



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 343 OF 2024

Sansar Texturisers Pvt. Ltd.

... Petitioner

Versus

Union of India & Ors.

... Respondents

Mr. Naresh Jain a/w. Ujjwala Chaturvedi i/b. Ms. Neha Anchlia for the petitioner.

Mr. Saket R. Ketkar i/b. Mr. Karan Adik for the respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 22 January, 2024

Oral Judgment (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution, although challenges the validity of the notifications dated 13 January, 2012 and 19 January, 2017 issued by the respondents providing for a levy of anti-dumping duty, the real intention of the petitioner is to avail refund of anti-dumping duty paid by the petitioner in relation to the imports of the petitioner for the period from 13 January, 2012 to 12 January, 2018.

2. The questions which would primarily arise for consideration are two fold – firstly, whether a belated prayer to assail the notifications in question would be maintainable and secondly, whether under the grab of assailing such notifications, a prayer for money claim ought to be entertained.

3. The prayers in the petition are required to be noted, which reads thus:

(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the first impugned notification dated 13 January 2012, issued by the Respondent No. 1 (being Exhibit 'D' hereto) and after going into the validity and legality thereof to quash the same.

(b) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the second impugned notification dated 19 January, 2017, issued by the Respondent No. 1 (being Exhibit 'E' hereto) and after going into the validity and legality thereof to quash the same.

(c) that this Hon'ble Court be pleased to direct respondent no. 2 to refund the Anti-Dumping Duty amounted to Rs. 9,24,97,208/- collected under the impugned notifications along with the interest at the appropriate rate."

4. At the outset, we may observe that the petition is thoroughly misconceived to say the least and for the reasons which are more than one. We may observe that the petition lacks even the basic pleadings on facts as to how the cause of action as purportedly arisen to the petitioner, can be said to be a live cause of action so as to persuade this Court to exercise its discretionary and equitable jurisdiction under Article 226 of the Constitution of India, including to discard the well settled principles of delay and laches. It is well settled that the Court would be loath to entertain a writ petition which espouses a stale cause of action or a belated attempt of a litigant to seek a relief for which even a civil suit, if filed would be barred by limitation. The facts as narrated hereunder would aid our opening observations.

5. The case of the petitioner is that the petitioner is engaged in the business of import of Nylon Filament yarn. During the period from 13 January 2012 to 12 January, 2018, the petitioner had imported such materials from different countries, being the period covered under the impugned notifications issued in exercise of powers under Section 9A(1) and 9A(5) of Customs Tariff Act, 1975 in regard to the levy of anti dumping duty as paid by the petitioner.

6. It is the petitioner's case that anti-dumping duty on import of specified Nylon Filament Yarn from People's Republic of China, Chinese Taipei, Malaysia, Indonesia, Thailand and People's Republic of Korea was imposed on such materials. The petitioner has merely set out the brief facts, in relation to the notifications dated 29 August, 2006 (No. 85 of 2006) by which anti-dumping duty on import of such materials was imposed. It is contended that thereafter on 27 August 2010, the Designated Authority vide Notification no. 15/14/2010-DGAD had initiated a sunset review of anti-dumping duty imposed by Notification No. 85 of 2006 and recommended for extension of the anti-dumping duty. It is contended that on 9 December, 2010, respondent no. 1 issued Notification No.123 of 2010 - Customs, amending Notification No. 85 of 2006 by adding paragraph 3 in the said notification, stating that Notification No. 85 of 2006 shall remain in force up to and inclusive of 26 August, 2011. It is contended that on 9 August, 2011, respondent No. 1 issued Notification no. 73 of 2011- Customs, amending Notification No. 85 of 2006

by substituting para 3 in the said notification, stating that the earlier Notification No. 85 of 2006 shall remain in force up to and inclusive of 28 November, 2011. It is contended that thereafter on 19 November, 2011 the time period of sunset review had expired, by a notification no. 15/14/2010-DGAD, the Designated Authority had recommended continuation of the anti-dumping duty.

7. It is the petitioner's case that on 13 January, 2012, respondent no. 1 issued the first impugned notification i.e. No. 3 of 2012. By this notification, anti-dumping duty on import of said materials from the People's Republic of China, Chinese Taipei, Malaysia, Indonesia, Thailand and People's Republic of Korea was re-imposed. It is contended that as per Clause 2 of this Notification, the anti-dumping duty was imposed for a period of five years from the date of its issue i.e. 13 January, 2012 and hence such notification was to lapse on 12 January, 2017. It is contended that thereafter on 19 January, 2017, respondent no. 1 issued the second impugned notification i.e. No. 4 of 2017, which *inter alia* recorded that the Designated Authority vide notification no. 15/17/2016-DGAD dated 9 January, 2017 had initiated a sunset review of anti-dumping duty imposed by notification no 3 of 2012 and recommended for extension of the anti-dumping duty. It was also recorded that Notification No. 3 of 2012 was to remain in force up to and inclusive of 12 January, 2018. It is the petitioner's case that thereafter on 5 January, 2018, respondent no. 1 by

notification no. 15/17/2016-DGAD concluded the sunset review of anti-dumping duty initiated on an application of the domestic industry. It is contended that by the said notification, the authority did not recommend continuation of the anti-dumping duty on the imports of subject goods from the said countries.

8. On the above backdrop, it is contended by the petitioner that anti-dumping duty of Rs. 9,24,97,208/- was paid on imports undertaken by the petitioner during the period 13 January, 2012 to 12 January, 2018. This is stated and/or shown to the Court merely on the sample of Bill of Entry and payment challan as annexed to the petition "Exhibit-G". The case of the petitioner is that the impugned notifications and subject matter of challenge as set out in the prayers as made in the petition were issued by respondent No. 1 without authority of law inasmuch as, as per section 9A(5) of the Customs Tariff Act, the anti-dumping duty could be imposed for a period of five years. It is submitted that it is only before the expiry of the notification, the Designated Authority could review whether the same should be extended for a further period of five years or not and more particularly considering the proviso of section 9A(5). It is contended that for such reason, the impugned notifications are required to be held to be contrary to law and being illegal, they are required to be quashed and set aside. Consequently, the petitioner be held to be entitled to the refund of anti-dumping duty. The petitioner has

contended that the cause of action to urge such contentions has arisen to the petitioner in view of the decision of the Supreme Court in **Union of India and Ors. Vs. Kumho Petrochemicals Company Limited and Ors.**¹,

9. It is contended that with such grievance the petitioner recently approached this Court in Writ Petition No. 2097 of 2022 along with other petitioners, which were joint petitions comprising of several parties, which came to be disposed of by an order dated 28 November, 2023, which reads thus:

“1. We have extensively heard learned counsel for the petitioners on these petitions. We are not at all satisfied with the frame of the petitions, so as to entertain the challenge of the petitioners and the prayers they have made. We see that Writ Petition No. 2097 of 2022 has 48 petitioners. There are no pleadings on the fact as to how the petitioners are aggrieved. Similar is the position in Writ Petition No. 3798 of 2021 where, there are 171 petitioners as also in Writ Petition No.1384 of 2021 where, there are 6 petitioners.

2. We are of the clear opinion that if the individual petitioners are aggrieved, they need to file appropriate petitions. We are accordingly not in a position to entertain these petitions.

3. We dispose of these petitions with liberty to the petitioners to take recourse to an appropriate remedy, as may be available in law.

4. All contentions of the parties are expressly kept open.”

(emphasis supplied)

10. In the light of the above observations of this Court, the petitioner contends that the present petition is filed, being its independent proceedings. It is the petitioner’s case that considering the decisions of the Supreme Court in

1 MANU/SC/0724/2017

Union of India and Ors. Vs. Kumho Petrochemicals Company Limited and Ors. (*supra*), Lohia Machines Ltd. & Anr. Vs. Union Of India & Ors.,² as also in Mafatlal Industries Ltd. Versus Union of India³, this petition is required to be entertained and held maintainable as also not barred by delay and laches. The petitioner accordingly has raised grounds to assail the notifications contending that they are contrary to law.

11. Mr. Jain, learned counsel for the petitioner in supporting the petitioner's case would submit that the petition needs to be entertained without the same being held to be barred by delay and laches. He would submit that it is only after the petitioner received the knowledge of the decision of the Supreme Court in Union of India and Ors. Vs. Kumho Petrochemicals Company Limited and Ors. (*supra*), the petitioner realized that the impugned notifications are bad and illegal, the first petition came to be filed within a period of three years from the decision of the Supreme Court in *Kumho Petrochemicals Company Ltd. (supra)*. Such judgment of the Supreme Court, according to him, has in fact given rise to a cause of action to the petitioner to file the present petition. It is hence submitted that the petitioner would be entitled to the refund of duty, if the petitioner succeeds in the principal challenge, namely, in the event the notifications are declared to be bad and

2 Writ Petition No. 4509 of 1980

3 1996 (12) TMI 50

illegal. In support of such contentions, Mr. Jain relying on the aforesaid decisions has also placed reliance on the decision of a co-ordinate Bench of this Court in GIMA Manufacturing Pvt. Ltd. & Ors. vs. Union of India⁴

12. We are quite surprised with the contentions as urged by Mr. Jain in his attempt to persuade us to hold that this petition needs to be entertained and that the petition would also not be hit by the principles of delay and laches, and on other issues which we would discuss. Such issues are (i) Maintainability for issuance of a writ of mandamus on the touchstone of “demand for justice”; (ii) Doctrine of Delay and Laches; (iii) Whether in view of a prospective decision of the Supreme Court, a cause of action can arise to maintain a Writ Petition; and (iv) Maintainability of a money claim in a Writ Petition.

13. At the outset, we may observe that the present petition is a classic case where the petitioner completely overlooks all the basic essentials/requirements for a litigant to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. This more particularly as the petitioner has made a money claim (prayer clause (c)), thus the basic desire of the petitioner is to directly make a money claim. We may observe that when the petitioner’s claim is for refund of the anti dumping duty paid between the period 2012 to 2018, which being a serious prayer made in a writ petition, that too paid by the petitioner acting upon the notifications which were prevailing at that point of

4 (2017) 8 TMI 630

time before the writ Court, which needs to be considered by the Court with a grain of salt. The task to succeed in such claim when considered in law, in our opinion is quite herculean. We discuss the above issues which would weigh with the Court in such situation to entertain the writ petition.

I. Demand for Justice

14. At the outset, we find from the frame of the petition that the basic requirement for maintaining a writ of mandamus, namely, a request for demand for justice, which would be the first and foremost consideration, before any party could approach the Writ Court is not fulfilled by the petitioner. We find that there was no prior representation made by the petitioner to the appropriate department of Government of India, pointing out any illegality on the notifications, much less of making a refund application which in the normal course of law a prudent litigant and that too an importer would follow.

15. In such context, we may observe that it is well settled that a prayer for a writ of mandamus is not maintainable in the absence of an enforceable legal right as well as a legally protected right. In such context, the Supreme Court in **Mani Subrat Jain & Ors. vs. State of Haryana & Ors.**⁵ has observed thus:

“9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person

5 (1977) 1SCC 486

can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.”

16. Further, it is also well settled that unless there has been a distinct ‘demand for justice’ in maintaining a prayer for mandamus, and after such demand being made when the authorities did not act in accordance with the law, only in such event, a prayer for a writ of mandamus would be maintainable. In **Saraswati Industrial Syndicate Ltd. & Ors. vs. Union of India**⁶, the Supreme Court referring to the Halsbury’s Laws of England, observed that the powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. The relevant observations of the Supreme Court are required to be noted, which reads thus:

“24. The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognized rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury’s Laws of England* (3rd Edn.), vol. 13, p. 106):

As a general rule, the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that demand was met by a refusal.

25. In the cases before us, there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

6 (1974) 2 SCC 630

17. In **Amrit Lal Berry vs. Collector of Central Excise, New Delhi & Ors.**⁷, the Supreme Court observed that there was no assertion that any representation was made against any violation of a petitioner's right, hence, the rule recognized by the Supreme Court in *Kamini Kumar Das Choudhury vs. State of West Bengal*⁸ that a demand for justice and its refusal must precede the filing of a petition asking for direction or a writ of mandamus, would operate against the petitioners. The relevant observation of the Supreme Court reads thus:

“25. In the petition of K.N. Kapur and Others, we do not even find an assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognized by this Court in *Kamini Kumar Das Choudhury vs. State of West Bengal*, that a demand for justice and its refusal must precede the filing of a petition asking for direction or writ of mandamus, would also operate against the petitioners.”

18. In **Federation of Retail Traders Welfare Associate and Anr. vs. State of Maharashtra and Ors.**⁹, the Division Bench of this Court has observed that it seems to have become a habit in this Court to seek a high prerogative remedy of a mandamus without averring that the petitioner has made a demand for justice and the same having been denied or has even not made a demand at all, let alone explaining how the case fits in the few limited and well-known exceptions to the general rule. The Division Bench in making such

7 (1975) 4 SCC 714

8 (1972) 2 scc 420

9 2022 SCC OnLine Bom 388

observations also took into consideration the decisions which we have referred hereinabove.

II. Delay and Laches

19. Apart from the above clear position in law to maintain a writ petition, in our clear opinion, the petition is completely barred by delay and laches. The principles of law in this regard are well settled. In **Shiv Dass Vs. Union of India and Others**¹⁰, the Supreme Court has held that normally, in the case of a belated approach, the writ petition has to be dismissed. It was observed that delay or laches is one of the factors to be borne in mind by the High Courts when it exercises its discretionary powers under Article 226 of the Constitution of India. It was held that in an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right, as taken in conjunction with the lapse of time and other circumstances, which would cause prejudice to the opposite party and that the discretion has to be exercised judicially and reasonably. Even when a fundamental right is involved in the matter, it is still the discretion of the Court. Referring to the decision in **State of M.P. vs. Nandlal Jaiswal**¹¹, it was observed that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.

10 (2007) 9 Supreme Court Cases 274

11 (1986) 4 SCC 566

If there is an inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court would decline to intervene and grant relief in exercise of its writ jurisdiction. It was also held that such rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after an unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. Also referring to the decision in **K.V. Rajalakshmiah Setty vs. State of Mysore**¹², it has been pointed out that representations cannot be the adequate explanation to take care of delay (albeit in the present case there is none). It was observed that there is a limit to the time which can be considered to be reasonable for making representation and if the Government had turned down one representation, the making of another representation on similar lines will not explain the delay. Referring to the observations of Sir Barnes Peacock in **Lindsay Petroleum Co. Vs. Prosper Armstrong Hurd**¹³ which was approved by the Supreme Court in **Moon Mills Ltd. vs. M. R. Meher**¹⁴ and **Maharashtra SRTC vs. Balwant Regular Motor Service**¹⁵, it was observed thus:

“7. Sir Barnes had stated that now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it

12 AIR 1967 SC 993

13 (1874) 5 PC 221

14 AIR 1967 SC 1450

15 AIR 1969 SC 329

would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

20. In **Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu**¹⁶, the Supreme Court referring to the aforesaid decisions, pertinent observations were made that the doctrine of delay and laches ought not to be lightly brushed aside and the writ court is required to weigh the explanation offered and the acceptability of the same, as it is not only the duty of the Court to protect the rights of the citizens, but simultaneously to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. It was observed that delay reflects inactivity and inaction on the part of a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, the law does not permit one to sleep and rise like a phoenix. It was observed that delay does

16 (2014) 4 Supreme Court Cases 108

bring in hazard and causes injury to the lis. It was also observed that remaining innocuously oblivious to such delay does not foster the cause of justice, on the contrary, it brings in injustice which is likely to affect the others. It was observed that a Court is not expected to give indulgence to such indolent persons who compete with “Kumbhakarna” and for that matter “Rip Van Winkle”. In such case, a delay of four years was held to be fatal. Justice Dipak Misra, speaking for the Bench, observed thus:-

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent

persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

21. The Supreme Court reiterated the above principles in **Baljeet Singh (dead) through Legal Representatives and others Vs. State of Uttar Pradesh and Others**¹⁷ and held that the matter requires examination from another aspect, namely, laches and delay. It was observed that it is a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases, courts have coined the doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the court belatedly without any justifiable explanation for bringing the action after unreasonable delay.

22. In **Union of India and Others Vs. N. Murugesan and Others**¹⁸ the principles of delay, laches and acquiescence were succinctly explained in which the Court observed that the principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions, however, they have their distinct characters and distinct elements. It was observed that one can say that delay is the genus to which laches and acquiescence are species. It was observed that laches might be called a genus to a species by

17 (2019) 15 Supreme Court Cases 33

18 (2022) 2 Supreme Court Cases 25

name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. It was further observed that such principles are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The observations of the Supreme Court on delay and laches would aid the conclusion which we intend to derive in the present proceedings so as to non-suit the petitioner applying the principles of delay and laches. The observations of the Supreme Court read thus:-

“Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court.

Laches

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is

neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy to a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the Court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.”

III. Whether in view of a prospective decision of the Supreme Court, a cause of action can arise to maintain a Writ Petition

23. We are quite surprised at another logic of the petitioner, which is quite peculiar and astonishing, when the petitioner says that although the petitioner had no grievances at the relevant time and paid duty under the notification(s) in question, now as a decision is rendered by the Supreme Court in Kumho Petrochemicals Company Ltd. (*supra*), a course of action has arisen to the petitioner. Such contention of the petitioner can have no legs to stand by applying any prudent parameter. If such contention is accepted, it would mean

that as and when the Courts declare a law on a particular issue, it would give rise to a cause of action to undo and/or unsettle concluded actions *inter se* between the parties or on any issue a citizen is expected to act as per the Government policy prevalent at a particular time. Such contention as urged on behalf of the petitioner if accepted, would bring about a chaotic situation and/or the situation of horrendous confusion. We have no manner of doubt that such contention of the petitioner cannot deserve any acceptance to hold that merely because the Supreme Court prospectively pronouncing such decision, the petition can have any cause of action.

24. We thus cannot accept the case of the petitioner that the cause of action has accrued to the petitioner to assail the notifications on the ground of the prospective decision of the Supreme Court in Kumho Petrochemicals Company Ltd. (*supra*).

IV. Maintainability of a money claim in a Writ Petition

25. Apart from the above discussion, we may observe that although there is a challenge to the impugned notification, however, as noted above, the primary intention of the petitioner is to seek refund of money from the Government of India of the anti-dumping duty paid during the period 13 January, 2012 to 12 January, 2018 and that too at no prior point of time, being genuinely feeling

aggrieved by such notification. Thus, under the garb of challenge to the notification, what is underneath is purely a money claim. The principles of law as discussed above, necessarily are required to be applied from the point of view of the limitation as prescribed by law, applicable in respect of any money claim. The writ court cannot be oblivious to such basic requirement a litigant needs to fulfill in undertaking its usual scrutiny of the proceedings. It would certainly not be swayed away or blindfolded for the fact that the party invoking the writ jurisdiction of the High Court is akin to a party in position of a plaintiff in a civil suit when the prayer is of a money claim.

26. In such context, the principles of law as laid down by the Supreme Court are well settled namely that normally a writ petition for a simplicitor money claim would not be maintainable. In **Suganmal Vs. State of Madhya Pradesh & Ors.**¹⁹ the Constitution Bench of the Supreme Court has observed that the petition under Article 226 of the Constitution solely praying for issue of a writ of mandamus directing the State to refund the money, is not ordinarily maintainable for the simple reason that a prayer for such a refund can always be made in a suit against the authority which had illegally collected money as a tax. In **Union of India Vs. Orient Enterprises and Ors.**²⁰, the Supreme Court considering the decision in Suganmal vs. State of Madhya Pradesh (supra)

19 AIR 1965 SC 1740

20 (1998) 3 SCC 501

observed that at the relevant time, there was no statutory right entitling the respondents to receive money, which according to respondents was towards payment of interest on delayed refund. It was observed that the Writ Petition filed by the respondents thus was not for enforcement of a legal right available to them under any statute, hence following the decision, it was held that the petition seeking relief of payment of interest on delayed refund of the amounts, was not maintainable.

27. There is another factor, which is required to be considered, namely, when the case is on refund of tax, whether the money held by the Government without the authority in law and/or in breach of the Constitutional requirement under Article 265 of the Constitution, so that there is no disputed question of fact, for the writ court without a second thought to direct the respondent to release the money to the petitioner. In other words, in such category of cases, wherein there is no dispute on illegal retention of money by the tax authorities, the Court, considering the principles of law as discussed hereinabove, issues a writ directing refund. In our opinion the petitioner's reliance on the decision of the Supreme Court in **Mafatlal Industries Ltd.** (supra) is also not well founded. This for the reason that this is not a case where the petitioner is in a position that it has an undisputed money claim against the respondents and/or a clear case that money which the petitioner is demanding is withheld by the Government of India without authority in law that is in

breach of the provisions of Article 265 of the Constitution. Further, the decision of the Supreme Court in **Union of India & Ors. vs. I.T.C. Ltd.**²¹ as relied on behalf of the petitioner would defeat the petitioner's contention. In such decision, the Supreme Court referring to the prior decision in **Shri Vallabh Glass Works Ltd. & Anr. vs. Union of India & Ors.**²² examined the question as to what is the point of time from which the limitation should be deemed to commence and observed that the relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. The Supreme Court observed thus:

“9. In *Shri Vallabh Glass Works Ltd., and Anr. v. Union of India and Ors.* 1984 (16) ELT 171 SC, this Court, while examining the question as to what is the point of time from which the limitation should be deemed to commence observed that relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. Just as an assessee cannot be permitted to evade payment of rightful tax, the authority which recovers tax without any authority of law cannot be permitted to retain the amount, merely because the tax payer was not aware at that time that the recovery being made was without any authority of law. In such cases, there is an obligation on the part of the authority to refund the excess tax recovered to the party, subject of course to the statutory provisions dealing with the refund.”

28. Certainly, even assuming that the petitioner in the present case has paid the duty under any mistake (when in fact it is not so) in the present facts, the petition would not be maintainable.

21 AIR 1993 SC 2135

22 1984 (16) ELT 171 SC

29. In the light of the aforesaid discussion, we are more than certain that the petition needs to fail. It is accordingly rejected. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)