

(1993) 06 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: M.P. No. 532/92

Devpriya Alloys Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: June 22, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1993) 44 ECC 12 : (1993) 67 ELT 479

Hon'ble Judges: V.S. Kokje, J; M.W. Deo, J

Bench: Division Bench

Advocate: A.M. Mathur, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.S. Kokje, J.

The following order of the court was delivered by V.S. Kokje "J":

2. This case was heard along with Misc. Petition No. 1108/92. The petitioner seeks quashing of a show cause notice dated 28-8-1991 issued by the respondent No. 2 to the petitioner, on the ground that the inputs of the petitioner's product come under Heading No. 72.15 and 73.09 of the Central Excise Tariff Act, 1985. According to the petitioner the show cause notice is basically wrong being based on wrong interpretation of the notification. On the question of alternate remedy being not an absolute bar to a writ petition, several rulings have been cited by the learned counsel for the petitioner. - [Sainet Private Ltd. and Another Vs. Union of India \(UOI\) and Another](#), (Bom.), Bomin Pvt. Ltd. v. Union Of India - 1981 (8) E.L.T. .618 (Guj.), [Nirma Chemical Works and Others Vs. Union of India and Others](#), (Guj.). [Union of India \(UOI\) Vs. Punjab Rubber and Allied Industries](#), (P & H) were cited in addition the decisions in Dunlop India Ltd. v. Union of India AIR 1977 SC 597 , [Ram and Shyam Company Vs. State of Haryana and Others](#), were also cited.

3. In view of the settled law on the point, there is no doubt that availability of an alternate remedy is not an absolute bar against the entertainment of a petition for issue of a writ under Article 226 of the Constitution of India. However, in the very nature of things, whether a case for interference is made out or not would depend on circumstances of each case and no cut and dry formula can be set out in exercise of discretion whether to entertain a petition or not, which can be universally applied to all cases.

4. The scope of interference at the show cause notice stage ignoring the question of alternate remedy was considered by this court in *Universal Cables Ltd. v. Union of India* 1978 (2) E.L.T. (532) . Relying on the decisions in [Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another](#) , [East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta](#), and [N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd.](#), this court held that it is settled law that if a notice issued by the Tribunal or Authority threatening to initiate proceedings prejudicial to a person is in excess of jurisdiction, the Tribunal or Authority can be prohibited from further proceeding in the matter under Article 226 of the Constitution of India to save unnecessary harassment of the person concerned.

5. In [Hindustan Electro Graphites Ltd. Vs. Union of India \(UOI\)](#), this court has followed a decision in the *Universal Cables Ltd. (supra)*, there is, therefore, no doubt that if it is shown with admitted facts that the impugned show cause notice was without jurisdiction, this court can consider to interfere and quash the show cause notice without insisting on alternate remedy being followed by the petitioner.

6. In the facts of this case, the show cause notice cannot be said to be without jurisdiction, when even the petitioner is alleging that it is based on wrong interpretation of a notification. The Department or the Authority have right to interpret a notification according to their own wisdom. If they interpret the notification wrongly, it cannot be said that they were acting without jurisdiction. In any case, there is nothing on record to show that the show cause notice is without jurisdiction or is based on extraneous considerations or is arbitrary.

7. The petition, therefore, deserves to be and is hereby dismissed, without notice to the other side.