

Supreme Court of India

Union Of India (Uoi) vs Bajaj Tempo Limited And Ors. on 29 July, 1997

Equivalent citations: 1997 (94) ELT 285 SC, JT 1998 (9) SC 138, (1998) 9 SCC 281

Bench: J Verma, B Kirpal

ORDER

1. Leave granted.

2. These appeals by special leave arise out of writ petitions filed under Article 226 of the Constitution in the High Court for quashing show-cause notices issued to the assessees. The assessee in each of these cases denies its liability to pay the excise duty demanded and instead of replying to the show-cause notices issued by the Assistant Collector, filed the writ petitions which have been allowed. The justification for filing the writ petitions given by learned counsel for the respondents/assesseees, is that a trade notice which was issued left no scope with the departmental authorities to accept the assesseees' contention. In our opinion, this is no ground to justify the filing of writ petitions in any of these cases.

3. It is clear that the question of exigibility to the duty demanded depends on the facts found relating to the process by which the end-product on which duty is demanded came into existence. The items in question are several and in each case a finding has to be given on the facts pertaining to the particular item. This has not been done by any authority in respect of any of these items or goods. There is thus no finding of fact on which the question of exigibility to excise duty on any of the items or goods can be decided. The appropriate course for the assessee in each case was to reply to the show-cause notice enabling the authorities to record their findings of fact in each case and then if necessary, the matter should have been proceeded to the Tribunal and thereafter to this Court. The trade notice was not decisive of the question either before the Tribunal or in this Court.

4. We are satisfied that the question of excise duty which has been raised in these matters can be decided only after recording the findings of fact in each case in respect of goods or items given by the appropriate authority.

5. These matters must, therefore, go back to the Assistant Collector for decision of questions of fact. It would be open to the assessee in each case to submit its reply to the adjudicating authority within four weeks. The adjudicating authority would then proceed to decide the same in accordance with law. The further remedy thereafter would be available to the aggrieved party in accordance with law. These appeals are allowed in the manner indicated above.