

PETITIONER:
SUPERINTENDENT, CENTRAL EXCISE & ANR.

Vs.

RESPONDENT:
AYYANGAR MATCH WORKS ETC.

DATE OF JUDGMENT 04/12/1975

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SARKARIA, RANJIT SINGH
BHAGWATI, P.N.

CITATION:
1976 AIR 1003 1976 SCR (2) 888
1976 SCC (1) 716

ACT:

Central Excise Salt Act, 1944-S. 3-Notification dated 4 September 1967 giving concessional rate of duty to small manufacturers of matches-Khadi and Village Industries Commission-If competent to grant certificate under the notification.

HEADNOTE:

For the purpose of protecting the smaller manufacturers from the competition of larger manufacturers, the Government of India, by a notification dated 21 July 1967, amended by notification dated 4 September, 1967, declared a concessional rate of duty to those manufacturers who had filed a declaration before 4 September 1967 that their estimated annual clearance would be less than 75 million match sticks. This Court in Union of India v. Parameswaran Match Works etc. [1975] 2 S.C.R. 573 setting aside the judgment of the High Court holding that classification was invalid, held the classification founded on a particular date to be reasonable; and the concessional rate would be availed of even by those manufacturers who came to the field after 4 September, 1967 if they satisfied the condition in clause (d) of the notification regarding quantity of matches and are recommended by the Khadi and Village Industries Commission for exemption.

The respondent filed declarations on 22 December, 1967 that they would not produce more than 75 million match sticks during the year 1969-70 and claimed to be entitled to the concessional rate of excise duty.

In appeal to this Court the respondents sought to support the judgment of the High Court on the grounds (i) that they were entitled to the exemption on the basis of clause (d) of the notification; and (ii) that the Khadi and Village Industries Commission was not competent to make any recommendation.

Allowing the appeal,

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HELD: (1) The appeals are covered by the decision of this Court in Parameswaran Match Works case and no case is made out by the respondents on the basis of exemption under

cl. (d) of the notification. There is no allegation in the petition that the respondents came into the field after 4 September 1967 or that they started manufacturing the matches after 4 September, 1967 or that they were recommended by the Khadi and Villages Industries Commission mission. [871 D & B]

(2) Under s. 15(h) of the Khadi and Village Industries Commission Act 1956 the Commission may take steps in ensuring the genuineness of, and for granting certificates to producers of, or dealers in, Khadi or the products of any village industry. Therefore, the Commission is competent to recommend for exemptions under cl. (d) of the Notification. [871. F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 133-188 of 1975.

[Appeals by Special Leave from the Judgments and Orders dated the (1) 29-4-1970, (2) 28-7-1970, (3) 12-3-1970, (4) 28-7-1970, (5) 7-9-1970, (6) 7-4-1970 & (7) 12-3-1970 of the Madras High Court at Madras in (1) W.P. Nos. 2929, 3253 and 68, 123 and 260 of 1970, (2) W.P. Nos. 1606 and 1607/70, (3) W.P. Nos. 1998, 2484, 2567, 2568, 2569, 2663-65, 3046, 3125, 3126, 3182, 3363 65, 3410, 3508, 3555-60, 3630, 3631, 3667-3668, 3810-3812 and 869

3650 of 1969, (4) W.P. Nos. 2647, 2648/69 and 1121, 1451, 1452 and 1495 and 1496 of 1970, (5) W.P. Nos. 1912, 1913, 1919, 2123, 2318, 2516 and 2610 of 1970, (6) W.P. Nos. 2088, 2317 and 2515/70 and (7) W.P. No. 3666 of 1969 respectively.

Niren De, Attorney General of India and R. N. Sachthey, for the Appellants.

M. R. M. Abdul Karim and Shaukat Hussain for the Respondents (In Cas. Nos. 137, 140, 149, 152-155, 164, 169, 178, 179, 181, 182, 183 and 187/75.)

Mrs. S. Gopalakrishnan for the Respondents (In CA No. 177 of 1975).

The Judgment of the Court was delivered by

RAY, C.J. These appeals arise out of the judgment dated 11th December, 1968 in writ petition No. 3838 of 1968 in the High Court at Madras.

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.

In Civil Appeals No. 262-273 of 1971 arising out of the common judgment dated 11 December, 1968 of the High Court at Madras in writ petition No. 3838 of 1968 this Court in the decision in Union of India & Anr. v. M/s Parameswaran Match Works etc. set aside the orders of the High Court and dismissed the writ petitions.

The present appeals were not heard at that time because service was not complete.

This Court by order dated 14 July, 1975 directed that these appeals be listed for hearing on 21 November, 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 14 July, 1975 the hearing of the appeals on 21 November, 1975. The respondents have entered appearance in all these appeals.

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 21 July, 1967 as amended by notification dated 4 September, 1967.

The case of the respondents in the High Court was that they filed declaration on 22 December, 1969 for 1969-70 that they would not produce more than 75 million match sticks during the financial year. The respondents claimed to be entitled to the concessional

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rate of excise duty at Rs. 3.75 per gross pursuant to the notification dated 21 July, 1967. The further case of the respondents in the High Court was that the notification dated 4 September, 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 declaration before 4 September, 1967. The respondents challenged the fixing of the date 4 September, 1967 as an arbitrary time limit making unreasonable discrimination between the same category of manufacture simply on the basis of the application being before or after 4 September, 1967. The respondents craved reference to the judgment of the High Court in writ petition No. 3838 of 1968 dated 11 December, 1968 and prayed for orders in terms of that judgment.

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

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 (supra) held that the purpose of the notification dated 4 September, 1967 was to enable bonafide small manufacturers of matches to earn a concessional rate of duty by filing 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.

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 to the effect that the manufacturers who came to the field after 4 September, 1967 were entitled to concessional rate of duty if they satisfied the condition prescribed in clause (d) of the notification dated 4 September, 1967. In M/s Parameswaran Match Works case (supra) the match works asked for a licence on 5 September, 1967 for manufacturing matches stating that it began the industry from 5 March, 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 5 September, 1967

after the expiry of the fixed date. This Court held that the
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concessional rate would be availed by them who satisfied the condition laid down in the notification.

The case of the respondents as laid in the petition before the High Court was that they were claiming an order in terms of the judgment in writ petition No. 3838 of 1968. There is no allegation in the petition that the respondents came to the field after 4 September, 1967 or that they started manufacturing matches after 4 September, 1967. The notification dated 4 September, 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 bonafide 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 bonafide 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).

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. to 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 certificates recommending village industries for exemption under clause (d) of the notification dated 4 September, 1967.

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.

P.B.R.

Appeals allowed.