

NATWAR TEXTILE PROCESSORS PVT. LTD. AND ANR.

v.

UNION OF INDIA AND ORS.

JANUARY 9, 1995

[B.P. JEEVAN REDDY AND MRS. SUJATA V. MANOHAR, JJ.]

Administration of Justice—Abuse of process of Court—Show cause notice served in 1983—Excise duty allegedly payable by appellant is over Rupees ten crores—Notice not proceeded with as appellant filed writ petitions and appeals—Gross abuse of process of court—Appellant to pay cost of Rs. 15,000 to respondents—Any duty found payable shall be paid by appellant with interest @18% p.a. from date of notice upto date of payment—Excise Authorities to dispose of matter expeditiously—No court or Tribunal shall interdict proceedings until final orders passed.

A notice dated December 28, 1983 was served upon the appellant by the Central Excise Authorities alleging that the appellant had removed power loom cotton fabrics worth Rupees sixty two crores without payment of excise duty. It was stated that the appellant wrongfully availed of exemption notification and cleared the goods in an illicit manner. The appellant challenged the validity of the show cause notice by filing a writ petition which was dismissed in September, 1984. Special Leave Petition filed against the judgment of the High Court was also dismissed. The appellant applied to the Central Excise Authorities for inspection of certain documents. The request was rejected. The appellant filed a writ petition against the said refusal and withdrew it without seeking and obtaining the leave of the High Court to approach it again. He sought to file an appeal before the Tribunal which was not maintainable in law. On the Tribunal expressing a doubt as to the maintainability of the appeal, the appellant withdrew the appeal unconditionally. It was dismissed as withdrawn in May, 1986. Another writ petition was filed against the very same order of refusal of inspection of documents. The petition could not be disposed of early because the records were missing. The records had to be re-constructed. The writ petition was dismissed with strong condemnation of the appellant's conduct. Special Leave Petition was filed without disclosing all the facts. The appellant obtained an interim order in December, 1989. The SLP was posted only after a period of five years.

A The appellant submitted that his request for inspection of the documents was justified one. It was also stated that similar request for inspection of documents was pending consideration in the case of another assessee.

B Disposing of the matter, this Court

C HELD : 1. The fact in the instant case disclose how persons without scruples are abusing the system of administration of justice in this country. The courts are therefor honest litigation. Persons like the petitioners try to use the courts to advance their oblique ends and in the process the courts, the very system, is getting a bad name, In this case, for a period of eleven years, the show cause notice could not be proceeded with. The appellant had been doing this because he thought that even if he was liable to pay any duty pursuant to the show cause notice, he would not be liable to pay interest thereon since the Central Excise Act did not provide for granting of interest. In the circumstances of the case the very filing of the writ petition was a gross abuse of the process of the court and so was the present special leave petition/civil appeal. It is necessary in the interest of justice that such tactics should not be allowed to pass muster and should, in no event, be allowed to benefit the persons indulging in them. Stringent terms have to be imposed so that not only the appellant but others minded like him should know that they should not play with the courts and that if they do so, they should not complain if they are mauled in the process. This is the price of abusing the process of court. The court which is seized of the matter has the undoubted power to make such order as it thinks just and necessary to meet the ends of justice. It is the respondent who has invoked the jurisdiction of the High Court and this

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F Court. [115-H, 116-A-H, 117-A]

G 2. The revenue authorities had been lax in not moving for early disposal of the matter, in this court at any rate. That does not however explain, condone or justify the conduct of the appellant. So far as plea of fairness in action is concerned, it is well to remember that fairness is not a one-way street. The authorities are undoubtedly bound to act fairly but so is the assessee - more particularly, when he seeks to invoke the discretionary jurisdiction of the High Court or of this court. No person has a licence to act unfairly and yet call upon others to act fairly. [117-F-G]

H 3. The cost payable by the appellant to the respondents are assessed

at Rs. 15,000. In case any duty was found payable pursuant to the show cause notice mentioned above, the same shall be payable by the appellant with interest @ 18% p.a. calculated from the date of show cause notice upto the date of payment. The appropriate Central Excise Authorities shall dispose of the matter expeditiously and no Court or Tribunal shall interdict the said proceedings until final orders are passed thereon.

[117-H, 118-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 185 of 1995.

From the Judgment and Order dated 16.10.89 of the Gujarat High Court in S.C.A. No. 2885 of 1986.

Ashok H. Desai, Harish N. Salve, S. Ganesh and Ms. Bina Gupta for the Appellants.

J. Vellapally and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for the parties.

This appeal arises from the judgment and order of the Gujarat High Court dismissing the writ petition filed by the appellant, being S.C.A. No. 2885 of 1986. The writ petition filed in the High Court and the Special Leave Petition filed in this Court against the judgment of the High Court do, in our opinion, amount to gross abuse of process of court, a fact which would be evident from the facts stated hereinafter. We are taking the facts from the judgment of the High Court and we may mention that the correctness of none of those facts is disputed before us.

A notice dated December 28, 1983 was served upon the appellant by the Central Excise Authorities alleging that the appellant had clandestinely removed power loom cotton fabrics worth Rupees sixty two crores without payment of excise duty during the period November 24, 1979 to July 31, 1983. The allegation was that the appellant wrongfully availed of exemption notification and cleared the goods in an illicit manner. The appellant challenged the validity of the said show cause notice by filing a writ petition in the Gujarat High Court, being S.C.A. No. 4611 of 1984, which was disposed of on September 13, 1984 under the following order :

A "No final action pursuant to the show cause notice had been taken. It is for the petitioners to show cause. *Their complaint before us is that certain documents on which they would like to rely, though the excise authorities have indicated that they do not propose to rely on them, are not made available to them despite their request and this*

B *may vitiate the proceedings now taken as it would be in violation of the principles or natural justice.* Though we have been addressed elaborately by the petitioners' counsel, we have not been persuaded to agree that interference at this stage is called for. It is open to the petitioners to urge all their contentions in answer to the show

C cause notice including their contention as to why the copies of the documents sought for by them are necessary for the proper conduct of their defence and as to how non supply of those copies would vitiate the proceedings. We expect the excise authorities to properly look into all the contentions taken by the petitioners including the contention of non-supply of copies. It is not necessary

D to consider in this petition whether those copies would be relevant and whether if not supplied now, the proceedings would have been held to be bad.

E We do not think, on the facts averred in the petition, any case has been made out for interference. Hence we are dismissing the petition as premature. Dismissed."

(Emphasis added)

F Against the said order of the High Court, the appellant approached this court by way of Special Leave Petition (C) No. 11569 of 1984, which was dismissed on May 6, 1985 under the following order :

G "The point as to the limitation before us can be raised in reply to the show cause notice received by the petitioners. *The request for inspection of documents can also be raised by the petitioners, before the Collector of Customs, Central Excise.* We trust that the request will be duly considered. The Special leave petition is dismissed accordingly".

(Emphasis added)

H Meanwhile, the appellant had applied to the Central Excise

Authorities for inspection of certain documents on July 16, 1984. It is evidently this request which finds a mention in the order of this court aforesaid. This request was rejected by the authorities on December 16, 1985. The appellant then approached the Gujarat High Court by way of S.C.A. No. 317 of 1986 questioning the refusal of inspection of documents asked for by him. When the writ petition came up for hearing before a Division Bench on March 18, 1986, the appellant sought to withdraw the writ petition. It was dismissed as withdrawn under the following order :

"Mr. V.N. Nair on behalf of Mr. S.I. Nanavati wants permission of the court to withdraw this petition as not pressed *reserving liberty to agitate this matter as and when he files an appeal to the Tribunal against the order of the Collector if at all such an eventuality arises.* Permission to withdraw is granted with the above said observations and as such this writ petition is dismissed as withdrawn."

(Emphasis added)

It is obvious that the appeal to the Tribunal contemplated in the aforesaid order was an appeal against the final orders passed pursuant to the show cause notice. The idea was that the appellant can raise all questions which are open to him in law in such appeal. However, seeking to mis-interpret the said order of the High Court, the appellant filed an appeal before the CEGAT against the very same order dated December 16, 1985. On the Tribunal expressing a doubt as to the maintainability of the appeal, the appellant withdrew the appeal unconditionally. It was dismissed as withdrawn on May 15, 1986.

Within two weeks of the dismissal of its appeal by the Tribunal, the appellant again approached the Gujarat High Court, during the summer vacations, in the last week of May 1986. The prayers in the writ petition are to the following effect :

"(A) This Hon'ble Court may be pleased to issue writ of *mandamus* and/or any other writ in the nature of *mandamus* directing the respondents to give the inspection of the documents mentioned as serial Nos. 1, 2 and 4 in the letter dated 16th July, 1984 which is at Annexure-D to this petition.

(B) The Hon'ble Court may issue an appropriate writ, *mandamus*

A or direction or order quashing and setting aside the order passed by the Collector or Central Excise and customs, Baroda dated 16th December, 1985 which is at Annexure-C to this petition."

B It is evident that the writ petition was directed against the very same order of the Excise Authorities (dated December 16, 1985) which was already the subject matter of S.C.A. No. 317 of 1986, which was dismissed as withdrawn without reserving any liberty to the appellant to approach the High Court again *and* which was also the subject matter of appeal before the Tribunal which too was withdrawn by the appellant unconditionally. Even so, the appellant succeeded in obtaining an interim order from the
C High Court on June 23, 1986 which order was extended to September 1, 1986 pending final orders. While extending the interim order, the court directed the matter to be posted for admission on September 22, 1986. It did not so come up for admission, whereupon, the respondents (Central Excise Authorities) moved the court for hearing the matter. It was found
D that the record was missing. By an order dated October 7, 1989, the court directed the record to be reconstructed and thereafter it was posted before a Division Bench for final hearing. The above facts impelled the High Court to make the following observations :

E "It is *rather shocking and much painful* to note that the matter filed in the year 1986 has remained at the admission stage till today. The facts disclosed *prima facie* reveal a *very distressing state of affairs*. Had it been a matter pertaining to lower court or any other Government Department we ourselves would have given appropriate directions for holding inquiry and for suitable actions to
F be taken against persons responsible for such lamentable lapse. However, since the question pertains to the administration of the High Court itself, we ourselves would rather refrain from passing any such order. But we direct the Registrar of the High Court to place a copy of this judgment before the learned Chief Justice drawing his attention to this aspect. We hope and trust that the
G learned Chief Justice will take suitable effective actions in the matter, with a view to find out as to who is responsible for the disappearance of the papers and why this was not brought to the notice of the learned Chief Justice or to the notice of Court taking
H up such matters and what steps are required to be taken for preventing recurrence of such incidents. We hope and trust that

suitable effective actions will be taken against persons who may be found responsible for causing disappearance of the papers and also against persons who did not and/or could not prevent such things to happen."

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The writ petition was accordingly dismissed.

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In the Special Leave Petition filed in this court, the following order was made on December 11, 1989 :

"Issue notice on the special leave petition returnable on 6.2.90, state in the notice that the matter will be disposed of at the notice stage. In the meantime proceedings may go on but no final order will be passed.

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It is stated that the proceedings are at the stage where the cross-examination of the witnesses called by the department is in progress. It is further stated that the diaries which are the subject matters of this adjudications the witnesses called will not be cross-examined. In that view of the matter proceedings to that extent are stayed."

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The record does not disclose that the Special Leave Petition was posted on February 2, 1990 as directed in the aforesaid order. It was posted only sometime towards the end of 1994. It is not known who is responsible for this state of affairs. This Court intended that the matter will be disposed of at the notice stage itself soon after the service of the notice on the respondents. The notice on the respondents was served immediately and in fact they filed their counter-affidavit as early as March 26, 1990. Even so, the matter was not posted before the court. It is equally surprising that the respondents too did not choose to take any steps for having the matter posted early. The Registrar General is directed to bring this matter to the notice of the Hon'ble Chief Justice for appropriate action to determine the culpability, if any, of any member or members of the registry of this Court in not carrying out the orders aforesaid.

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The facts stated above disclose how persons without scruples are abusing the system of administration of justice in this country. They forget that the courts are there for honest litigation. They think and they try to use the courts to advance their oblique ends and in the process the courts,

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A the very system, is getting a bad name. Look at the facts of this case. The show cause notice was issued in December, 1983. It was questioned immediately by the appellant by way of a writ petition which was dismissed in September, 1984. The appellant carried the matter to this court, which was dismissed in May, 1985. Meanwhile, he had applied for inspection of certain documents, which was rejected in December, 1985. He filed a writ petition against the said refusal and withdrew it without seeking and obtaining the leave of the High Court to approach it again. Trying to mis-interpret the orders of the High Court, he sought to file an appeal before the Tribunal which was not maintainable in law. When that was pointed out, he withdrew it unconditionally. Then he filed another writ petition against the very same order of December, 1985 which was the subject matter of S.C.A. No. 317 of 1986 in the Gujarat High Court and an appeal before the CEGAT, both of which were withdrawn unconditionally. This latest writ petition could not be disposed of early because the records were said to be missing; the records had to be re-constructed. The writ petition was dismissed with strong condemnation of the appellant's conduct. In spite of the same, the appellant comes to this court and evidently without disclosing all the facts, obtained an interim order in December, 1989. Though this court intended to dispose of the matter within a couple of months, the Special Leave Petition did not see the light of the day for a period of about five years with the result that a period of eleven years, the show cause notice could not be proceeded with. The appellant has been doing this because he thinks that even if he is liable to pay any duty pursuant to the show cause notice, he would not be liable to pay interest thereon since the Act does not provide for granting of interest. According to the show cause notice, the duty payable is over Rupees ten crores. In our opinion, the very filing of the writ petition, S.C.A 2885 of 1986, is a gross abuse of the process of the court and so is the present Special Leave Petition/Civil Appeal. It is necessary in the interests of justice that such tactics should not be allowed to pass muster and should, in no event, be allowed to benefit the persons indulging in them. Stringent terms have to be imposed so that not only the appellant but others minded like him should know that they should not play with the courts and that if they do so, they should not complain if they are mauled in the process. This is the price of abusing the process of court. The court which is seized of the matter has the undoubted power to make such orders as it thinks just and

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necessary to meet the ends of justice. It should be remembered that it is the respondent who has invoked the jurisdiction of the High Court and this Court. A

Sri Ashok Desai, learned counsel for the appellant submitted that his request for inspection of the documents is a justified one and that all that the appellant wanted to know was the names of the officers who visited the appellants' factory, the dates and time of their visit so as to enable it to defend itself effectively. We are, however, not prepared to entertain the said submission inasmuch as the Gujarat High Court had rejected this very submission in the earlier writ petition, S.C.A. No. 317 of 1986, with the observation that all these questions can be agitated by the appellant as and when he files an appeal before the Tribunal against the orders of the Collector, in case the Collector decides against him. The said order has become final and cannot be re-opened in a subsequent writ petition. B C

The appellant has filed written submission wherein it is stated that a similar request for inspection of documents is pending consideration in the case of another assessee in S.L.P. (C) No. 22023 of 1993 *Birla Jute Industries v. Union of India*. The appellant has also sought to make out a justification for his request for inspection. However, for the reasons stated above, the said submission could not have been raised in the writ petition from which this appeal arises for the reason stated in the preceding para. The appellant has also sought to blame the Central Excise Authorities for not moving fast for vacating the orders passed by the court or for early disposal. We are surprised at this logic. While we agree that the revenue authorities have been lax in not moving for early disposal of the matter, in this court at any rate, that does not explain, condone or justify the conduct of the appellant. So far as plea of fairness in action is concerned, it is well to remember that fairness is not a one-way street. The authorities are undoubtedly bound to act fairly but so is the assessee - more particularly, when he seeks to invoke the discretionary jurisdiction of the High Court or of this court. No person has a licence to act unfairly and yet call upon others to act fairly. D E F G

For the above reasons, the civil appeal is dismissed with costs. The costs payable by the appellant to the respondents are assessed at Rs. 15,000. It is further directed that in case any duty is found payable pursuant H

- A** to the show cause notice mentioned above, the same shall be payable by the appellant with interest @ 18% p.a. calculated from the date of show cause notice upto the date of payment. It is also directed that the appropriate Central Excise Authorities shall dispose of the matter expeditiously and that no Court or Tribunal shall interdict the said
- B** proceedings until final orders are passed thereon.

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Appeal disposed of.