

**1990 (2) G.L.H. 214**  
**A. P. RAVANI AND J. U. METHA, JJ.**

(M/s) Lama Prints and Another ... Petitioners  
Versus  
Union of India and Others ... Respondents

Special Civil Application No.518 of 1989

D/- 18-10-1989\*

\*Application praying to issue appropriate writ, etc. setting aside the impugned order dated 24-6-88 passed by the Collector, Central Excise and Gold (Control) Appellate Tribunal, Bombay and etc.

**(A) Constitution of India - Art. 227 - Ambit - Central Excise and Salt Act, 1944 - S. 35F - Amount of pre-deposit penalty fixed by the Tribunal (CEGAT) after considering relevant factors - On facts it cannot be said that the Tribunal has not applied its mind to all the relevant facts and circumstances of the case - Therefore, in a petition under Art. 227 of the Constitution of India, no interference is called for.**

The Tribunal has taken into consideration the entire material placed on the record and particularly the relevant balance sheet produced by the petitioner. After taking into consideration the record and the liquidity position the Tribunal has come to the conclusion that major part of the amount required to be deposited as pre-condition be dispensed with, i.e. roughly about 60% of the amount required to be deposited has been dispensed with. Only around 40% of the total amount to be deposited is ordered to be deposited as pre-deposit. In the facts of the case it cannot be said that the Tribunal has not applied its mind to all the relevant facts and circumstances of the case. Therefore, in a petition under Art. 227 of the Constitution of India, no interference is called for. (Para 5)

**(B) Constitution of India - Art. 227 -Petition under - Rejected - Prayer for extension of interim relief granted earlier by the High Court for some time so as to enable the petitioner to challenge the legality of the order before superior forum - Court by its order would not and rather should not permit litigation in court to be converted into sound business proposition - Petitioner granted time to make payment on conditions as stated in para 9 of the judgment.**

Courts by its order would not and rather should not permit a litigation in Court to be converted into a sound business proposition. No capital investment, no risk. But all profits and profits. Even if a petitioner ultimately loses, he stands to gain by way of interest benefit enormously and maintains comfortable liquidity position during the pendency of the litigation. And all this under the protection of the orders of the court. Such protection is both invitation and incentive to initiate litigation in courts. If orders resulting into situation as indicated hereinabove are passed, it would lead to an invert situation. A tax payer who comes to court would be taxing the society rather than society taxing him. (Para 8)

After enactment of the Constitution, the notion of "Crown" taxing the "subject" is always required to be protected from the exaction of the tax money by the "Crown" requires reconsideration. Under the Constitution of India there is no "crown", there is no "subject". The society through the instrumentality of the State and the Governments, taxes its members, i.e. the people at large. In other words, the people in whom the ultimate sovereignty rests, empower the Government as provided under the Constitution to tax themselves. In view of this Constitutional provision, the society needs protection [page214] from the powerful economic interests that be. The Court machinery and the orders of the Court cannot be permitted to be used by the powerful economic interests so as to inflict loss on the society. Just as the citizens need protection at the hands of the Court, the society also requires to be protected from the onslaughts of powerful economic interests. (Para 6)

**Case Referred :**

Civil Application No. 1945 of 1989 in First Appeal No.244 of 1989 decided on 6-9-1989. ( Para7 )

**Appearances :**

Mr. K. S. Nanavati, Advocate for the petitioners

Mr. J. D. Ajmera, for the respondents

**PER RAVANI, J. :-**

1. Petitioner No. 1 is a partnership firm and petitioner No.2 is a partner thereof. The petitioner firm is engaged in the manufacture processing of man-made fabrics with the aid of power which falls under Tariff Item No.22 of the First Schedule to the Central Excise and Salt Act, 1944. The factory premises were visited for surprise check by the Officers of the Central Excise Department on September 13,1984. On verifying the books of account and other relevant records the officers found several irregularities and discrepancies.

2. The petitioner was served show cause notice and was called upon to show cause as to why excise duty amounting to Rs.32,43,576.09 ps. should not be recovered on processed man-made fabrics measuring 60,48,662.50 Lmts. valued at Rs.6,17,66,588.37 ps. The petitioner was also called upon to explain as to why the action mentioned in the show-cause notice be not taken.

3. At the conclusion of the enquiry, the Collector directed the petitioner to pay an amount of excise duty of Rs.32,43,576.09 ps Rs. 31,12,560.03 ps. additional excise duty + Rs. 1,31,008.06 ps. handloom cess). The Collector also imposed a penalty of Rs. 15,00,000/- upon the petitioner. Against the aforesaid order passed by the Collector the petitioner preferred appeal before the Customs, Excise & Gold (Control Appellate Tribunal) and challenged the legality and validity of the order passed by the Collector. The petitioner also applied before the Collector for dispensing with the pre-deposit of the amount of duty and penalty. The Tribunal imposed condition of pre-deposit of Rs.20,00,000 (Twenty lacs) instead of depositing the entire amount of excise duty and penalty imposed upon the petitioner, i.e., total amount of Rs.48, 74, 584.15 ps. The petitioner has challenged the legality and validity of the aforesaid order passed by the Tribunal (Annexure 'K' - dated 7-12-1988).

4. It may be noted that the petitioners have not pressed their prayer with regard to constitutionality and validity of the provisions of Section 35-F of the Central Excises and Salt Act, 1944 and Rules 1973-E and 1983-Q of the Central Excise Rules. The petitioners have also not challenged the legality and validity of the order passed by the Collector of Central Excise (Annexure-I dated June 24,1988). In this view of the matter the challenge is to the order passed by CEGAT directing the petitioners to deposit an amount of Rs.20,00,000 (Twenty lacs) as pre-deposit and dispensing with the deposit of entire amount of excise duty and that of penalty. It may be noted that at the initial stage of the petition it was directed by way of ad interim relief that petitioner should deposit an amount of Rs.4,00,000/- (Rupees four lacs only) and this court stayed the operation of the order of Tribunal. It is stated at the Bar that the petitioner has paid the aforesaid amount in the Tribunal. Thus, still the petitioner would be required to make deposit of Rs. 16,00,000/- (Rupees sixteen lacs) as per the direction given by the Tribunal in, [*@page215*] its order dated 7-12-1988 (Annexure K), if the order of the Tribunal becomes operative and the same is to be implemented.

5. The petitioner contends that the order passed by the Tribunal is not just and proper. In his submission, at the most an amount of Rs.4,00,000/- as ordered by this Court should have been directed to be deposited and not an amount of Rs.20,00,000/- as has been done by the Tribunal. It is submitted that the Tribunal has not applied its mind to all the relevant facts and circumstances of the case. The aforesaid contention cannot be accepted. The Tribunal has taken into consideration the entire material placed on the record and particularly the relevant balance sheet produced by the petitioner. After taking into consideration the record and the liquidity position the Tribunal has come to the conclusion that major part of the amount required to be deposited as precondition be dispensed with, i.e. roughly about 60% of the amount required to be deposited has been dispensed with. Only around 40% of the total amount to be deposited is ordered to be deposited as pre-deposit. In the facts of the case it can not be said that the Tribunal has not applied its mind to all the relevant facts and circumstances of the case. Therefore, in a petition under Article 227 of the Constitution of India, no interference is called for.

Hence, the petition is liable to be rejected, and the ad interim relief granted earlier is also required to be vacated.

6. At this stage the learned Counsel for the petitioner requests that the ad interim relief granted earlier by this Court on January 24, 1989 be extended for some time so as to enable the petitioner to challenge the legality and validity of the aforesaid order before the superior forum as it may be available to the petitioner. The request to grant time for approaching superior forum should not ordinarily be rejected. But at the same time such request should not ordinarily be granted so as to adversely affect the other side. In matters pertaining to fiscal statutes and collection of taxes from factory owners, traders and businessmen, and other tax payers, consequences of interim orders are required to be borne in mind by the Court. In the instant case the Tribunal directed as per its order dated December 7, 1988 that the petitioner should deposit Rs.20,00,000/- in cash and on that condition there shall be waiver of pre-deposit as well as stay of recovery of balance duty and penalty amount. The Tribunal granted eight weeks' time to make deposit from the date of communication of the order. It may be reasonably calculated that by February 10, 1989 eight weeks' time would have been over. However, before that time, by order dated January 24, 1989 the petitioner obtained order from this Court and was required to make payment of Rs.4,00,000/- within six weeks from the date of the order passed by this court. Thus the petitioner got time till about March 10, 1989 to make payment of Rs.4,00,000/-. Now the aforesaid order passed by the Tribunal is being confirmed and the petitioner's challenge to the aforesaid order dated December 7, 1988 is being rejected and the petitioner is required to make payment of Rs.20,00,000/-. It is stated at the Bar that the petitioner has made payment of Rs.4,00,000/-. If time as prayed for by the petitioners is granted the petitioners would retain Rs.16,00,000/- (Sixteen lacs) with them. Will there be any gain to the petitioners on account of the interim protection that may be granted by the Court? Some simple arithmetical calculation be made. On an amount of Rs. 1 lac the interest at the rate of 18% would be Rs.18,000/- per annum. That means, interest for one month for Rs.1 lac would be Rs.1500/-. Thus, for one month the amount of interest for Rs.16 lacs would come to Rs.24,000/-. Thus, even if one month's time is granted it would be a gift of Rs.24,000/- to the petitioner. Gift, yes, but at whose cost and from whose pocket? After the enactment of the Constitution, the notion of "Crown" taxing the "subject" and the "subject" is always required to be protected from the exaction of the tax money by the "Crown" requires reconsideration. Under the Constitution [page 216] of India there is no "crown", there is no "subject". The society through the instrumentality of the State and the Governments, taxes its members, i.e. the people at large. In other words, the people in whom the ultimate sovereignty rests, empower the Government as provided under the Constitution to tax themselves. In view of this Constitutional provision, the society needs protection from the powerful economic interests that be. The Court machinery and the orders of the Court cannot be permitted to be used by the powerful economic interests so as to inflict loss on the society. Just as the citizens need protection at the hands of the Court, the society also requires to be protected from the onslaughts of powerful economic interests.

7. If the request as made is granted, it would be that the petitioner who has not paid the tax in time and who is alleged to have evaded payment of excise duty would be taxing the society. Such a situation has been visualised by the Division Bench of this High Court in *Civil Application No.1945 of 1989 in First Appeal No.244 of 1982, decided on September 6, 1989*. In that order, in the context of Octroi rules framed under the Gujarat Panchayats Act and the powers of the Development Commissioner to grant stay, it is *inter alia* observed as follows :

"In case of several Gram/Nagar Panchayats, revenue in the shape of octroi duty from one or two factories alone may be the main source of its finance. The amounts of such octroi duty run into lacs and crores of rupees. Delay of even few days in collection of such amount would result into benefit to the factory owner to the tune of thousands of rupees by way of interest benefits."

After referring to the aims of the relevant provisions of the Statute in that behalf, the Division Bench has observed as follows :

"Thus when the tax is imposed and the relevant law is implemented in this manner, instead of the society taxing the factory owner, the factory owner taxes the society and earns out of the amount of tax collected from the people. Such is the result of blanket stay granted by the powers that be. Therefore, assumption of unrestricted powers to delay the decision in such matters while permitting the factory owner to enjoy the

protection of stay order is not only illegal but it amounts to permitting the factory owner to fleece the pockets of the people. Under the cover of law instead of the factory owner paying tax to the society, the society pays tax to the factory owner."

The aforesaid observations made by the Division Bench of this Court are pertinent and are required to be borne in mind while considering the request for granting time to make payment.

**8.** Courts by its order would not and rather should not permit a litigation in Court to be converted into a sound business proposition. No capital investment, no risk. But all profits and profits. Even if a petitioner ultimately loses, he stands to gain by way of interest benefit enormously and maintains comfortable liquidity position during the pendency of the litigation. And all this under the protection of the orders of the court. Such protection is both invitation and incentive to initiate litigation in Courts. If orders resulting into situation as indicated hereinabove are passed, it would lead to an invert situation. A tax payer who comes to court would be taxing the society rather than society taxing him.

**9.** Having regard to the aforesaid position, we are of the opinion that the petitioner cannot be granted time to make payment without imposing condition. Therefore it is directed that the petitioner shall calculate interest at the rate of 15% per annum on the amount of Rs.16 lacs (sixteen lacs) for a period of two months and after calculating the amount on this basis the same shall be deposited with the Tribunal on or before November 30, 1989. If the amount is so deposited, the order vacating the ad interim relief shall *[@page217]* remain in abeyance for a period of two months from today, i.e. up to December 18, 1989. It is clarified that the amount of interest that the petitioner may deposit will be non-refundable and shall not be adjustable against any amount of duty that may become payable by the petitioner. The amount of Rs.20 lacs directed to be deposited by the petitioner shall not be reduced to the extent of the amount of interest that may be paid by the petitioner.

**10.** Subject to the aforesaid condition, it is directed that the ad interim relief granted by this Court on January 24, 1989 shall remain in operation up to December 18, 1989. However, if the petitioner does not make payment of the amount of interest as indicated hereinabove, this direction by which the ad interim relief granted earlier by order dated January 24, 1989 is kept in abeyance up to December 18, 1989 shall stand automatically vacated.

**11.** Office is directed to send a copy of this order to respondent No.2 herein, i.e. the Registrar, Customs, Excise & Gold (Control) Appellate Tribunal, Bombay.

**12.** Subject to the aforesaid observation and direction the petition stands rejected. Ad interim relief stands rejected. However, if the direction given hereinabove is complied with, order vacating ad interim relief shall remain in abeyance up to December 1989.

(ISS)

Order accordingly.