Union Of India vs Paliwal Electricals (P) Ltd & Anr on 25 March, 1996

Equivalent citations: 1996 SCC (3) 407, JT 1996 (3) 606, AIR 1996 SUPREME COURT 3106, 1996 AIR SCW 1570, (1996) 3 SCR 845 (SC), (1996) 83 ELT 241, 1996 (3) SCC 407, (1996) 3 JT 606 (SC)

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.C. Sen

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
PALIWAL ELECTRICALS (P) LTD & ANR.

DATE OF JUDGMENT: 25/03/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1996 SCC (3) 407 JT 1996 (3) 606
1996 SCALE (3)113

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T B.P.JEEVAN REDDY,J.

The Allahabad High Court has struck down Para-7 of the Exemption Notification No. 223 of 1987] on the ground of violation of Article 14 of the Constitution of India. The decision under appeal is largely influenced by and follows the decision of a learned Single Judge of the Calcutta High Court in

banner and Company v. Union of India [1994 (70) E.L.T.181].

Rule 8 of the Central Excise Rules empowers the Central Government to exempt, subject to such conditions as it may specify, any excisable goods from the whole or any part of duty leviable on such goods.

By means of Notification No.175 of 1986 issued Under Rule 8 of the Central Excise Rules, exemption from excise duty was granted in favour of certain small scale industries manufacturing the goods specified in the schedule to the Notification provided their annual turnover did not exceed the limit prescribed. The relevant portions of the Notification read :

> "3. Nothing contained in this notification shall apply if the aggregate value of clearance of all excisable goods for home consumptions:--
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> (a) by a manufacturer, from one or more factories, or
>
> (b) from any factory, by one or more manufacturers, had exceeded rupees one hundred and fifty lakh in the preceding financial year.

4. The exemption contained in this notification shall be applicable only to a factory which is an undertaking registered with the Director of Industries in any State or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulations) Act, 1951 (65 of 1951).....

Explanation IV. for the purposes of this notification, where the specified goods manufactured by a manufacturer, are affixed with a brand name or trade name (registered or not) of another manufacturer or trade, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader."

Explanation IV is of relevance. It provided that merely because the brand-name or trade-name of anther manufacturer or trader was affixed to the goods manufactured by a 'small manufacturer' (to use a convenient expression denoting a manufacturer who is entitled to the benefit of the said Notification) such goods shall not be deemed to be the goods manufactured by such other manufacturer or trader.

The object of the notification is self-evident. It is to help that small manufacturers to service in the market which is dominated by brand-names/ trade-names. It is a matter of common knowledge that people prefer well-known brand-names. They buy them under an implicit faith that they are of reliable quality. In such a situation, a small manufacturer faces an uphill task in having his goods accepted in the market. If he prices his goods at the same level as the price of goods manufactured by a well-known brand-name, he stands no chance; he will be priced out of market in no time. It is precisely to enable him to survive him in the market that the said exemption is granted. By virtue of exemption form duty, the small manufacturer would be able to sell his goods at a cheaper price thus making them attractive in the market - and more competitive. The notification thus serves the

socioeconomic objectives of helping the small manufacturers and increasing the industrial production. So far as Explanation IV is concerned, it is really classificatory in nature; it merely reiterates to principle of the decision of this Court in Union of India & Ors. v. Cibatul Limited [1985 (22) E.L.T. 302].

On September 22, 1987, Notification No. 175 of 1986 was amended by Notification No. 223 inserting Para 7 and Explanation VII therein. The inserted provisions read as follows:

> "7. The exemption contained in this notification shall not apply to the specified goods where a manufacturer affixed the specified goods with a brand name or trade name registered or not) of another person who is not eligible for the grant of exemption under this notification:
>
> Provided that nothing in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the Ist day of October, 1987. Explanation VIII.-- Brand name or trade name shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using 'such name or mark with or without any indication of the identity of that person."

Now, what does Para 7 provide and why? It provides that the benefit of Notification No. 175 shall not be available to a small manufacturer, who affixes the brand-name or trade-name (registered or not) of another person, who is not eligible for the grant of exemption under the said notification. Explanation VIII defines the expressions "brand-name or trade-name". The explanatory note appended to the notification states that "(T)his amendment seeks to deny small scale exemption in respect of specified goods affixed with the brand-name/trade-name of a person who is not eligible for the exemption under Notification NO. 175/86-CE dated 1.8.86." The object underlying Para 7 is self-evident. If a small manufacturer who affixes the brand-name or trade- name of an 'ineligible manufacturer' (a convenient expression to denote a manufacturer outside the purview of Notification No. 175 of 1986 and who owns or entitled to use a brand-name or trade-name), the very reason d'etre for granting the exemption disappears. The exemption is designed to enable the small manufacturer to survive in the market in competition with the ineligible manufacturer but if he joins, or identifies himself with, the ineligible manufacturer, his goods become one with the goods or such ineligible manufacturer. They become indistinguishable. In the market, they will all be understood as one and the same goods. They no longer need the benefit under the Notification. It must be remembered that by extending the benefit of exemption, the State is foregoing public revenue to which it is entitled under the Act. The loss to public revenue is supposed to be compensated by helping along the small manufacturers to survive in the market and continue to produce. Once he becomes one with his competitor, the need for supporting crutches disappears. There is no reason why in such a case the State should forego the revenue due to it under the Act. It is the insufficient appreciation of this basic aspect that has led both the Allahabad and Calcutta High Courts astray. But before we deal with their approach and reasoning, it would be appropriate to deal

with the nature and character of the power of exemption under Rule 8 of the Central Excise Rules.

The power of exemption is a potent weapon in the hands of the Central Government to regulate and manage the economy and to achieve the various social and economic objectives of the State. As observed by this Court in Union of India & Ors. v. M/s. Jalyan Udyog & Anr. [1994 (1) S.C.C. 319] dealing with Section 25 of the Customs Act which is in pari materia with Rule 8:

> "It is a power given to the Central Government to be exercised in public interest. Such a provision has become a standard feature in several enactments and in particular, taxing enactments. It is equally well settled by now that the power the taxation can be used not merely for raising revenue but also to regulate the economy, to encourage or discourage as the situation may call for, the import and export of certain goods as also for serving the social objectives of the State [Vide Elel Hotels and Investments Ltd. v. Union of India (1989) 3 SCC 698, Sri Srinivasa Theatre v. Government of T.N. (1992) 2 SCC 643 and Subhash Photographics v. Union of India [(1993) Suppl. 3 SCC 323 : JT (1993) 4 SC 116]. Since the Parliament cannot constantly monitor the needs of and the emerging trends in the economy and is in no position to engage itself in day-to-day regulation and adjustment of import-export trade accordingly, power is conferred upon the Central Government to provide for exemption from duty of goods, either wholly or partly, and with or without conditions, as may be called for in public interest.

We see no warrant for reading any limitation into this power. If the public interest demands that the exemption should be absolute, the Central Government can do so.

Similarly, if the public interest demands that the exemption should be granted only subject to certain conditions. Then again if the public interest demands that conditions specified should relate to a stage subsequent to the date of clearance it can do so. The guiding factor is the public interest."

Though Rule 8 does not use the expression "public interest" unlike Section 25 of the Customs Act, both the powers are conceived in public interest. See the Constitution Bench decision in Orient Weaving Mills v. Union of India [A.I.R. 1963 S.C. 98 = (1962) Supp. 3 S.C.R. 481] upholding the constitutional validity of Rule 8. It is observed therein:

> "The Act recognizes and only gives effect to the well established principle that there must be a great deal of flexibility in the incidence of taxation of a particular kind. It must vary from time to time, as also in respect of goods produced by different agencies.....It is a function of the State, in order to raise revenue for State purposes, to determine what kind of taxes shall be levied and in what manner. Its function, therefore, is to raise revenues for public purposes. The State naturally is interested in raising all the revenue necessary for public purposes, without sacrificing the legitimate interests of persons and groups, who deserve special treatment at the hands of the State for reasons, which the State may determine, entitling them to be placed in a special case."

We are of the opinion that while examining the challenge to an Exemption Notification under the Central Excise Act, the observations in the decisions aforesaid should be kept in mind. It should also be remembered that generally speaking the Exemption Notification and the terms and conditions prescribed therein represent the policies of the government evolved to subserve public interest and public revenue. A very heavy murder, lies upon the person who challenges them on the ground of Article 14. Unless otherwise established, the court must presume that the said amendment was found by the Central Government to be necessary for giving effect to its policy [underlying the notification] on the basis of the working of the said Notification and that such an amendment was found necessary to prevent persons from taking unfair advantage of the concession. In fact, in this cases the explanatory note appended to amending Notification says so in so many words. If necessary, the Court could have called upon the Central Government to establish the reasons behind the amendment. [It did not think it fit to do so.] It is equally necessary to bear in mind, as pointed out repeatedly by this Court that in economic and taxation sphere, a large latitude should be allowed to the Legislature. The Courts should bear in mind the following observations made by a Constitution Bench of this Court in R.K.Garg v. Union of India [1982 (1) S.C.R. 947] :

> "Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes,J. that the legislature should be allowed some play in the Joints, it has to deal with complex which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints problems allowed to the legislature. should feel more inclined to The Court give judge judgment regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitiously expressed than in Morey v. Doud* (1957) 354 U. S. 457 where Frankfurter,J. said in his inimitable style:
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> 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self--restraint if not judicial difference to legislative judgment. The legislature after all has the affirmative responsibility.
>
> The courts have only the power to destroy, not these are added to the complexity of economic regulation, the uncertainty, the liability to the experts, and the number of times the judges have been overruled by events-self- limitation can be seen to be the path of judicial wisdom and institutional and stability.
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> ---------- *It is true that Mory v. Daud was overruled later by the United States Supreme Court in New Orleans v. Dukes (1976) 427 U.S. 297, but the said fact does not detract from the validity of the said rule stated in Morey v. Daud nor does it in any manner affect the principle stated by this Court.

The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry' that exact wisdom and nice adaptation of remedy are not always possible and that 'judgment is largely a prophecy based on meagre and uninterrupted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in Secy. of Agriculture v. Central Reig.

Refining Co. (1950) 94 L.ed.381, be converted into tribunals for relief from such crudities and inequities.

There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses.

Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or possibilities of abuse come to light the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

The same principle should hold good in the matter of Exemption Notifications as well, for the said power is part and parcel of the enactment and is supposed to be employed to further the objects of enactment - subject, of course, to the condition that the Notification is not ultra vires the Act, and/or Article 14 of the Constitution of India. (See P.J. Irani v. State of Madras A.I.R. (1961) S.C. 1731 = 1962 (2) S.C.R. 169).

We are of the opinion that the judgment under appeal is erroneous for the reason that it has not borne in mind the aforementioned relevant consideration. It is equally in error in saying that the classification it brings about - assuming that it does so - is not reasonable or that it has no nexus with the object underlying the Notification. Not only is Para 7 consistent with the object underlying the Notification, it indeed promotes it, as explained hereinbefore. We are constrained to say that the High Court has not bestowed the care and consideration which is expected of it before it strikes down such a Notification - or, for that matter, any statutory provision. For the very reason, the decision of the learned Single Judge of the Calcutta High court in Banner & Co. v. Union of India [(1994) 70 E.L.T.181] must also be held to have been wrongly decided.

Before we conclude, we must deal with one more aspect. The decision under appeal quotes extensively from, and relies upon, the decision of the Calcutta High Court in Banner and Company. The Calcutta High Court relied upon the decisions of the High Courts in Bush (India) Limited v. Union of India & Ors. [(1980) 6 E.L.T.258], Bata (India) Limled v. Aissistant Collector of Central Excise, Patna [(1978) 2 E.L.T.211], Bapalal and Company v. Government of India & Ors. [(1931) 8 E.L.T.581], Carona Sahu Company Limited v. Superintendent, Central Excise & Ors. [(1981) 8 E.L.T.730] besides the decisions of this Court in Cibatul [supra] and Joint Secretary to Government of India v. Food Specialities Limited [(1985) 22 E.L.T.324 (S.C.)]. We may briefly refer to the said decisions and see whether any of them supports the decision arrived at by Calcutta and Allahabad High Courts.

Bush (India) Limited was concerned with the meaning and scope of the definition of "manufacture" in Section 2(f) and not with any Exemption Notification, much less with the Notifications, concerned herein. The question there was whether merely by placing the Garrard Record Changer Decks on a wooden base with cover and selling it under the trade- name of 'Bush Auto-Changer', can it be regarded that a process of manufacture has taken place. It was held that mere placing of a ready-to-use article on a wooden base, with or without a cover, with a view to make it more saleable does not amount to process of manufacture within the meaning of Section 2(f). Bata (India) Limited merely says that just because 'Bata' places it brand-name on the footwear manufactured by another, Bata cannot be treated as manufacturer of the said goods. Bapalal and Company deals with Notification No. 119 of 1975 dealing with job works and the exemption granted to job workers. The decision in Carona Sahu Company Limited is similar to the (India) Limited. We are unable to see any relevance these decisions have on the question at issue herein. We have already referred to the ratio of Cibatul. Food Specialities manufactured certain goods whereupon it affixed the brand-name of Nestle under an agreement with the latter and sold them to Nestle. The question was as to how to value the said goods. The Revenue contended that the value should be determined on the basis of wholesale price at which Nestle sold those goods. The plea was rejected by this Court holding that the wholesale price at which Food Specialities sold the said goods to Nestle should be the basis for determining the value.

For all the above reasons, we are of the opinion that the decision under appeal is unsustainable in law. For the same reasons, the decision of the Calcutta High Court in Banner and Company is also held to be wrongly decided [We are, of course, not told whether any Letters Patent Appeal was preferred against the said judgment and if so, what was the result?] The appeal is accordingly allowed. There shall be no order as to costs as respondents though served is not represented.