GOVT. OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF FINANCE AND OTHERS

v.

DHANALAKSHMI PAPER AND BOARD MILLS TIRUCHIRUPALLI

DECEMBER 12, 1988

[SABYASACHI MUKHARJI AND LALIT MOHAN SHARMA, JJ.]

Central Excises and Salt Act, 1944 Central Excise Rules 1944: First Schedule Item No. 17(3)/Rule 8(1) and Notification dated March 1, 1964—Strawboard and pulpboard—Exemption from duty—Clause (a) proviso (3) of Notification held ultra vires—Choice of date—Relevancy of.

The respondent-assessee built up a factory for the manufacture of paper and paper boards, which started production on 7.5.1964. The respondent claimed that the duty in respect of the paper boards manufactured in the factory during the period 7.5.1964 to June 1966 was payable at the concessional rates allowed by the Government of India notification dated 1st March, 1964. The claim was however rejected by the Revenue on the ground that the factory had not come into existence on or before the 9th day of November, 1963 as stipulated in clause (a) of Proviso (3) of the said notification.

The respondent's writ application before the High Court was allowed by the Single Judge and the appellant's Letters Patent appeal was dismissed *in limine*. The High Court has accepted the respondent's contention that the date '9th of November, 1963' mentioned in the notification was arbitrary.

On behalf of the Revenue it was contended that the date (9.11.1963) was selected because an earlier notification bearing No. 110 had required applications to be made on or after 9.11.1963. It was further contended that a statutory provision had necessarily to be arbitrary in the choice of date and it could not be challenged on that ground.

On behalf of the respondent it was contended that the said date did not have any significance whatsoever and did not bear any rational relationship to the object sought to be achieved by the notification.

A **Dismissing the appeal, it was**

HELD: 1. A rule which makes a difference between past and present cannot be condemned as arbitrary and whimsical. [1056D]

2. In cases where choice of the date is not material for the object
B **to be achieved, the provisions are generally made prospective in operation. [1056D]**

3. The Revenue has not been able to produce notification No. 110. Unless the nature and contents of notification No. 110 and its relevance with reference to the present notification are indicated, it is futile
C **to try to defend the choice of the date in clause (a) on its basis. [1055A; 1056E]**

4. In the present case, the benefit of concessional rate was bestowed upon the entire group of assesses referred therein and by clause (a) of Proviso (3) the group was divided into two classes without adopting any differentia having a rational relation to the object of the
D **Notification. [1057F]**

5. Clause (a) of the Proviso (3) of the Notification was *ultra vires* and the benefit allowed by the Notification would be available to the entire group including the respondent. [1057G]

E *Union of India* **v.** *M/s. P. Match Works* **[1975] 2 SCR 573** *Jagdish Pandey* **v.** *The Chancellor, University of Bihar*, **[1968] 1 SCR 237 and** *U.P. M.T. S.N.A. Samiti, Varanasi* **v.** *State of U.P.*, **[1987] 2 SCR 453, distinguished.**

Dr. Sushma Sharma **v.** *State of Rajasthan*, **[1985] Supp. SCC 45;**
F **and** *D.S. Nakara* **v.** *Union of India*, **[1983] 1 SCC 365 referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6 of 1976.

From the Judgment and Order dated 12.11.1973 of the Madras
G High Court in Writ Appeal No. 390 of 1969.

V.C. Mahajan, C.V. Subba Rao and K.M.M. Khan for the Appellants

K.N. Bhat and Vineet Kumar for the Respondent.

H

The Judgment of the Court was delivered by

SHARMA, J. This appeal arises out of a writ application allowed by the Madras High Court striking down Clause (a) of the Proviso (3) of the Notification dated the 1st March, 1964 issued by the Union of India in the Ministry of Finance, under Rule 8(1) of the Central Excise Rules, 1944 and granting consequential relief. The aforesaid notification granted certain exemptions from payment of excise duty, but the benefit was denied to the writ petitioner, respondent before this Court, in view of the impugned clause.

2. The respondent assessee, a business concern functioning under the name of M/s. Dhanalakshmi Paper and Board Mills, decided to set up a factory for the manufacture of paper and paper boards and allied products, and obtained a lease of certain premises in June 1963 and put up a suitable structure for the factory by August 1963. The necessary machineries for running the factory, however, were received in April 1964 and application for licence therefor was filed on 27.4.1964. The licence was granted on 6.5.1964 and production in the factory started the next day, i.e. 7.5.1964.

3. The respondent claimed that the duty in respect of the paper boards manunactured in the factory during the period 7.5.1964 to June 1966 was payable at the concessional rate allowed by the Notification, relevant portion whereof reads as follows:

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)
NEW DELHI, THE 1ST MARCH, 1964/PHALGUNA 11, 1885 (SAKA)

NOTIFICATION
CENTRAL EXCISE

CSR: In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 57/60 Central Excise dated 20th April, 1960 and No. 37/63 Central Excise dated the 1st March, 1963 the Central Govt. hereby exempts strawboard and pulpboard including, greboard, calling under Sub-item (3) of Item No. 17 of the

A First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), takes together up to the quantity prescribed in column (1) of Table 1 (omitted), cleared by any manufacturer for home consumption during any financial year, from so much of the leviable thereon as is in excess of the amount specified in the corresponding entry in column (2) B of the same Table:

TABLE-1 (being not relevant, omitted)

Provided that—

C (1) .....
(2) .....

TABLE-2 (being not relevant, omitted)

(3) nothing contained in this notification shall apply to a D manufacturer who applied or applies for a licence on or after the 9th day of November 1963, unless he satisfies the Collector of Central Excise—

(a) that the factory for which the licence was or is applied for was owned on the 9th day of November, 1963, by the E applicant;"

The benefit of the Notification claimed by the respondent assessee was denied by the appellants on the ground that the factory did not come into existence on or before the 9th day of November, 1963, the date mentioned in the impugned clause (a). The respondent moved the F High Court in its writ jurisdiction under Article 226 of the Constitution, and the application was allowed by a learned Single Judge. An appeal therefrom under Clause 15 of the Letters Patent was dismissed ***in limine***. The appellants have by special leave challenged the decision before this Court.

G 3. The ground urged on behalf of the assessee which found favour with the High Court is arbitrary nature of the date, '9th of November, 1963' mentioned in the impugned clause (a). It has been contended that the said date does not have any significance whatsoever and does not bear any rational relationship to the object sought to be achieved by the Notification. The learned counsel for the appel- H lants defended the validity of the impugned provision on the ground

that the date (9.11.1963) was selected because an earlier notification bearing no. 110 had required applications to be made on or after 9.11.1963. This notification is not on the records of the case and the learned counsel has stated that he has also not been able to examine the same inspite of his unsuccessful request to the Department concerned for a copy thereof. He has mentioned about this notification in his argument on the basis of the reference in the judgment of the High Court. The High Court judgment does not throw any light on the nature of the notification no. 110, and the learned counsel could not draw any inference about its provisions from the judgment. It is not claimed that the said notification was before the High Court or the Judges had any occasion to examine it. The present appeal was filed in 1976 and even now the learned counsel for the appellants is not in a position either to produce it or to tell us what it was about. The result is that no explanation for the choice of the date in clause (a) is forthcoming.

4. Sri V.C. Mahajan, learned counsel for the appellants, contended that a statutory provision has necessarily to be arbitrary in the choice of date and it cannot be challenged on that ground. He relied upon the observations of this Court in *Union of India* v. *M/s Parmeswaran Match Works etc.*, [1975] 2 SCR 573 (at page 578) as quoted below:

> "To achieve that purpose, the Government chose September 4, 1967, as the date before which the declaration should be filed. There can be no doubt that any date chosen for the purpose would to a certain extent, be arbitrary. That is inevitable"

Reliance was also placed on *Jagdish Pandey* v. *The Chancellor, University of Bihar and Another,* [1968] 1 SCR 237 and *U.P.M.T.S.N.A. Samiti, Varanasi* v. *State of U.P. and Others,* [1987] 2 SCC 453. We are afraid, the argument has no merit and has to be rejected.

5. In *Union of India* v. *M/s P. Match Works,* (supra) the question related to concessional rate of excise duty leviable on the manufacture of match boxes. Match factories were classified on the basis of their output during the financial year and matches produced in different categories of factories were subject to varying rates of duty—higher rate being levied on matches produced in factories having higher output. In pursuance of a change in the policy, the match factories were later classified as mechanised units and non-mechanised

A units and by a notification dated July 21, 1967 a concessional rate of duty was allowed in respect of units certified according to the provisions therein. The notification also contained a proviso. The purpose of these provisions was to grant the benefit of concessional rate of duty only to small manufacturers. This Court while analysing the notification observed that the proviso "would have defeated the very purpose B of the notification, namely, the grant of concessional rate of duty only to small manufacturers". In order to cure this self-defeating position, the notification dated July 21, 1967 was amended by Notification No. 205 of 1967 dated September 4, 1967. The latter notification mentioned the 4th September, 1967 as the cut-off date. The attach on the choice of this date was met by the observations relied upon by the learned counsel for the appellants and quoted earlier. It will be ob- C served that the date, September 4, 1967, was the date on which the amending Notification itself was issued. The crucial date, therefore, could not be condemned as one "taken from a hat". It was the date of the notification itself. A rule which makes a difference between past and present cannot be condemned as arbitrary and whimsical. In cases D where choice of date is not material for the object to be achieved, the provisions are generally made prospective in operation. In that sense this Court observed in *M/s P. Match Works* case that the date chosen would to a certain extent be arbitrary and this was inevitable. In the present case the relevant Notification was dated March 1, 1964 and not 9.11.1963. It is true that as mentioned in the High Court judgment E some other notification required applications referred therein to be made on or after 9.11.1963, but unless the nature and contents of that notification and its relevance with reference to the present notification are indicated, it is futile to try to defend the choice of the date on its basis. The appellants have miserably failed to do so, inspite of more than a decade available to them.

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6. The other two cases relied upon on behalf of the appellants, instead of supporting their case, indicate that the view taken by the High Court is correct. In *U.P.M.T.S.N.A. Samiti, Varanasi* v. *State of U.P.*, and Others (supra) this Court observed in pargraph 1 of the judgment: "The legislature could not arbitrarily adopt January 3, G 1984, as the cut-off date ....." After examining the circumstances of the case it was held in paragraph 2:

> "We agree with the High Court that fixation of the date January 3, 1984 for purposes of regularisation was not arbitrary or irrational but had a reasonable nexus with the H object sought to be achieved."

Similarly in *Jagdish Pandey* v. *The Chancellor, University of Bihar* and Another it was held: A

> "There is no doubt that if the dates are arbitrary, s. 4 would be violative of Art. 14 for then there would be no justification for singling out a class of teachers who were appointed or dismissed etc. between these dates and applying s. 4 to them while the rest would be out of the purview of that section." B

The Court then proceeded to examine the purpose of the legislation and the attendant circumstances and upheld the section.

7. Another learned counsel who appeared on behalf of the appellants for the final reply placed reliance on paragraphs 38, 44 and 45 of the judgment in *Dr. Sushma Sharma and Others* v. *State of Rajasthan and Others*, [1985] Supp. SCC 45. In paragraph 38 it was said that wisdom or lack of wisdom in the action of the Government or Legislature is not justiciable by the Court, and to find fault with the law is not to demonstrate its invalidity. We are afraid, this aspect is wholly irrelevant in the case before us. In paragraph 44, the case of *Union of India* v. *M/s. P. Match Works Ltd.*, already discussed above, was mentioned. In paragraph 45 the case of *D.S. Nakara* v. *Union of India*, [1983] 1 SCC 305, was distinguished in the following words: C D

> "But as we have mentioned hereinbefore, Nakara case dealt with the problem of benefit to all pensioners. The choice of the date of April 1, 1979 had no nexus with the purpose and object of the Act. The facts in the instant case are, however, different." E

In the present case also benefit of concessional rate was bestowed upon the entire group of assessees referred therein and by clause (a) of Proviso (3) the group was divided into two classes without adopting any differentia having a rational relation to the object of the Notification, and the benefit of one class was withdrawn while retaining it in favour of the other. It must, therefore, be held that the impugned clause (a) of the Proviso (3) of the Notification in question is *ultra vires* and the benefit allowed by the Notification is available to the entire group including the respondent. F G

8. We, therefore, hold that there is no merit in this appeal which is dismissed without costs.

R.S.S. Appeal dismissed. H