

(1986) 08 CAL CK 0004

Calcutta High Court

Case No: F.M.A.T. No. 2419 of 1986

Indo Asahi Glass Co. Ltd. and
Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 26, 1986

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1987) 11 ECC 378 : (1987) 12 ECR 886 : (1987) 30 ELT 124

Hon'ble Judges: M.N. Roy, J; M. Majumdar, J

Bench: Division Bench

Advocate: R.N. Das and Pranotosh Mukherjee, for the Appellant; N. Ray Chowdhury, for the Respondent

Final Decision: Dismissed

Judgement

M.N. Roy, J.

This application for stay of an order dated 7-8-1986, passed by Suhas Chandra Sen, J. Was filed in an appeal, which was presented on 12-8-1986. The application and the appeal have been filed by the writ petitioners and from the statements in the application it would appear that the application for a rule came up for hearing as "Listed Motion" before the learned trial Judge on 29-7-1986 and after hearing the parties, he was pleased to reserve the judgment and thereafter, by the order under appeal, the learned Judge was pleased to dismiss and/or reject the said application.

2. The proceedings before the learned trial Judge were taken against certain demands raised by the respondent, Collector of Central Excise and the other authorities of the Customs, Excise and Gold (Control) and from a reference to the cause title, it appeared to us that on the basis of the location of the records, for the cause of action which arose, this Court has no jurisdiction in its writ jurisdiction to entertain the application for a writ. Mr. Das of course stated that since the office of

the Collector of Central Excise (Appeals) is here at Calcutta and appeals are pending, so this Court will have jurisdiction. We feel on the basis of the determinations of the Supreme Court in the case of (1) [State of Rajasthan and Others Vs. Swaika Properties and Another](#), and (2) [Empire Industries Limited and Others Vs. Union of India and Others](#), this Court, in the facts and circumstances of the case will have no territorial jurisdiction to entertain the writ proceedings and if at all the proceedings could have been moved before the High Court at Patna and before the Ranchi Bench of the same.

3. We also feel that the writ petition filed by the applicants purporting to be under Article 226 of the Constitution of India in this Court at Calcutta constitutes a serious abuse of the process of the Court. The registered Company of the applicant is at Calcutta and the applicant carries on its manufacturing activity in Bhurkhunda, which is situate in the State of Bihar. The show cause notice is issued by the Superintendent of Central Excise, Ranchi. All the adjudication took place in the State of Bihar by the Central Excise authorities. Even the statutory appeal as provided for under the Act and the Rules are now pending before the Court, Delhi. The cause of action neither wholly nor in part arose within the territorial limits of the High court at Calcutta. The entire cause of action culminating in raising of the demands arose within the State of Bihar within the territorial jurisdiction of Patna High Court at its Ranchi Bench and since the applicants feel aggrieved by the purported demand as contended by them, they ought to have challenged the validity of the proceedings by a petition under Article 226 of the Constitution as the remedy of the applicants for the grant of such relief had to be sought by filing such petition before the Patna High Court, Ranchi Bench where the cause of action wholly or in part arose. We should bear in mind that the amplitude of Article 226 is to be effectively understood and the Court has a role and the power has to be exercised under Article 226 by the Court with great complication (sic). The Court is to adhere to the self imposed restraint. In spite of all these facts, the applicants sought to file an application under Article 226 of the Constitution for relief before this High Court at Calcutta. While proposing our ultimate order and rejecting this application, we feel it necessary to put on record a note of caution that it should be borne in mind that such areas of Bihar have long ceased to be territory of West Bengal and this Court has no power to extend its jurisdiction to the said area. The view that we have taken finds sustenance from the decision of Supreme Court reported in the case of [State of Rajasthan and Others Vs. Swaika Properties and Another](#), .

4. On the basis of the [Empire Industries Limited and Others Vs. Union of India and Others](#), , we also feel that the Court should refrain from passing interim orders staying realisation of taxes and that being the position, we wanted to know from Mr. Das as to what are the taxes due and payable now by the writ petitioners, who are appellants before us. Mr. Das on a reference to paragraph 30A of the application pointed out that the demands as raised, which according to him were ex parte and arbitrary, would be Rs. 5,72,47,9W.39 and, according to him, his clients have paid Rs.

3,03,58,922.00. Such being the position, it appeared to us that admittedly the writ petitioners are still required to pay Rs. 2,68,89,018.39 on account of tax. We also enquired of Mr. Das if his clients were agreeable to deposit that amount in cash with the authorities concerned within three weeks and to that he pleaded his clients' inability.

5. In fiscal matters involving indirect taxes, realisation of taxes cannot be otherwise stayed by way of grant of interim order. Interim orders staying the payment of indirect taxes until the final determination of the cases should not normally be made. Huge amount of taxes are involved in the instant case. Final disposal of the writ matters in the context of the unprecedented arrears of cases involved normally a long time. The effect of the pendency of proceedings in which interim orders have been passed, for years together works out extreme prejudice and inconvenience to the administration. It is held by the Supreme Court in the case of *Empire Industries Limited v. Union of India* (SC) (supra) that it is a matter of balance of public convenience. Non-realisation of taxes for an indefinite time creates an adverse effect on economic life causing great inconvenience to ordinary people. Governments are run on public funds and if large amounts all over the country are held during the pendency of the litigation, it is difficult for the Government to run and it becomes oppressive to the people.

6. Such and above being the position, we feel that stay, as prayed for in this case, cannot be granted on any of the grounds as indicated above and, as such, this application is rejected without any order as to costs. In view of the facts and circumstances of the case, we also feel that it is fit and proper that the application as also the appeal should be dismissed with costs assessed at 100 G.M.S.

7. On the prayer of Mr. Das, we keep it on record that nothing said in this order be deemed to be a determination of the questions as involved on merits.