Government of India, Represented by Secretary, Ministry of Finance and Others

Vs

M/S. Dhanalakshmi Paper and Board Mills, Tiruchirapalli

Civil Appeal No. 6 of 1976

(L. M. Sharma, Sabyasachi Mukharji JJ)

12.12.1988

JUDGMENT

SHARMA, J. –

1. 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 March 1, 1964 issued by the Union of India in the Ministry of Finance, under Rule 8 (1) of the Central Excise Rule, 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 therefore was filed on April 27, 1964. The licence was granted on May 6, 1964 and production in the factory started the next day, i. e. May 7, 1964.

3. The respondent claimed that the duty in respect of the paper boards manufactured in the factory during the period May 7, 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, March 1, 1964/Phalguna 11, 1885 (Saka) Notification Central Excise##

GSR - 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 April 20, 1960 and No. 37/63 Central Excise dated March 1, 1963 the Central Government hereby exempts strawboard and pulpboard including, greboard, falling under sub-item (3) of item 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), taken together up to the quantity prescribed in column (1) of Table 1 (omitted), cleared by any manufacture for home consumption during any financial year, from so much of the duty of excise leviable thereon as is in excess of the amount specified in the corresponding entry in column (2) of the same Table :

> Table 1 (being not relevant, omitted)

Table 2 (being not relevant, omitted)

(3) nothing contained in this notification shall apply to a manufacture who applied or applies for a licence on or after the 9th day of November, 1963, unless he satisfied 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 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 November 9, 1963, the date mentioned in the impugned clause (a). The respondent moved the 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.

4. The ground urged on behalf of the assessee which found favour with the High Court is arbitrary nature of the date, "November 9, 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 appellants defended the validity of the impugned provision on the ground that the date (November 9, 1963) was selected because an earlier notification bearing No. 110 had required applications to be made on or after November 9, 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 in spite 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 provision 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) forthcoming.

5. Sri V. C. Mahajan, learned counsel for the appellants, contended that a statutory provision has necessarily to be arbitrary in the choice of the date and it cannot be challenged on that ground. He relied upon the observations of this Court in Union of India v. M/s. Parameswaran Match Works as quoted below : (SCC p. 310, para 8)

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. Chancellor, University of Bihar and UPMTSNA Samiti, Varanasi v. State of U. P. We are afraid, the argument has no merit and has to be rejected.

6. In Union of India v. M/s. Parameswaran Match Works 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 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 of the notification, namely, the grant of concessional rate of duty 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 September 4, 1967 as the cut-off date. The attack on the choice of his date was met by the observations relied upon by the learned counsel for the appellants and quoted earlier. It will be observed 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 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. Parameswaran 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 November 9, 1963. It is true that as mentioned in the High Court judgment some other notification required applications referred therein to be made on or after November 9, 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, in spite of more than a decade available to them.

7. 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 UPMTSNA Samiti, Varanasi v. State of U. P. this Court observed in paragraph 1 of the judgment : "The legislature could not arbitrarily adopt January 3, 1984, as the cut-off date.." After examining the circumstances of the case it was held in paragraph 2 : (SCC p. 454, para 2)

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

Similarly in Jagdish Pandey v. Chancellor, University of Bihar it was held :

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

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

8. 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 v. State of Rajasthan. 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. Parameswaran Match Works Ltd., already discussed above, was mentioned. In paragraph 45 the case of D. S. Nakara v. Union of India, was distinguished in the following words : (SCC p. 67, para 45)

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.

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 to 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.

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

</html