IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.12.2022
Pronounced On	16.02.2023

CORAM

THE HON'BLE **MR.JUSTICE S.VAIDYANATHAN**
AND
THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.A.Nos.2512 to 2523 of 2012 &
W.A.Nos.645 to 652 of 2018 &
W.A.Nos.968 and 969 of 2018
and
C.M.P.Nos.8189, 8190, 6237 to 6244 of 2018

W.A.No.2512 of 2012

1.Union of India,
Rep. by Secretary, Ministry of Finance,
Govt. of India, South Block,
New Delhi.

2.The Commissioner of
Central Excise – Coimbatore,
Race Course Road, Coimbatore.

3.The Superintendent of Central Excise,
Erode Range, Erode. .. Appellants

Vs

M/s.Sri Suryodhaya Textile Processing,
No.50-A, Mudali Thottam,
Soolai, V.Chatram, Erode – 638 004. ... Respondent

Writ Appeal filed under Clause 15 of Letter Patent, to set aside the order dated 21.07.2009 passed by the learned Single Judge in W.P.No.5976 of 2000.

For Appellants : Mr.V.Sundareswaran
Central Government Senior Standing Counsel

For Respondent : Mr.S.Kolandaiswamy

COMMON JUDGMENT

S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

By this common order, all these 22 Writ Appeals are being disposed of.

2. For the sake of convenience, details of 22 Writ Petitions which came to be disposed by the impugned orders are given below in a Table:-

Table No.1

Sl. No	*W.A.No.*	*Date of the impugned order*	*W.P.No.*	*Notification No. / Rule challenged in W.P.*
1	2512/2012	21.07.2009	5976/2000	14/2000 - C.E. (NT), dt. 01.03.2000
2	968/2018	21.07.2009	6272/2000	14/2000 - C.E. (NT), dt. 01.03.2000
3	969/2018	21.07.2009	7991/2000	14/2000 - C.E. (NT), dt. 01.03.2000

Sl. No	***W.A.No.***	***Date of the impugned order***	***W.P.No.***	***Notification No. / Rule challenged in W.P.***
4	649/2018	21.07.2009	5975/2000	14/2000 - C.E. (NT), dt. 01.03.2000
5	650/2018	21.07.2009	6538/2000	14/2000 - C.E. (NT), dt. 01.03.2000
6	2513/2012	21.07.2009	5977/2000	Rule 96ZQ of the C.E. Rules, 1944
7	2515/2012	21.07.2009	6135/2000	Rule 96ZQ of the C.E. Rules, 1944
8	2517/2012	21.07.2009	6274/2000	Rule 96ZQ of the C.E. Rules, 1944
9	2519/2012	21.07.2009	6540/2000	Rule 96ZQ of the C.E. Rules, 1944
10	2521/2012	21.07.2009	7993/2000	Rule 96ZQ of the C.E. Rules, 1944
11	2514/2012	21.07.2009	6134/2000	19/2000 - C.E. (NT), dt. 01.03.2000
12	2516/2012	21.07.2009	6273/2000	19/2000 - C.E. (NT), dt. 01.03.2000
13	2518/2012	21.07.2009	6539/2000	19/2000 - C.E. (NT), dt. 01.03.2000
14	2520/2012	21.07.2009	7992/2000	19/2000 - C.E. (NT), dt. 01.03.2000
15	652/2018	21.07.2009	6133/2000	19/2000 - C.E. (NT), dt. 01.03.2000
16	2522/2012	22.07.2009	7818/1999	42/1998 - C.E. (NT), dt. 10.12.1998
17	645/2018	22.07.2009	7861/1999	42/1998 - C.E. (NT), dt. 10.12.1998
18	646/2018	22.07.2009	7862/1999	43/1998 - C.E. (NT), dt. 10.12.1998
19	647/2018	22.07.2009	7817/1999	43/1998 - C.E. (NT), dt. 10.12.1998
20	2523/2012	22.07.2009	7819/1999	36/1998 - C.E. (NT), dt. 10.12.1998
21	648/2018	22.07.2009	20319/1999	36/1998 - C.E. (NT), dt. 10.12.1998
22	651/2018	22.07.2009	7860/1999	36/1998 - C.E. (NT), dt. 10.12.1998

Note : C.E. Rules – Central Excise Rules, 1944

3. For the sake of convenience, the challenges before the learned Single Judge in the above Writ Petitions can be categorized as follows:-

Table No.2

Category 1		
Sl. No.	***Notification No.***	***Date***
1	Notification No.36,1998-C.E. (N.T.)	10.12.1998
2	Notification No.19/2000-C.E. (N.T.)	01.03.2000

Table No.3

Category 2		
Sl. No.	***Notification No.***	***Date***
1	Notification No.42,1998-C.E. (N.T.)	10.12.1998
2	Notification No.14/2000-C.E. (N.T.)	01.03.2000

Table No.4

Category 1		
Sl. No.	***Notification No.***	***Date***
1	Notification No.43,1998-C.E. (N.T.)	10.12.1998

4. As far as the Notifications in Category No.1 (Table No.2) are concerned, Notification No.36,1998-C.E. (N.T.), dated 10.12.1998 is the parent Notification. It specified the rate of duty on the specified goods falling under Heading Nos.52.07, 52.08, 54.06, 54.07, 55.11, 55.12, 55.13 and 55.14, manufactured or produced by an Independent Processor

with Aid of Hot-Air Stenter on the basis of annual capacity of production under Section 3A of the Act. This Notification was later amended *vide* Notification No.19/2000-C.E. (N.T.), dated 01.03.2000.

5 As far as the Notifications in Category No.2 (Table No.3) are concerned, Notification No.42/1998-C.E. (N.T.), dated 10.12.1998 is also a parent Notification. It framed the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998. The said Rules was later amended vide Notification No.14/2000-C.E. (N.T.), dated 01.03.2000.

6. As far as the Notification in Category No.3 (Table No.4) is concerned, the said Notification No.43/1998-C.E. (N.T.), dated 10.12.1998 deals with the procedure to be followed by an independent processor of textile fabrics and the consequence for the failure to pay the amount of duty by way of interest and penalty.

7. The impugned orders of the learned Single Judge of this Court read almost identically. They are based on the Judgment of another

learned Single Judge of this Court in the case of **Beauty Dyers** Vs. **Union of India**, 2004 (166) E.L.T. 27 (Mad.). The decision of the learned Single Judge in **Beauty Dyers** Vs. **Union of India**, 2004 (166) E.L.T. 27 (Mad.) was affirmed by the Division Bench of this Court by its order dated 18.07.2008 in W.A.Nos.2366 to 2369 of 2022.

8. The learned Single Judge in the case of **Beauty Dyers** referred to *supra* had held as under:-

> **12.** On the basis of the above-mentioned decisions, if we considered the scope of arguments of learned Senior Counsel with reference to the impugned notifications, the case of the petitioners has to be accepted under the impugned notifications, the Government have not tried to fix the formula to determine the production capacity on the basis of the quantity of production, but on the basis of the value fixed by the Central Government by themselves irrespective of the capacity of the factories concerned. Such a flat rate fixed by the Central Government cannot be sustained in view of the above-mentioned decisions of the Apex Court. Further, from a reading of Notification Nos. 36/1998 and 42/1998. I am not able to see any link between such notification though one is for fixing determination of production capacity and another is giving the rate of duty of excise which has to be levied and collected on the basis of the said determination of the production capacity following

the rules framed under Notification No. 42/1998. Any rules, should be only in accordance with the main provisions and to achieve the object of the said provisions. So, the capacity of production cannot be arrived at on the basis of deemed value as it has been given by the Central Government that too without any basis.

13. As rightly submitted by learned Counsel all chambers irrespective of the nature, age and their capacity cannot be treated equally for the purpose of fixing the annual capacity of production, as the same has been done under Notification No. 42/1998. The rules framed under Notification No. 42/1998 is not having acceptable method to arrive at the capacity of production, which is absolutely necessary to levy and collect duty of excise under Section 3A of the Act. So, the said rules cannot be adopted for determination of excise duty as they cannot level the correct capacity of production of the factory for the purpose of levying excise duty. So, the Rule 3 of the rules issued in the Notification No. 42/1998 cannot be sustained as they are *ultra vires* Section 3A of the Act.

14. The Order rules issued under other Notifications which are impugned in the other writ petitions are only based on the rules issued in Notification No. 42/1998 and so the reasoning given above will apply to these rules also. So they also cannot be sustained consequently, they are set aside. But the petitioners are liable to pay duty of excise under Section 3 of the Act or under any other provisions contemplated for the same.

15. For all the foregoing reasons, these writ petitions are allowed accordingly. No costs. Connected W.M.Ps. are closed.

9. On further appeals before the Division Bench in W.A.Nos.2366 to 2369 of 2022 by the revenue, the Division Bench *vide* its order dated 18.07.2008 has held as follows:-

> It is submitted by the learned Assistant Solicitor General appearing for the appellants that Section 3A of the Central Excise Act has been omitted from the statute book with effect from 11.05.2001. In view of the same, there is nothing survives to be adjudicated in these writ appeals.
>
> Recording the said statement, the writ appeals are dismissed as nothing survives to be adjudicated. Consequently, the connected W.A.M.P.Nos.4021 to 4024 of 2022 are also dismissed.

10. Further appeal to the Hon'ble Supreme Court was dismissed by the Hon'ble Supreme Court *vide* order 06.02.2009 reported in (2015) 17 SCC 817.

11. The above view was followed by the Division Bench of this Court in **Commissioner of Central Excise** Vs. **M/s. Entex Pvt. Ltd.**, 2015 (324) E.L.T. 466 (Mad). There are no records to substantiate that the said decision of the Division Bench of this Court has been appealed before the Hon'ble Supreme Court.

12. On the other hand, the above view was affirmed by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise** Vs. **Angadpal Indl. P.Ltd.**, 2015 (325) E.L.T. 228 (S.C.), wherein, it was held as under:-

> *9. It is not even necessary to go into this question because of a simple reason. The vires of the aforesaid Rule 96-ZQ was challenged before the Madras High Court in Beauty Dyers v. Union of India [Beauty Dyers v. Union of India, (2004) 166 ELT 27 (Mad)] and the High Court held the said Rule to be ultra vires the erstwhile Section 3-A of the Act. Special leave petition was preferred by the Union of India against the said judgment which was dismissed by this Court [Union of India v. Beauty Dyers, (2015) 17 SCC 817, wherein it was directed"Heard learned counsel for the petitioner. Delay condoned. No merits. The special leave petitions are dismissed."] . The judgment by the Madras High Court is reported in CCE v. Entex (P) Ltd. [CCE v. Entex (P) Ltd., 2015 SCC OnLine Mad 13866 : 2015 TIOL 2123 (Mad)].*

13. The issue has attained finality not only before the Division Bench of this Court on an earlier occasion in **Beauty Dyers'** case but has also been affirmed by the Hon'ble Supreme Court *vide* order 06.02.2009

reported in (2015) 17 SCC 817 and also affirmed in the case of **Angadpal Indl. P.Ltd.**, referred to *supra*.

14. We are therefore of the view that judicial discipline requires us to maintain an uniformity as any other interpretation to the impugned Notifications by the learned Single Judge as affirmed by the Division Bench and the Hon'ble Supreme Court would lead to a distortion and confusion particularly considering the fact that compounded levy on textile products has not been re-introduced after 2001.

15. Section 3A of the Central Excise Act, 1944 was omitted by Section 121 of the Finance Act, 2001 with effect from 11.05.2001 as has been observed by the Division Bench in its order dated 18.07.2008 in W.A.Nos.2366 to 2369 of 2002 etc., batch. Though Section 3A of the Central Excise Act, 1944 was reintroduced by Section 79 of the Finance Act, 2008 with effect from 10.05.2008, no corresponding Notification was issued for bring the textile products within the purview of tax under Section 3A of the Act.

16. The Central Government *vide* Notification No.29/2008-C.E. (N.T.), dated 01.07.2008 and Notification No.10/2010-C.E. (N.T.), dated 27.02.2010 has brought only following products within the excise duty:-

Notification No.29/2008-C.E. (N.T.), dated 01.07.2008	***Notification No.10/2010-C.E. (N.T.), dated 27.02.2010***
i. Pan masala falling under tariff item 2106 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), except the pan masala containing not more than 15% betel nut; and ii. Pan masala containing tobacco, commonly known as gutkha, falling under tariff item 2403 99 90 of the said Tariff Act, manufactured with the aid of packing machine and packed in pouches as notified goods, on which there shall be levied and collected duty of excise in accordance with the provisions of the said section 3A.	i. Unmanufactured tobacco, bearing a brand name, falling under tariff heading 2401 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and ii. Chewing tobacco falling under tariff item 2403 99 10 of the said Tariff Act, manufactured with the aid of packing machine and packed in pouches as notified goods, on which there shall be levied and collected duty of excise in accordance with provisions of the said section 3A

17. Following Notifications were issued by the Central Government to specify the rate of duty:-

i. Notification.42/2008-C.E., dated 01.07.2008 as amended by Notifications No.43/2008-C.E., dated 15.07.2008, No.13/2012-C.E., dated 17.03.2012, No.6/2015-C.E., dated 01.03.2015 and No.17/2016-C.E., dated 01.03.2016.
ii. Notification No.16/2010-C.E., dated 27.02.2010 as amended by Notifications No.19/2010-C.E., dated 13.04.2010, No.14/2012-C.E., dated 17.03.2012, No.5/2015-C.E., dated 01.03.2015 and No.16/2016-C.E., dated 01.03.2016.

18. As no corresponding Notification was issued to bring the textile products under Section 3A of the Act once again and since issue has already attained finality, we are of the view that these Writ Appeals are liable to be dismissed. Accordingly, they are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

(S.V.N., J.) (C.S.N., J.)
16.02.2023

Internet : Yes/No
Index : Yes/No

Jen

S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

Jen

Pre-Delivery Common Judgment
made in
W.A.Nos.2512 of 2012 etc. batch

16.02.2023