PETITIONER:
ASSISTANT COLLECTOR OF CENTRAL EXCISE CHANDAN NAGAR, WEST BE

Vs.

RESPONDENT:
DUNLOP INDIA LTD. AND ORS .

DATE OF JUDGMENT30/11/1984

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 330 1985 SCR (2) 190
1985 SCC (1) 260 1984 SCALE (2)819
CITATOR INFO :
F 1985 SC1289 (10)
R 1986 SC 614 (5,6)
RF 1988 SC2010 (12)

ACT:
Constitution of India 1950 Articles 226 and 141
Interim orders in writ petition-Grant OF-Situations and circumstances-What are-Matters involving public revenue-Not sufficient showing a prima facie case-Furnishing of bank guarantee not a circumstance-Balance of convenience to be in favour of grant of interim order-Likelihood of prejudice to public interest to be shown.
Supreme Court decisions binding on all courts-Judgment per incuriam Principle of-High Court not entitled to disregard judgment of Supreme Court labeling It per incuriam.

HEADNOTE:
The Government of India by a notification dated April 6,1984, exempted tyres from a certain percentage of Excise Duty to the extent that the manufacturers had not availed themselves of the exemption granted under certain other earlier notifications.
The Customs and Excise Department was of the view that the Respondent-company who was a manufacturer of Tyres, Tubes and various other rubber products was not entitled to the aforesaid exemption as it had cleared the goods earlier without paying Central Excise Duty but on furnishing Bank Guarantees under various interim-orders of courts.
The Company claimed the benefit of exemption to the tune of about Rs. 6 crores and filed a Writ Petition in the-High Court and sought an interim order restraining the Central Excise authorities from the levy and collection of excise duty. The High Court held that a prima facie case had been made out in favour of the company and by an interim order allowed the benefit of the exemption to the tune of about Rs. 2 crores and directed that the goods be released on furnishing a Bank Guarantee.
In the Department's appeal, the Division Bench confirmed the above order with a slight modification to the effect that the Collector of Central Excise could encash 30

per cent of the Bank Guarantee.

Allowing the appeals by the Department, this Court,

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HELD: 1. The orders of the Single Judge as well as the Division Bench are wholly unsustainable and should never have been made, Even assuming the

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company had established a prima facie case, it was not a sufficient justification A for granting the said interim orders. There was no question of any balance of convenience being in favour of the respondent-Company, it was certainly in favour of the Government of India. [201B-C]

2. Governments are not run on mere Bank Guarantees. Very often some courts act as if furnishing a Bank Guarantee would meet the ends of justice. No Governmental business, for that matter no business of any kind can be run on mere Bank Guarantees. Liquid cash is necessary for the running of a Government as indeed any enterprise. [201C]

3. Where matters of public revenue are concerned, it is of utmost importance that interim orders are not to be granted merely because prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. [201D1

4. Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Art. 226. The Court must also have good and sufficient reason to by-pass the alternative remedy provided by statute. Matters involving the revenue where statutory remedies are available are not such matters. The vast majority of the petitions under Art. 226 are filed solely for the purpose of obtaining interim orders and thereafter to prolong the proceedings by one device or the other. This practice needs to be strongly discouraged. [194F-H; 195A] E

5. There are, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are about to be, or are perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury, or shake a citizen's faith in the impartiality of public administration, a court may well be justified in granting interim relief against public authority.

Samarias Trading Company Pvt. Ltd. v. S. Samuel and Ors., [1985] 2 S.C.R. 24, Siliguri Municipality v. Amalendu Das, [1981] 2 SCC 436, Titaghur Paper Mills Co. Ltd. v. State of Orissa, [1983] 2 SCC 433, Union of India v. Oswal Woollen Mills Ltd., [1984] 2 SCC 646 and Union of India v. Jain Shudh Vanaspati Ltd., C.A. No. 11450 of 1983; referred to.

6. In India, under Art. 141, the law declared by the Supreme Court shall be binding on all courts and under Art. 144 all authorities civil and judicial shall act in aid of the Supreme Court. [200B]

7. In the hierarchical system of Courts which exists in our country it is

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necessary for each lower tier, including the High Courts to accept loyally the decisions of the higher tiers. The better wisdom of the Court below must yield to the higher wisdom of the Court above. [199E-F]

8. The label per incuriam is relevant only to the right of an appellate court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a judge of the High Court to disregard a decision of the Supreme Court. [199H; 200A]

Cassel and Co. Ltd. v. Broome, [1972] A C. 1027 and Rookes v. Barnard, [1964] A.C. 1129, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4742-43 of 1984.

a Appeal by Special leave from the Judgment and order dated the 9th August, 1984 of the Calcutta High Court in FMAT No. 2139 of 1984 and 2023 of 1984.

K. Parasaran, Attorney General, V. J. Francis, Chandrasekharan, N.M. Popli and Miss Savitha Sharma for the Appellant.

F. S. Nariman, D. N. Gupta and Harish Salve for the Respondent.

The Judgment of the Court was delivered by

CHlNNAPPA REDDY, J. It is indeed a great pity-and, we wish we did not have to say it but we are afraid;we will be signally failing in our duty if we do not do so -some courts, of late, appear to have developed an unwarranted tendency to grant interim orders-interim orders with a great potential for public mischief-for the mere asking. We feel greatly disturbed. We find it more distressing that such interim orders, often ex-parte and non-speaking, are made even by the High Courts while entertaining writ petitions under Art. 226 of the Constitution, and in the Calcutta High Court, on oral application too. Recently in Samaries Trading Company Pvt. Ltd. v. S. Samuel & Ors(l). we had occasion to condemn and prohibit this practice of entertaining oral applications under Art. 226 and passing interim orders thereon. In several other cases, Siliguri Municipality v. Amelendu Das(2), Titagur Paper Mills Co. Ltd. State of Orissa,(3) Union

(1) [1985] 2 S.C R. 24.
(2) [1983] 2 S.C.C 436
(3) [1983] 2 S.C.C 433

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Of India v. Oswal Woollen Mills Ltd(l)., Union of India v. Jain Shubh A Vanaspati Ltd.(a), this Court was forced to point out how wrong it was to make interim orders so soon as an application was but presented, when a second thought (or a second's thought) would expose the impairment of the public interest and often enough the existence of a suitable alternative remedy. Despite the fact that we have set our 8 face against interfering with interim orders passed by the High Courts and made it practically a rigid rule not to so interfere, we were constrained to interfere in those cases.

In Siliguri Municipality v. Amalendu Das, (supra) A. P. Sen and M. P. Thakkar, JJ. had to deal with an interlocutory order passed by the Calcutta High Court restraining the Siliguri Municipality from recovering a graduated consolidate rate on the annual value of buildings in terms of the amended provisions of the Bengal Municipal Act. We reiterate the following observations made therein:

"We are constrained to make the observations which follows as we do feel dismayed at the tendency on the part of some of the High Courts to grant interlocutory orders for the mere asking. Normally, the High Court should not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant to stay in such matters, should be an exception and not a rule.

"It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only consideration at that juncture is to ensure that no prejudice is occasioned to the rate payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held

(l) [1984l 1.2 S.C.C. 646 t
(2) C, A. No. 11420 of 1983
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to be invalid by the court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the Court cannot be unmindful of the need to protect the authority levying the tax, for, at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed. The Court has to show awareness of the fact that in a case like the present a municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the municipality from recovering the taxes as per the impugned provision. And that the municipality has to maintain essential civic services like water supply, street lighting and public streets etc., apart from cunning public institutions like schools, dispensaries, libraries etc. What is more, supplies have to be purchased and salaries have to paid. The grant of an interlocutory order of This nature would paralyze the administration and dislocate the entire working of the municipality. It seems that these serious ramifications of the matter were lost sight of while making the impugned order".

In Titaghur Paper Mills Co. Ltd. v. S/ate of Orissa A. P. Sen E. S. Venkataramiah and R. B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and there after to have the case stated to the High Court, it was not for the High Court to exercise its extra ordinary jurisdiction under Art. 226 of the Constitution ignoring as it were, the complete statuary machinery. That it has become necessary, even now, to as to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short circuit of circumvent statutory procedures. It is only were statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of thee statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication

of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast
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majority of the petitions under Art. 226 o the Constitution are filed . solely for the purpose of obtaining interim orders and there after prolong the proceedings by one device or the other. The practice certainly needs to be strongly couraged.

In Union of India v. Oswal Woollen Mills Ltd., we had occasion to consider an interim order passed by the Calcutta High Court in regard to a matter no part of the cause of action relating to which appeared to arise within the jurisdiction of the Calcutta High Court. In that case the interim order practically granted the very prayers in the writ petition. We were forced to observe,

> "It is obvious that the interim order is of a drastic character with a great potential for mischief. The principal prayer in the writ petition is the challenge to the order made or proposed to be made under Clause 8 of the Import Control order. The interim order in terms of prayers (j) and (k) has the effect of practically allowing the writ petition at the stage of admission without hearing the opposite parties. While we do not wish to say that a drastic interim order may never be passed without hearing the opposite parties even if the circumstances justify it, we are very firmly of the opinion that a statutory order such as the one made in the present case under Clause 8-B of the Import Control order ought not to have been stayed without at least hearing those that made the order. Such a stay may lead to devastating consequences leaving no way of undoing the mischief. Where a plentitude of power is given under a statute, designed to meet a dire situation, it is no answer to say that the very nature of the power and the consequences which may ensue is itself a sufficient justification for the grant of a stay of that order, unless, of course, there are sufficient circumstances to justify a strong Prima facie inference that the order was made in abuse of the power conferred by the statute. A statutory order such as the one under Clause 8-B purports to be made in the public interest and unless there are even stronger grounds of public interest an expert interim order will not be justified. The only appropriate order to make in such cases is to issue notice to the respondent and make it returnable within a short period. This should particularly be so where the offices of the principals respondents and relevant records
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> lie outside the ordinary jurisdiction of the court. To grant interim relief straightaway and leave it to the respondents to move the court to vacate the interim order may jeopardise the public interest. It is notorious how if an interim order is once made by a court, parties employ every device and tactic to ward off the final hearing of the application. It is, therefore, necessary for the courts to be circumspect in the matter of granting interim relief, more particularly so where the interim relief is directed against orders or actions of public officials acting in discharge of their public duty and in exercise of

statutory powers. On the facts and circumstance of the present case, we are satisfied that no interim relief should have been granted by the High Court in the terms in which it was done",

We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations. Regarding the practice of some clever litigants of resorting to filing writ petitions in the far-away courts having doubtful jurisdiction, we had this to observe:

"..... Having regard to the fact that the registered office of the Company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or p in the Delhi High Court. The writ petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the Company is in the State of Punjab and all the principal respondents are in Delhi. But we do feel disturbed that such writ petitions are of ten deliberately

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filed in distant High Courts, as part of a manoeuvre in a A legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications".

In Union of India v. Jain Shudha Banaspati Ltd. (supra), Chandrachud, CJ., A. P. Sen, R. N. Misra, JJ. allowed an appeal against an interim order making the following observations:

"After hearing learned counsel for the rival parties, we are of the opinion that the interim order passed by the High Court on November 29, 1983 is not warranted since it virtually grants to the respondents a substantial part of the relief claimed by them in their writ petition. Accordingly, we set aside the said order".

We have come across cases where the collection of public revenue has been seriously jeopardised and budgets of Governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave alone in the public interest, because of the stays granted by courts. We have come across cases where an entire Service is left in a stay of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended animation. We have come across cases where buses and lorries are being run under orders of court though they were either denied permits or their permits had been canceled or suspended by Transport Authorities. We have come

across cases where liquor shops are being run under interim orders of court. We have come across cases where the collection of monthly rentals payable by Excise Contractors has been stayed with the result that at the and of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across cases where dealers in food grains and essential commodities have been allowed to take back the stocks seized from them as if to permit them to continue to indulge in the very practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been stayed by courts. Incalculable harm has been done by such interim orders. All this is not to say that interim orders may never be
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made against public authorities. There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a Court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bonafide with due regard to the public interest, a court must be circumspect in granting interim orders of far reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the Court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facia case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest There are many such factors worthy of consideration. We often wonder why in the case indirect taxation where the burden has already been passed on to the consumer, any interim relief should at all be given to the manufacturer, dealer and the like !

There is just one more thing that we wish to say. In Siliguri v. Amalendu Das, the Court was put to the necessity of pointing out the following:

> "We will be failing in our duty if we do not advert to feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the present appeal came up again, the same learned judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We
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> mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court

in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and width of the powers of the High Court to grant interim relief. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed".

We desire to add and as was said in Cassel and Co. Ltd. v. Broome(l) we hope it will never be necessary for us to say so again that 'in the hierarchical system of Courts' which exists in our country, 'it is necessary for each lower tier', including the High Court, 'to accept loyally the decisions of the higher tiers'. "It is inevitable in a hierarchical system of Courts that there are decisions 11 of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary.....
But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted"(2). The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system. In Cassel v. Broome, commenting on the Court of Appeal's comment that Rookes v. Barnard(3) was rendered per incuriam Lord Diplock observed,-

"The Court of Appeal found themselves able to disregard the decision of this House in Rookes v. Barnard by applying to it the label per incuriam That label is relevant only to the right of an appellate court to decline to

(1) [1972] AC 1027
(2) (See observations of Lord Hailsham and Lord Dipock in Broome v. Cassell).
(3) [1984] A.C. 1129.

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follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a judge of the High Court to disregard a decision of the Court of Appeal."

It is needless to add that in India under Act. 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts within the territory of India and under Art. 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

Now coming to the facts of the present case, the respondent, Dunlop India Limited is a manufacturer of types, tubes and various other rubber products. By a notification dated April 6, 1984 issued by the Government of India, Ministry of Finance (Department of Revenue) in exercise of the powers conferred by Rule 8 (1) of the Central Excise Rules, 1944, types, falling under item No. 16 of the First Schedule to the Central Excise and Salt Act, 1944, were exempt from a certain percentage of excise duty to the extent that the manufacturers had not availed themselves of the exemption granted under certain other earlier notifications The Department was of the view that the Company was not entitled to the exemption as it had cleared

the goods earlier without paying central excise duty, but on furnishing Bank Guarantees under various interim orders of courts. The Company claimed the benefit of the exemption to the tune of Rs. 6.05 crores and filed a writ petition in the Calcutta High Court and sought an interim order restraining the central excise authorities from the levy and collection of excise duty. The learned single judge took the view that a prima facie case had been made out in favour of the Company and by an interim order allowed the benefit of the exemption to the tune of Rs. two crores ninety three lakhs and eighty five thousand for which amount the company was directed to furnish a Bank Guarantee, that is to say, the goods were directed to be released on the Bank Guarantee being furnished. An appeal was preferred by the Assistant Collector of Central Excise under clause 10 of the Letters Patent and a Division Bench of the Calcutta High Court confirmed the order of the learned single Judge, but made a slight modification in that the Collector of Central Excise was given the liberty to encash 30% of the Bank Guarantee. The Assistant Collector of Central Excise has preferred this appeal by special leaue. By our interim order dated November 15, 1984, we vacated the orders granted by the learned single Judge

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as well as by the Division Bench. We gave two weeks' time to the A respondent Company to file a counter No. counter has, however been filed. Shri F.S. Nariman, learned counsel, however appeared for the respondent. We do not have the slightest doubt that the orders of the learned single judge as well as Division Bench are wholly unsustainable and should never been made. Even assuming that the company had established a prima facie case, about which we do not express any opinion, we do not think that it was sufficient justification for granting the interim orders as was done by High Court. There was no question of any balance of convenience being in favour of the respondent-Company. The balance of convenience was certainly in favour of the Government of India. Governments are not run on mere Bank Guarantees. We notice that very often some courts act as if furnishing a Bank Guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be run on mere Bank Guarantees. Liquid cash is necessary for the running of a Government as indeed any other enterprise. We consider that where matters of public revenue are concerned, it is of utmost importance to reales that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. We are very sorry to remark that these considerations have not been borne in mind by the High Court and interim order of this magnitude had been granted for the mere asking. The appeal is allowed with costs. E

N.V.K. Appeal allowed.

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