sustenance from the decision of the Supreme Court in the case of *Subhash Photographics v. Union Of India 1993 (6) ELT 3 (SC)*

15. Learned Standing Counsel further submits that the distinction sought to be made between a factory having the pulp unit manufacturing pulp based on conventional raw materials such as wood, bamboo etc., attached to it, and a factory without such unit attached to it, is a valid classification; that it has nexus to the object of granting exemption to encourage more use of non-conventional raw materials for manufacture of paper and paper boards; that the notification is not only reasonable but also makes an intelligible differentia, having nexus to the object of issuing or granting exemption in respect of such paper and paper board manufactures who use less and less conventional raw material. The learned Standing Counsel draws sustenance from the decision of the Supreme Court in the case of *State of Assam and Others Vs. Shri Naresh Chandra Ghose (D) By Lrs.*, Reliance is also placed on the decision in the case of *Union of India and Others Vs. Indian Charge Chrome and Another*, . So also the decision of the Supreme Court in *M. Jhangir Bhatusha and Others Vs. Union of India (UOI) and Others*, Reliance is also placed on the decision of the Madras High Court in *Bharat*

Match Works, Vanaramurthi and Others Vs. Union of India and Others, In the decisions relied upon by the learned Standing Counsel appearing for the respondent, rendered by the Supreme Court as well as Madras High Court, it is held that if the classification is reasonable and having nexus to the object of issuing of such notifications, where under the classification was made, validity of such notifications is sustainable.

16. I have considered the respective pleadings and also rival submissions of the learned counsel appearing for the petitioner as well as the respondent.

17. It is not in doubt any more that the validity of an exemption notification can be questioned on the grounds which are available to attack even plenary legislation and further that the notification can be challenged even on the ground of ultra vires the provisions of the Statute under which it is issued. Though no doubt in a matter of concession, no one can call in aid Article 14 of the Constitution of India for the purpose of seeking extension of a concession, even the notification like exemption notification extending a concession can nevertheless be examined on the touchstone of Article 14, in the sense that the notification should be one that answers that test of reasonableness, answers the test of fairness in State action, answers the test of the executive functioning in a non-arbitrary manner.

18. Even in respect of plenary legislation, it is not as that the moment the classification is made the legislation is caught in the vice of Article 14. What Article 14 frowns upon is a class legislation without any reasonable justification, a classification or grouping together of dissimilar persons or objects or a classification wherein such persons or objects or groups are put together without any rationale or a common thread running through them. While the classification is permitted, the golden Rule is that the classification should be reasonable based on an intelligible different and having a nexus to the main object of the legislation. If these tests are answered, the action of the Legislature or the subordinate legislation by the Executive still is sustainable notwithstanding a classification.

19. The impugned notification, no doubt, makes a classification between paper and paperboard-manufacturing factories with pulp units based on wood or bamboo pulp unit attached to them or without them. While the units without them get further concession of 12% on duty over and above the initial exemption granted under the Entry 86 of the exemption notification of the year 2002, right upto the initial production of 3500 MT at the rate of 8%, for concession thereafter, the condition No. 14A in respect of the notification of the year 2004 has to be complied with.

20. Though Sri Habibulla Badsha, learned Senior Counsel appearing for the petitioners has sought to draw a parallel between the notification of the year 2002 and the notification of the year 2004 and points out that while in both the notifications, the basic requirement is that 75% of the raw materials consumed

should be sourced from non-conventional based products, it is only the obnoxious condition of 14A, which looms large and plays a villain to deny the benefit to the petitioner. Learned Senior Counsel submits that when once the basic requirement is fulfilled, the question as to whether the factory, which has fulfilled the basic requirements, has a wood or bamboo pulp unit attached to the factory or not is immaterial. Learned Senior Counsel further submits that for the reason that in any view of the matter, the petitioner is entitled for using the conventional based products upto the extent of 25% and for such purpose, if a wood or bamboo based pulp unit is attached to it, and can still claim the benefit under the 2002 notification, there is no reason why such benefits should be denied by the kind of classification as imposed under condition No. 14A for the petitioner is concerned. It is for this reason, the learned Senior Counsel appearing for the petitioners submits that the condition is one which brings about a class legislation, one which has no rationale nor nexus to the object and therefore the condition should be declared to be bad.

21. The petitioners do not dispute that the notification of the year 2002 is a notification which is issued in the public interest. The petitioners have understood as to what is that "public interest" and even have averred in para-4 of the writ petition to the effect that:"... The main intention behind the notification being to encourage the use of unconventional raw material and save the forests." When the object of issuing such an exemption notification extending concession is to encourage such units which use more and more non-conventional raw materials, which in effect, helps to conserve forest wealth and also for preserving ecological system, that is the public interest. The public interest is to conserve the existing forest wealth and to maintain the existing eco-balance. The notifications issued so long as they sub-serve this object, it cannot be said that they have no nexus to the object in the sense it is not in the public interest.

22. The first notification of the year 2002 achieving this object is not in dispute and the petitioners themselves concede this. It is only the condition in the second notification of the year 2004 the petitioners have a quarrel. The condition No. 14A seeks to make a distinction, as noticed above, between factories having conventional based pulp units attached to them and those factories not attached with such units to them. While further concession is extended to factories not having such conventional pulp producing units attached to them. It is denied to factories, which have attached to them conventional pulp-manufacturing unit. The question is not so much as to whether the petitioner-factory procures the balance 25% pulp from outside, whether it is again based on the conventional raw materials or otherwise. In fact, even as averred in the writ petition, the petitioners have three other paper and paperboard manufacturing units in the very factory, for which, conventional raw material is exclusively used and in respect of which the petitioners do not claim the benefit of either notification. It is claimed that it is only in respect of 4th and 5th units of the factory manufacturing paper and paperboards the petitioners seek to avail the benefit of the notification. While the petitioner-factory availed the concession under the

2002 notification, the effort to seek the benefit of the 2004 notification is denied because of the attachment of the conventional raw materials based pulp units.

23. It is very obvious that there is certainly an intelligible distinction between the factories having valorem valorem valorem conventional raw material based pulp units attached to them and those without them, as that does not call for much wisdom to understand that any factories where such pulp units are not attached, there is less scope for consumption of conventional raw materials like bamboo or wood. It is obviously to wean away even the existing manufactures of paper and paper boards from using the conventional raw material to the use of non-conventional raw materials. This main object is certainly achieved even by the subsequent notification of the year 2004 also. In fact if the petitioner-factory is so very keen, it can ensure that such conventional based pulp units are removed from its factory and thereafter claim the benefit of the second notification, as is rightly pointed by Sri R.L. Patil, learned Standing Counsel appearing for the respondent. It is not for the Court to question the wisdom of the policy after examining as to whether the policy by itself is good or bad. The test is applied only to the legislative and executive action pursuant to the policy and whether such action results in any discrimination.

24. In the present case, on a cursory glance at the contents of the exemption notification of the year 2004, it becomes quite obvious that the Government, even after extending certain concessions in terms of the notification of the year 2002, where under the condition is use of minimum 75% of the raw material procured from non-conventional sources, further encouragement is sought to be given to such manufacturers who are prepared to remove their conventional raw material based pulp units. The object is to discourage more and more the use of conventional raw materials like bamboo, wood etc. This is definitely achieved by the notification of the year 2004. Even from a layman's point of view, it can be appreciated that the paper and paper board manufacturers with or without pulp units based on conventional raw materials form two different classes. If such class of manufacturers who cause no loss or damage to the ecological system, are sought to be further encouraged, no fault can be found with such a step and the object is definitely laudable and is in furtherance of the main object and that is how the second notification being is also issued in public interest.

25. The present case does not involve a situation wherein by the issue of a subsequent invalid notification, an existing concession is sought to be curtailed, as in the case of *Dal-Ichi Karkariya Ltd v. Union Of India* (supra) but on the other hand by issue of a subsequent notification, a further concession is provided.

26. The ratio of the case reported in *Extrusion Processes Pvt v. Assistant Collector Of Central Excise, Bombay* (supra) of the Bombay High Court is also not applicable, as it is on an examination found that condition No. 14-A by itself does not bring about any class legislation which can be termed as discriminatory.

27. Accordingly, I hold that the notification of the year 2004, challenged in this

writ petition, containing the condition No. 14A, is a valid notification and it makes a reasonable classification of two types of paper and paper board manufacturers, as discussed above, and that the condition for availing the further concession in terms of this notification has a definite nexus with the object of encouraging paper and paper board manufacturers using lesser and lesser conventional raw materials. Challenge to the notification fails. Writ petition is accordingly dismissed. Rule discharged.