

Andhra Cement Co. Ltd. and anr. Vs. Union of India and ors.

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Court : Delhi

Decided On : Jan-22-1990

Reported in : 41(1990)DLT21

Judge : S.B. Wad, J.

Acts : [Constitution of India](#) - Article 14; Industries (Development and Regulations) Act, 1958 - Sections 13

Appeal No. : Civil Writ Petition No. 1653 of 1988

Appellant : Andhra Cement Co. Ltd. and anr.

Respondent : Union of India and ors.

Advocate for Pet/Ap. : L.N. Singhvi,; P.R. Seetharaman and; Rajender Dutt, Adv

Judgement :

S.B. Wad, J.

(1) In view of the importance of cement as a basic building commodity, it has been subjected to various regulations with a view to increase production and to attain self-sufficiency. On 3.5. 79 the Government of India. Ministry of Industry passed an order fixing retention prices. It laid down inter-alia that new cement undertakings and undertakings with substantial expansions would receive a retention price @ Rs. 296.00 per tonne. By notification dated 1.3.87 (No. 36-CE)

the Government gave excise duty relief of Rs. 50.00 per M.T. to cement manufactured in a factory which commenced production after 1.4.86. There was a condition imposed for getting the benefit of the said relief, viz. that cement of clinker should be produced in the same factory. Subsequently, on 29.4.87 another notification (No. 124/87-CE) was issued by the Ministry of Industry giving excise duty relief of Rs. 20 f- per M.T. to cement manufactured in a factory which commenced production between 1.1.82 and 31.3.86. It also imposed the same condition of the cement and clinker being produced in the same factory. However, in regard to the notification dated 29.4.87 (which is in fact for a prior period) the condition of the cement and clinker being produced in the same factory was withdrawn by notification dated 16.9.87 (No. 221/87-CE). The removal of the restriction thus, meant that a cement company would be entitled to excise relief if the cement is manufactured out of clinker which is produced in any other factory of the same manufacturer, provided the production of clinker commenced during the said specific period. The grievance of the petitioners is that they are denied the relief of both the notification, i.e. notification dated 1.3.87 and 29.4.87 illegally. The other grievance of the petitioners is that M/s. Shree Digvijay Cement Company Ltd., Jamnagar, Gujarat, and M/s Rassi Cement Limited at Vishnupuram, Andhra Pradesh, who are similarly situated have been given the said relief and the petitioner is, thus, discriminated. It is alleged that the actions of the respondents in denying the said relief are violative of Article 14, 19(l)(g) and 300-A of the [Constitution of India](#). They have claimed relief of excise duty under the said two notifications as the principal relief in the writ petition.

(2) Broadly speaking the stand of the respondents is that the relief of excise duty under the said notifications is permissible only if the unit is a new unit. There were some doubts as to whether the relief is available to altogether new units in the green-field or is it available for existing units who have undertaken substantial expansion or modernisation. The concept of new industrial undertaking was known to the Industrial Development and Regulation Act as a part of the concept of substantial expansion under Section 13 of the Act. therefore, when the said two notifications for excise duty relief were issued it has to be presumed that the respondents were aware of the said definition of substantial expansion under Section 14 of the Act and the meaning of the term 'new industrial undertaking' as

envisaged by the said sections. The said Section 13 reads :

'Expansion of industrial undertaking which substantially increases the production activity of the undertaking or which is of such a nature as to amount virtually to a new industrial undertaking.'

(3) The stand taken by the respondents in their counter affidavits appears to be as to restrict the excise duty relief only to new industrial undertakings (which is mentioned in the second part of Section 13). This aspect of the notification dated 1.3.87 was strived to be clarified by two subsequent notifications dated 14.2.89 and 17.4.89. In the first clarificatory notification it was stated, 'The benefit is limited only to new units that have started production of cement on or after 1.4.86. It does not cover substantial expansion or modernisation. That means that if a totally independent unit has come into production on or after 1.4.86, it can avail the benefit of this notification.' By the second clarificatory notification the Central Board of Excise & Customs laid down, 'That the benefits of the said notifications could be extended to any factory set up as a substantial expansion or otherwise, as the case may be, provided the same is independent of the existing factory in all respects. If the substantial expansion is merely an expansion or modernisation of the already existing factory then the benefits of the said notifications would not be available in view of the fact that no new factory has come into existence.' It may be noted that the notification dated 17.4.89 issued by the Central Board of Excise & Customs applies .not only to the notification dated 1.3.87, but also to the notification dated 29.4.87. Even after these clarifications the question still remains as to what is meant by 'new factory'.

(4) Two things are to be clearly noted. First, that it is not necessary for the purposes of relief that the new unit should be in a green-field exploiting the natural resources in the area. Secondly, the units which have made substantial expansion or modernisation of the existing units are also entitled to the relief provided the same is done through a new factory. From the reply affidavits and rejoinder affidavits filed by the respondents in justification of recognising Digvijay and Rassi as new units it appears that existence of a different/separate kiln has been evolved as a test of new unit by the respondents. The question is how far they are correct

in laying down the said criteria within the frame-work of the relief scheme under the said two notifications and the Industries (Development & Regulation) Act, 1958

(5) In the counter-affidavit filed by Shri Subhash Chandra Jhana Undersecretary, Government of India, dated 17/20-4-89, it is claimed that the new unit of M/s. Shree Digvijay Cement Company Limited, Sikka is completely independent of their old unit at th& same place. For example, it has been verified that the old unit of M/s. Shree Digvijay Cement Company Ltd. at Sikka and the said Company's new unit at Sikka are using .separate kilns for the production of cement. It has also been verified that the old. unit of M/s. Rassi Cement Ltd. at Vishnupuram and their substantial expansion unit at the same place are using different kilns for the production of cement. However, in the case of M/s. Andhra Cement Company Ltd. the old and the substantial expansion unit at Nadikuda are using the same kiln. It is claimed in the affidavit that since the petitioner is using the same kiln after substantial expansion it cannot be called as a new unit. Along with the affidavit a copy of the letter dated 27.11.86 from the Ministry of Industries, Government of India, to M/s. Shree Digvijay Cement Co. Ltd. is produced. It is stated in the letter that the Government had decided to treat the dry process kiln at Sikka as an independent plant and a separate industrial license with a manufacturing capacity of 6.60 lakh tonnes per annum has been issued. The said unit at Sikka, the .letter states, is recognised as a new unit having a separate entity.

(6) Counsel for the petitioner submits that mere existence of a separate kiln does not make a unit after substantial expansion as a new unit. He has also taken exception to the Government letter dated 27.11.86 where it was stated that the Government had already decided to treat the dry process kiln at Sikka as an independent plant and a new unit. Mere ipse dixit of the Government (without valid reasons) cannot make a unit a new unit. In any case, it is submitted that the letter in question does not say that the said. unit of M/s. Digvijay Cement Co. Ltd. at Sikka is a new unit for the purposes of excise duty relief under the said two notifications.

(7) The petitioners assert that substantial expansion can be achieved by two methods, viz. by having a new kiln or by introducing a pre-calculator. The

petitioners further assert that Nadikuda has always been visualised as the mother clinkerisation plant for Vishakhapatnam unit. This was clear from the letter of intent dated 9.1.78 issued in favor of the petitioner.

(8) On reading the two notifications in question, granting excise duty relief, it is seen that starting of a new kiln is not a necessary pre-condition for getting the benefit of production by the new unit. Even the explanatory circulars dated 14.2.89 and 17.4.89 issued by the Central Board of Excise & Customs do not speak of a new unit only in terms of a new kiln. If the two methods for modernisation and expansion are possible, viz. having a new kiln or by introducing a pre-calculator, and the statute does not require that only one method should be followed, the Government is precluded from raising any objection to the petitioners' expansion scheme and refuse excise duty relief. It is not clear from the letter dated 27.11.86, relied upon by the respondents, as to what were the reasons and what was the data before the Government before it recognised the dry process kiln at Sikka of M/s. Digvijay Cement Co. Ltd. as a new unit having a separate entry. In any case, the said letter was issued much prior to the notifications dated 1.3.87 and 29.4.87 under which excise relief is claimed -by the petitioners. On the strength of the said letter dated 27.11.86, therefore, M/s. Shree Digvijay Cement Co, Ltd. cannot be given excise relief while denying the same to the petitioners. The rationale for deciding what is a new unit for the purposes of excise relief under the said two notifications is unreasonable and illogical. Classifying Digvijay Cement and Rassi Cement in one class and the petitioner company in the other class is an irrational and illogical classification. In denying petitioner the excise relief which is given to Digvijay Cement and Rassi Cement, is thus, discriminatory and violative of Article 14 of the Constitution.

(9) For the reasons stated above, the action of the respondents refusing the excise relief to the petitioner is illegal. The petitioners are entitled to exercise to relief under Notification No.36-CE dated 1.3.87 and Notification No. 124/87-CE dated 29.4.97. The writ petition succeeds with costs. Counsel fee Rs. 1,500.00 Rule is made absolute