

Supdt. of Central Excise and Others

Vs

M/s. Ayyangar Match Works and Others

Civil Appeals Nos. 133-188 of 1975

(CJI A. N. Ray, M. H. Beg, P. N. Bhagwati, R. S. Sarkaria JJ)

04.12.1975

JUDGMENT

RAY, C. J. –

1. These appeals arise out of the judgment dated December 11, 1968, in Writ Petition No. 3838 of 1968 in the High Court at Madras.
2. In the present appeals the writ petitions in the High Court were allowed following the judgment of the High Court in the aforesaid Writ Petition No. 3838 of 1968.
3. In Civil Appeals Nos. 262-273 of 1971 arising out of the common judgment dated December 11, 1968 of the High Court at Madras in Writ Petition No. 3838 of 1968 this Court in the decision in Union of India v. M/s. Parameswaran Match Works ((1975) 2 SCR 573 : (1975) 1 SCC 305) set aside the orders of the High Court and dismissed the writ petitions.
4. The present appeals were not heard at that time because service was not complete.
5. This Court by order dated July 14, 1975 directed that these appeals be listed for hearing on November 21, 1975. The Union made an application for consolidation of appeals, reduction of security and early hearing of the appeals. The respondents were served in that application. Pursuant to that application this Court ordered on July 14, 1975 the hearing of the appeals on November 21, 1975. The respondents have entered appearance in appeals Nos. 137, 140, 149, 152-155, 164, 169, 177-179, 181, 182, 184 and 187 of 1975.
6. In these appeals the respondents who were petitioners in the High court asked for a writ of prohibition restraining the appellants from collecting any duty in excess of Rs. 3.75 per gross from the petitioners in pursuance of notification dated July 21, 1967 as amended by notification dated September 4, 1967.
7. The case of the respondents in the High Court was that they filed declaration on December 22, 1969 for 1969-70 that they would not produce more than 75 million matchsticks during the financial year. The respondents claimed to be entitled to the concessional rate of excise duty at Rs. 3.75 per gross pursuant to the notification dated July 21, 1967. The further case of the respondents in the High Court was that the notification dated September 4, 1967 was issued stating that the concession of Rs. 3.75 per gross would be available to such "D" class manufacturers who had filed the fixing of the date September 4, 1967. The respondents challenged the fixing of the date September 4, 1967 as an arbitrary time limit making unreasonable discrimination between the same category of

manufacturer simply on the basis of the application being before or after September 4, 1967. The respondents craved reference to the judgment of the High Court in Writ Petition No. 3838 of 1968 dated December 11, 1968 and prayed for orders in terms of the judgment.

8. The High Court accepted the petition of the respondents following the judgment in Writ Petition No. 3838 of 1968 dated December 11, 1968.

9. The appellants challenged the decision of the High Court and relied on the decision of this Court in M/s. Parameswaran Match works case (supra). This Court in M/s. Parameswaran Match Works case held that the purpose of the notification dated September 4, 1967 was to enable bona fide small manufacturers of matches to earn a concessional rate of duty by filling the declaration. The small manufacturers whose estimated clearance in a year was less than 75 million matches would have availed themselves of the opportunity by making the declaration as early as possible because they would become entitled to the concessional rate of duty on their clearance from time to time. The purpose of the notification was to prevent larger units who were producing or clearing more than 100 million matches in a year and who could not have made a declaration from splitting up into smaller units in order to avail of the concessional rate of duty by making the declaration subsequently. The classification founded on a particular date was held to be reasonable because the choice of a date was to protect the smaller units in the industry from competition by the larger ones and that object would have been frustrated if by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty.

10. Counsel for the respondents relied on an observation of this Court in M/s. Parameswaran Match Works case (supra) at page 576 of the report [SCC p. 308, para 4] to the effect that the manufacturers who came to the field after September 4, 1967 were entitled to concessional rate of duty if they satisfied the condition prescribed in clause (d) of the notification dated September 4, 1967. In M/s. Parameswaran Match Works case the match works asked for a licence on September 5, 1967 for manufacturing matches stating that it began the industry from March 5, 1967 and also filed a declaration that the estimated manufacture for the financial year 1967-68 would not exceed 75 million matches. Parameswaran Match Works contended there that it was denied the benefit of the concessional rate of duty on the ground that it applied for a licence and filed the declaration on September 5, 1967 after the expiry of the fixed date. This Court held that the concessional rate would be availed by them who satisfied the conditions laid down in the notification.

11. The case of the respondents as laid in the petitions before the High Court was that they were claiming as order in terms of the judgment in Writ Petition No. 3838 of 1968. There is no allegation in the petitions that the respondents came to the field after September 4, 1967 or that they started manufacturing matches after September 4, 1967. The notification dated September 4, 1967 gave relief, inter alia, to factories mentioned in sub-clause (d) of the notification. The factories mentioned in sub-clause (d) are those whose production during any financial year does not exceed or is not estimated to exceed 100 million matches and are recommended by the Khadi and Village Industries Commission for exemption under this notification as a bona fide cottage unit or which is set up by a cooperative society registered under any law relating to cooperative societies for the time being in force.

There are no allegations in the petitions in the High Court that the respondents were recommended by the Khadi and Village Industries Commission for exemption as bona fide cottage units or were set up by cooperative society registered under any law relating to cooperative societies. No case was made by the respondents in the petitions on the basis of exemption under sub-clause (d).

12. A contention was advanced by the respondents that the Khadi and Village Industries Commission was not competent to make any recommendation as contemplated in sub-clause (d). Section 15 of the Khadi and Village Industries Commission Act, 1956 which speaks of the functions of the commission states in clauses (c), (d), (f), (g) and (h) that the commission may take steps to provide for the sale and marketing of khadi or of products of village industries, to encourage and promote research in the development of village industries, undertake, assist or encourage the development of village industries, to promote and encourage cooperative efforts among manufacturers of khadi and persons engaged in village industries. Section 15(h) specifically states that the commission may take steps for ensuring the genuineness of and for granting certificates to producers of, or dealers in Khadi or the products of any village industry. These provisions indicate that the khadi and village Industries Commission is competent to grant certificate recommending village industries for exemption under clause (d) of the notification dated September 4, 1967.

13. The appeals are all covered by the decision in M/s. Parameswaran Match Works case (supra). The appeals are accepted. The orders of the High Court are set aside and the petitions are dismissed. There will be one set of costs to the appellants.

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