

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

rrpa

WRIT PETITION NO.1120 OF 2014

M/s.The Deccen Do-op Textiles
Industries Ltd.

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

....

Mr.Jityendra Motwani i/b. Economic Laws Practice, Advocate for the
Petitioner.

Mr.A.S. Rao with Mr.S.D. Bhosale, Advocate for the Respondents.

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**CORAM : S.C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.**

DATED : MARCH 4, 2015.

P.C. :

This Writ Petition under Article 226 of the Constitution of India is directed against the recovery notice which has been issued by the Range Superintendent to the petitioner. The recovery notice demands from the petitioner outstanding duty amount of Rs.44,95,238/- with interest and penalty. This arises out of an order passed way back on 30th May, 2003. This order was unsuccessfully challenged before the Tribunal. The Appeal of the Petitioner admittedly was barred by limitation and hopelessly, the Tribunal refused to condone the delay and dismissed the Appeal. That order of

the Tribunal was challenged by the petitioner by filing a writ petition in this Court, and that writ petition also was dismissed being writ petition No.1195 of 2011. It was dismissed on 20th June, 2012. A Special Leave Petition was filed in the Hon'ble Supreme Court of India to challenge the order of this Court but even that was dismissed on 11th November, 2013 (See Annexure K page-156 of the paper book).

3 Mr.Motwani would submit that the demand itself could not have been raised. The show cause notice was based on a Rule which was later on removed from the statute book and without any saving clause. Even the substantive provision enabling making of a Rule was deleted from the statute book. Thus, the show cause notice was *ex-facie* without jurisdiction and the order in pursuance thereof is null and *void-ab-initio*. Therefore, this demand notice should be set aside.

4 Further, prior thereto the Rule based on which the show cause notice was issued was held to be *ultra-vires* by the High Court of Madras in a decision which has been referred in the grounds of this writ petition namely ***Beauty Dyers V/s. Union of India***¹.

1) 2004 (166) ELT Page 27 (Mad)

5 We do see how any of these contentions can be entertained. We cannot go behind the Order-in-Original after it was unsuccessfully challenged. The challenge having failed right up to the Hon'ble Supreme Court because the proceedings were belated, that we are of the opinion that Mr.Motwani's contentions cannot now be taken note of and by that the petitioner cannot be permitted to resist or avoid the demand.

6 Further, Mr.Motwani's, arguments overlooked the fact that an order which is erroneous, cannot be claimed to be a nullity. The difference between these two concepts have been noted long back. We cannot rely on the Madras High Court's order/judgment in the case of Beauty Dyers (Supra) and now set at naught a complete adjudication. We do not see any merit in the writ petition. It is accordingly dismissed. No costs.

(S.P. DESHMUKH, J.)

(S.C. DHARMADHIKARI, J.)