

Union Of India Through Its Secretary vs M/S. Mool Chand Indus. Estate P.Ltd. ... on 15 January, 2020

Author: Chief Justice

Bench: Chief Justice, B.R. Gavai, Surya Kant

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 999 OF 2007

UNION OF INDIA

..

APPELLANT

VERSUS

M/S MOOL CHAND INDUSTRIES
ESTATE P. LTD. & ORS.

..

RESPONDENT

WITH

C.A. NO. 1000/2007, C.A. NO. 1003/2007, C.A. NO. 1002/2007, C.A. NO. 1005/2007, C.A. NO. 1011/2007, C.A. NO. 1013/2007, C.A. NO. 1015/2007, C.A. NO. 1013/2007, C.A. NO. 1412/2007, C.A. NO. 1414/2007, C.A. NO. 2111/2007, C.A. NO. 381/2020 (@ SLP(C) 7315/2007), C.A. NO. 2824/2007, C.A. NO. 2823/2007, C.A. NO. 382/2020 (@ SLP(C) 13159/2007, C.A. NO. 383/2020 (@ SLP(C) 23674/2007)

O R D E R

C.A. NO. 999/2007, C.A. NO. 1003/2007, C.A. NO. 1002/2007, C.A. NO. 1005/2007, C.A. NO. 1011/2007, C.A. NO. 1013/2007, C.A. NO. 1412/2007, C.A. NO. 1414/2007, C.A. NO. 2111/2007, C.A. NO. 381/2020 (@ SLP(C) 7315/2007), C.A. NO. 2823/2007 Leave granted in SLP(C) No. 7315/2007.

1. Certain industries in certain areas in Uttarakhand were exempted from the levy of Central Excise and became entitled to some other exemption by virtue of notifications issued under the Central Excise Act, 1944.

2. A group of petitioners approached the High Court seeking inclusion of certain Khasra Nos. of Village Ratanpura, Bajpura, Udham Singh Nagar so as to constitute a notified independent

industrial area in order to avail of the exemption. They also prayed for certain other reliefs.

3. The High Court possibly finding the task to be enormous resorted to an unusual device. It formed a High powered Committee consisting of (i) Cabinet Secretary (ii) Chairman Central Board of Direct Tax,

(iii) Chairman, Central Board of Excise and Customs

(iv) Secretary (Revenue), Govt. of India, (v) Secretary (Industries), Govt. of India, (vi) Secretary (Revenue) Govt, of India as well as (vii) Chief Secretary, State of Uttaranchal, (viii) Secretary (Industries) and (ix) Secretary (Revenue), State of Uttaranchal. The Committee was directed to take a decision “with regard to the prayers made in the writ petition for redressal of grievance of the petitioner on appreciating the statement of fact duly supported with the evidence annexed in the writ petition and other documents they desire to file.” Lest there be any doubt as to whether the High Court has conferred the judicial function on the Committee, the High Court removed any such doubt by ordering that “the Committee would exercise Chief Judicial Power as authorized by this Court to review the notifications”.

4. This unprecedented order is challenged before us.

5. We are of the considered view, that the impugned order is completely beyond the scope of the High Court’s power under the Constitution of India or any other law. The High Court did not have the power to set up a Committee and invested it with judicial powers. No Court of law can delegate its judicial function to any other authority. In our view, the order amounts to an obliteration to the functioning of the High Court. The direction is plainly unconstitutional and whimsical. We, accordingly, set aside the said order and dismiss the writ petitions.

The appeals are disposed of accordingly.

6. In this appeal, the petitioner-M/s Titan Industries in the writ petition (respondent-herein) has sought for following reliefs from the High Court:

“1. to issue a writ or order in the nature of certiorari quashing the directions of the Respondent No. 6 given vide letters dated 28.9.2005 & 3.10.2005, in so far as they deny the benefits of exemption to Petitioner’s existing unit and directing the Petitioner to deposit Central Excise duty as applicable with interest w.e.f. 19.5.2005 (Annexure -IX & X).

2. to issue a writ or order in the nature of mandamus, directing the Respondent No.2 to reinstate Khasra Nos.

148D, 176B, 173B & 176A in Village Chandrabani Khalsa Mohobewala Industrial Area, Dehradun in Annexure-II to Notification 50/2003 CE Dated 10.6.2003 with retrospective effect.

3.....”

7. The writ petitioner was entitled for seeking exemption under the Central Excise Act, 1944 by virtue of having an industry located in certain Khasra No. The writ petitioner’s unit was mentioned in Annexure 2 which is a list of industry entitled to exemption. The writ petitioner’s unit was shifted to Annexure 3 which is a list of industry which became disentitled to exemption. According to the writ petitioner this was an inadvertent error. The petitioner, therefore, approached the High Court by way of Writ Petition praying for correction of the error and including their Unit at Annexure 2 so as to get the benefit of exemption.

8. According to Shri K. Radhakrishanan, learned senior Counsel appearing for the Revenue this was a conscious decision to disentitle the writ petitioner from exemption.

9. The High Court disposed of this matter along with other matters by constituting a Committee and investing the Committee with judicial powers, which it was not authorized to do. We have set aside the impugned order of the High Court in another batch of civil appeals by order passed herein-above. That order is in respect of writ petitions which have become infructuous in view of the introduction of GST. However, it is not disputed by the Revenue that the issues raised in the present writ petition would survive.

10. We accordingly direct that the present matter be remanded to the High Court for proper adjudication in accordance with law. All questions are left open. The parties are at liberty to file additional affidavits.

11. The appeal is disposed of accordingly. C.A. No.1000/2007, C.A. No. 2824/2007 C.A. No.382/2020 (@SLP© No. 13159/2007) C.A.NO. 383/2020 (@ SLP(C) No.23674/2007 Leave granted in SLP ©Nos.13159/2007 and 23674/2007.

12. More or less the challenge in these matters is similar with that of C.A. No.1015 of 2007. The writ petitioners before the High Court approached the High Court praying for including of Khasra Nos. into the notifications which granted exemption. According to these writ petitioners, non-inclusion of these Khasra Nos. was due to a mistake, which is denied by the Revenue. The High Court directed these writ petitioners to present their writ petitions before the Committee which has been set aside by our order referred to above. We, accordingly, direct that the present matters be remanded to the High Court for proper adjudication in accordance with law. All questions are left open. The parties are at liberty to file additional affidavits.

13. The appeals are disposed of accordingly.

.....CJI.

[S.A. BOBDE]J. [B.R. GAVAI]J. [SURYA KANT] NEW DELHI,
JANUARY 15, 2020.

ITEM NO.102,102.1-102.15 COURT NO.1 SECTION X S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS UNION OF INDIA Appellant(s) VERSUS M/S. MOOL CHAND
INDUS. ESTATE P.LTD. Respondent(s) & ORS.

WITH C.A. No. 1000/2007 (X) C.A. No. 1003/2007 (X) C.A. No. 1002/2007 (X) C.A. No.
1005/2007 (X) C.A. No. 1011/2007 (X) C.A. No. 1015/2007 (X) C.A. No. 1013/2007 (X) C.A. No.
1412/2007 (X) C.A. No. 1414/2007 (X) C.A. No. 2111/2007 (X) SLP(C) No. 7315/2007 (X) C.A. No.
2824/2007 (X) C.A. No. 2823/2007 (X) SLP(C) No. 13159/2007 (X) SLP(C) No. 23674/2007 (X)
Date : 15-01-2020 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE B.R. GAVAI HON'BLE
MR. JUSTICE SURYA KANT For Appellant(s)/ Mr. K. Radhakrishnan, Sr. Adv.
Respondent(s) Mr. Arijit Prasad, Sr. Adv.

Ms. Nisha Bagchi, Adv.

Ms. B. Sunita Rao, Adv.

Ms. Neelam Chand, Adv.

Mr. Rupesh Kumar, Adv.

Mr. B. Krishna Prasad, AOR For Petitioner(s)/ Respondent(s) Mr. M.P. Devanath,
AOR For Petitioner(s) Mr. Sudhir Kumar Gupta, AOR For Respondent(s) Mr. Sanjay
Jain, AOR Mr. Mahesh Agarwal, Adv. Mr. Rishi Agrawala, Adv. Mr. Ankur Saigal,
Adv.

Mr. Ajitesh Soni, Adv.

Mr. E.C. Agrawala, AOR Mr. Debasis Misra, AOR Mr. Ajay Aggarwal, Adv.

Ms. Mallika Joshi, Adv.

Mr. Rajan Narain, AOR Mr. Sanjai Kumar Pathak, AOR Ms. Shashi Pathak, Adv.

Mr. Arvind Kumar Tripathi, Adv.

Mr. Rabin Majumder, AOR Mr. Neeraj Kumar Sharma, AOR UPON hearing the
counsel the Court made the following O R D E R Leave granted in SLP(C) Nos.
7315/2007,13159/2007 and 23674/2007.

The appeals are disposed of in terms of the signed order.

All pending applications, if any, stand disposed of.

[CHARANJEET KAUR] [INDU KUMARI POKHRIYAL] A.R.-CUM-P.S. ASSTT.
REGISTRAR [Signed order is placed on the file]