

A M/S BHUWALKA STEEL INDUSTRIES LTD. & ANR.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 7823 of 2014)

B DECEMBER 05, 2019

**[R. F. NARIMAN, ANIRUDDHA BOSE AND
V. RAMASUBRAMANIAN, JJ.]**

C *Central Excise Act, 1944 – S.3A – Central Excise Rules, 1944*
– r.96-ZP(3) – *Hot Re-Rolling Steel Mills Annual Capacity*
D *Determination Rules, 1997 – r. 5 – Validity of r. 5 – The question*
before the Division Bench of Supreme Court in Bhuwalka Steel
Industries Ltd. was regarding the validity of r.5 of the 1997 Rules –
This question was not answered and instead the Division Bench
E *went into a completely different question i.e. vires of r. 96-ZP (3)*
and same was referred to the Larger Bench – Appellant-assessee
stated that they were only challenging the vires of r.5 and were not
challenging the fact that an assessee can be compelled to pay duty
in terms of r.96-ZP(3) without regard to actual production which is
laid down s.3A(4) of the Central Excise Act – Held: The question
posed before the Larger Bench did not arise on facts and the question
which was referred is not something which the assessee disputes –
Accordingly, the matter sent back to a Division Bench to decide the
questions stated in para 20 & issue raised in para 51 of Bhuwalka
Steel Industries Ltd. and Anr.

F *Bhuwalka Steel Industries Limited and Another v. Union*
of India and Others, (2017) 5 SCC 598 – referred to.

Case Law Reference

(2017) 5 SCC 598 referred to Para 1

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7823
of 2014.

From the Judgment and Order dated 27.09.2013 of the High Court
of Karnataka at Bangalore in Writ Appeal No. 315 of 2006.

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M/S BHUWALKA STEEL INDUSTRIES LTD. & ANR. v. UNION OF INDIA & ORS. 17

With A

Civil Appeal Nos. 7824, 7825 of 2014, S.L.P.(C) Nos. 16445 of 2010, 2014 of 2009, 34051 of 2017, T.C. (C) Nos. 20, 22, 23-24, 34 of 2010, 1, 2, 3, 4, 5 of 2011, 106 of 2015, T.P. (C) Nos. 419, 691, 1200 of 2016,

Mrs. Nalini Chidambaram, K. Radhakrishnan, Balbir Singh, Sr. Advs., Ms. Anushree Menon, Vikas Mehta, Ms. Shirin Khajuria, Ms. Nisha Bachi, Ms. Pooja Sharma, B. Krishna Prasad, Mrs. Anil Katiyar, Ms. Sheena Taqui, Ms. Suvarna Dubey, Kshitij Vaibhav, Mrs. Bina Gupta, Shantanu Tyagi, Ms. Nandita Chauhan, S. S. Shroff, M. P. Devanath, Saurabh Mishra, Ugra Shankar Prasad, Jitendra Mohan Sharma, Shreekant N. Terdal, M/s. COAC, Ms. Ruchira Goel, Purushottam Sharma Tripathi, Advs. for the appearing parties. B C

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1. The present reference arises from a judgment of the Division Bench of this Court reported as *Bhuwalka Steel Industries Limited and Another vs. Union of India and Others*, (2017) 5 SCC 598. The question before the Court was set out as follows:- D

“20. The validity of Rule 5 of the 1997 Rules is challenged both before the High Court and before us on two grounds: E

1. That the Rule is ultra vires the authority conferred under Section 3-A of the Act; and

2. That the Rule is violative of Article 14 of the Constitution of India. Because the Rule creates two classes of manufacturers:- F

(i) whose ACP is determined to be more than their *actual production* in the Financial Year 1996-97.

(ii) Whose ACP is determined to be less than their *actual production* for the Financial year 1996-97; and

imposes an irrational tax burden on the second of the above-mentioned two classes of manufacturers falling within the ambit of the 1997 Rules.” G

2. This question has not been answered by the Division Bench. Instead, the Division Bench went into a completely different question, which was posed as follows:- H

A “51. Whether an assessee who chooses once to pay duty in terms of Rule 96-ZP(3) can be compelled to pay duty calculated in accordance with the said Rule for all times to come without any regard to the *actual production* is a question which requires examination.”

B 3. This question was then referred to a larger Bench as follows:-

C “63. Therefore, we find it difficult to accept the submission of the respondent that the issue is covered by the judgments of this Court in *Venus Castings* (2000) 4 SCC 206 and *Supreme Steels* (2001) 9 SCC 645. In our opinion, for the reasons mentioned above, these two judgments require a further examination. Apart from that, these judgments did not deal with vires of Rule 96-ZP(3). However, in view of the fact that *Supreme Steels* is a decision rendered by a Bench of three learned Judges, we deem it appropriate that the question of law be settled by a Bench of an appropriate strength. We, therefore, direct the Registry to place the matter before Hon’ble the Chief Justice of India for further orders.”

E 4. Mrs. Nalini Chidambaram, learned Senior Advocate appearing on behalf of the appellant-assessee, states that she came to Court challenging the *vires* of Rule 5 instead of which a completely different question has been referred to a larger Bench. She further submits that she is not, in any way, challenging the fact that an assessee can be compelled to pay duty in terms of Rule 96-ZP(3) without regard to actual production which is laid down Section 3A(4) of the Central Excise Act.

F 5. This being the case, we answer this reference by stating that the question posed before us did not arise at all on facts and the question which has been referred is not something which the assessee disputes. Accordingly, the matter is sent back to a Division Bench to decide the questions stated in para 20 of *Bhuwalka Steel Industries Limited and Another (supra)*. The issues other than the issue raised in para 51 of the judgment in *Bhuwalka Steel Industries Limited and Another (supra)* may also be decided in the other tagged matters by the Division Bench.

G 6. The appeals and the tagged matters be placed before a Division Bench of this Court.

H Ankit Gyan

Matters to be placed before Division Bench.