

M/S. JAIN EXPORTS PVT. LTD. AND ANR.

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v.

UNION OF INDIA AND ORS.

AUGUST 14, 1996

[S.P. BHARUCHA AND S.B. MAJMUDAR, JJ.]

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Customs Act, 1962—Section 25(2)—Claim of exemption under—Maintainability—Import of liquid caustic soda—Levy of duty—Exemption granted in favour of State Chemicals and Pharmaceuticals Corporation by reducing rate of custom duty levied on them—Legality of.

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Practice and Procedure—Undertaking given to Court—Not an obligation imposed by court—Acting upon its own undertaking to Court—No equity in favour of the party giving it—It is not a special or peculiar circumstance.

The appellant imported liquid caustic soda in bulk, on which Customs, auxillary and countervailing duty was payable at the aggregate rate of 92.5 percent. The respondents, State Chemicals and Pharmaceuticals Corporation of India Ltd. were required to pay duty on import of caustic soda only at the rate of 10 percent because of an exemption granted to them in public interest u/s. 25(2) of Customs Act. The appellants filed a writ petition challenging it as discriminatory while claiming grant of such exemption. The High Court dismissed the writ petition. Hence this appeal.

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The appellants submitted that special circumstances favoured them in that interim order passed on the appellants by this Court on the appellant's application for the stay of recovery of the difference in duty, obliged them to sell the caustic soda at the price that did not take duty at the rate of 92.5 percent into account as appellants were permitted to clear the quantity of caustic soda on the condition that they furnished security to the satisfaction of the Collector of Customs for the difference in duty between 10 percent and 92.5 percent, and, in the event that the Collector was not satisfied with such security, the appellants furnished a bank guarantee for that difference. The appellant undertook 'not to sell caustic soda imported under the licence at the rate higher than Rs. 5132 only per M.T. Ex-godown which is represented by the State Chemicals and Pharmaceuticals Corporation of India Ltd. as the price at which they had sold the quantity of caustic soda imported by them'. Appellants alleged that an

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A obligation had been imposed by this Court upon the appellant not to sell the caustic soda at more than Rs. 5132 per metric tonne and they had been unable to cover the balance 82.5 percent of duty and therefore, an equity arose in favour of the appellant by reason of the interim order and they should be permitted to pay as duty only 10 percent as provided under its terms.

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Dismissing the appeal with costs, this Court

C HELD : 1.1. The interim order was passed upon the application for stay of recovery of the difference in duty made by the appellants. If the appellants found the condition imposed by the order unacceptable, they could have sold the caustic soda at a price higher than Rs. 5132 per metric tonne and paid duty thereon at the rate of 92.5 percent after applying to this Court to relieve them of their undertaking. The appellants acted upon the interim order knowing full well that if the appeal was decided against them they would be required to pay duty at the rate of 92.5 percent. Acting upon the interim order created no equity in favour of the appellants, nor were these any special or peculiar circumstances. [678-B-C]

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E 1.2. An undertaking given to Court is not an obligation imposed by the Court. It is a promise voluntarily made to the Court. Acting upon its own undertaking to court creates no equity in favour of the party giving it, nor is it a special or peculiar circumstance. [678-D]

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F 1.3. Should a court come to the conclusion that an exemption is arbitrary or discriminatory or violative of Article 14, it may strike the exemption down but it cannot widen its scope so as to cover those it finds have been discriminated against. [678-E]

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M. Jhangir Bhatusha & Ors. v. Union of India & Ors., [1989] Supp. 2 SCC 201 and *State of M.P. v. Mohan Singh*, [1995] 6 SCC 321, relied on.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 884 of 1980.

From the Judgment and Order dated 18.4.80 of the Delhi High Court in C.W. No. 351 of 1980.

H G.K. Raman, D.K. Garg, N.D.B. Raju and P. Parmeswaran for the Appellants.

A.K. Ganguli, A.S. Rao, Sushil Kr. Jain for the Respondents.

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The Judgment of the Court was delivered by

BHARUCHA, J. The correctness of order of the High Court of Delhi dismissing the writ petition filed by the appellants before it is under challenge.

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The appellants imported liquid caustic soda in bulk, on which Customs, auxiliary and countervailing duty was payable at the aggregate rate of 92.5 per cent. The State Chemicals and Pharmaceuticals Corporation of India Ltd. (the 3rd respondents) also imported caustic soda but were required to pay duty thereon only at the rate of 10 per cent because of an exemption granted to them in the public interest under the terms of Section 25(2) of the Customs Act. The writ petition was filed by the appellants on the ground that there was discrimination; the appellants were also entitled to the exemption granted to the 3rd respondents. The writ petition prayed for the grant of such exemption; and, in the alternative, that the exemption in favour of the 3rd respondents should be declared null and void.

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It is not now in dispute that the case would stand covered by the judgment of this Court in *M. Jhangir Bhatusha and Ors. v. Union of India & Others*, [1989] Supp. 2 S.C.C. 201, but for the appellant's argument that there were special or peculiar circumstances which created an equity in its favour.

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Learned counsel for the appellants relied upon the following passage in *Jhangir Bhatusha's* case :

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"13. First, as to the contention that both the reasons set forth in the exemption notifications under Section 25(2) of the Act are without foundation. It seems to us that the two reasons set forth in the exemption notifications can constitute a reasonable basis for those notifications. It does appear from the material before us that international prices were fluctuating, and although they may have shown a perceptible fall there was the apprehension that because of the history of fluctuations there was a possibility of their rising in the future. The need to protect the domestic market is always present, and therefore encouragement had to be given to the

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A imports effected by the State Trading Corporation by reducing the
rate of customs duty levied on them. This involved a long term
perspective, since the exclusive monopoly to import these edible
oils was now entrusted to the State Trading Corporation. What
B appears to have dominated the policy of the government in issuing
the exemption notifications was the consideration that the domestic
prices of vanaspati should be maintained at reasonable levels. It
cannot be doubted that the entire edible oil market is an integrated
one, and that it is not reasonable to treat any one of the edible oils
or vanaspati in isolation. It is a well accepted fact that vanaspati
C manufacturers constitute a powerful organised sector in the edible
oil market, and a high vanaspati price would encourage an un-
authorised diversion of the edible oils to vanaspati manufacturing
units, resulting in a scarcity in the edible oil market, giving rise to
erratic prices and depriving consumers of access to edible oils. The
D need for preventing vanaspati prices ruling high was also to prevent
people normally using vanaspati from switching over to other edible
oils, thus leading to an imbalance in the oil market. An overall view
made it necessary to ensure that domestic prices of vanaspati
remained at reasonable levels. To all these considerations the
E learned Attorney General has drawn our attention, and we cannot
to say that they are not reasonably related to the policy underlying
the exemption orders. So that the government would have sufficient
supplies of edible at hand in order to feed the market, the learned
F Attorney General says, it was considered desirable and in the public
interest to reduce the rate of customs duty to 5 per cent on the
Imports made by the State Trading Corporation. Now it is the
Central Government which has to be satisfied, as the authority
appointed by Parliament under Section 25(2), that it is necessary in
the public interest to make the special orders of exemption. It has
G set out the reasons which prompted it to pass the orders. In our
opinion, the circumstances mentioned in those notifications cannot
be said to be irrelevant or unreasonable. It is not for this Court to
sit in judgment on the sufficiency of those reasons. The limitations
on the jurisdiction of the court in cases where the satisfaction has
H been entrusted to executive authority to judge the necessity for
passing orders is well defined and has been long accepted.

14. It is true that the State done the robes of a trader when it enters the field of commercial activity, and ordinarily it can claim no favoured treatment. But there may be clear and good reason for making a departure. Viewed in the background of the reasons for granting a monopoly to the State Trading Corporation, acting as an agent or nominee of the Central Government in importing the specified oils, it will be evident that policy considerations rendered it necessary to make consumation of that policy effective by imposing a concessional levy on the imports. No such concession is called for in the case of the private importers who, in any event, are merely working out contracts entered into by them with foreign sellers before December 2, 1978."

Learned counsel for the appellants submitted that special circumstances favoured that appellants in that the interim order passed by this Court on 23rd April, 1980, obliged the appellants to sell the caustic soda at a price that did not take duty at the rate of 92.5 per cent into account.

By the said interim order on the appellant's application for stay of recovery of the difference in duty, the appellants were permitted to clear the quantity of caustic soda stated therein on the condition that they furnished security to the satisfaction of the Collector of Customs, Bombay, for the difference in duty between 10 per cent and 92.5 per cent, and, in the event that the Collector was not satisfied with such security, the appellants furnished a bank guarantee for the said difference. The interim order recorded that the appellants undertook "not to sell caustic soda imported under the aforesaid licence at a rate higher than Rs. 5132 only per M.T. Ex-godown, which is represented by the counsel for State Chemicals and Pharmaceuticals Corporation of India Limited as the price at which they have sold the quantity of caustic soda imported by them."

According to learned counsel for the appellants, as obligation had been imposed by this Court upon the appellants not to sell the caustic soda at more than Rs. 5132 per metric tonne. The appellants had complied with that obligation. Consequently, they had been unable to realise from the purchasers of the caustic soda a price sufficient to cover the balance 82.5 per cent of duty. An equity arose in favour of the appellants by reason of the interim order and they should be permitted to pay as duty only 10 per

A cent as provided under its terms.

B In the first place, the interim order was passed upon the application for stay of recovery of the difference in duty made by the appellants. If the appellants found the conditions imposed by the order unacceptable, they could have sold the caustic soda at a price higher than Rs. 5132 per metric tonne and paid duty thereon at the rate of 92.5 per cent after applying to this Court to relieve them of their undertaking. The appellants acted upon the interim order knowing full well that if the appeal was decided against them they would be required to pay duty at the rate of 92.5 per cent. Acting upon the interim order created no equity in favour of the appellants, nor are these any special or peculiar circumstances.

D In the second place, an undertaking given to Court is not an obligation imposed by the Court. It is a promise voluntarily made to the Court. Acting upon its own undertaking to court creates no equity in favour of the party giving it, nor is it a special or particular circumstance.

In the third place, the passage from the decision in *Jhangir Bhatusha's* case does not assist the appellants.

E In the fourth place, should a court come to the conclusion that an exemption is arbitrary or discriminatory or violative of Article 14, it may strike the exemption down but it cannot widen its scope so as to cover those if finds have been discriminated against. Reference in this behalf may be made to the judgment in *State of M.P. v. Mohan Singh*, [1995] 6 S.C.C. 321, to which one of us (S.P. Bharucha, J.) was a party. Paragraph 6 is self-explanatory :

F "6. Here we part company with the High Court. Having come to the conclusion that the grant of special remission to Scheduled Caste and Scheduled Tribe prisoners was unlawful, the proper course to adopt should have been to strike it down. It was beyond the High Court's power to expand the reach of the remission so as to give the benefit of it to the writ petitioner, who did not belong to the Scheduled Castes or Scheduled Tribes. The power to grant the remission lay with the State. If the power was improperly exercised, the High Court could quash the exercise. The High Court could not, in effect, grant a general remission where the State had intended it to be restricted."

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Before we part with the appeal we should mention that it had once been allowed and that judgment and order was set aside on a review petition filed by the 1st. respondents. A

The appeal is dismissed, with costs. The costs payable by the appellants to the 1st and 2nd respondents are quantified at Rs. 25,000 and to the 3rd respondent at Rs. 5,000. B

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Appeal dismissed.