

(1980) 02 KL CK 0011
In the High Court Of Kerala
Case No : W.A. NO. 190 of 1979

Government of India and Others

APPELLANT

Vs

A.S. Bava

RESPONDENT

Date of Decision : 12-02-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 100, 147, 151, 156B, 160
Central Excises and Salt Act, 1944 — Section 35, 36, 36(2)
Constitution of India, 1950 — Article 226

Citation : (1980) CENCUS 495 : (1980) 6 ELT 625

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : T.R. Govinda Warriar, for the Appellant; S.V. Sivaraman Nair and N. Kanakachandran, for the Respondent

Judgement

V. Balakrishna Eradi, C.J.—The appellants in this appeal are the Secretary, Ministry of Finance (Department of Revenue and Insurance), Government of India, New Delhi, the Secretary, Central Board of Excise and Customs, New Delhi and the Collector of Customs and Central Excise, Cochin. The appeal is against the judgment of a learned single judge of this Court allowing O.P. No. 2007 of 1976 filed by the respondent herein - hereinafter referred to as the writ petitioner-quashing the order Ext. P 11 passed by the Government of India in its capacity as the revisional authority u/s 36 of the Central Excises and Salt Act (Act 1 of 1944)-herein- after called the Act-and directing the Government of India to consider afresh "the question of duty payable by the petitioner" and also the quantum of such duty so payable under Rule 160 of the Central Excise Rules, 1944 in accordance with law.

2. The writ petitioner is a firm carrying on business in tobacco at Cochin on the strength of licences issued to it by the Central Excise authorities. The petitioner obtained two transport permits for transportation of 570 bags of Biri tobacco from its warehouse at Cochin to the warehouses of two licensees, one at Quilon and Anr. at Kayamkulam. According to the petitioner, on 28-7-1961 itself the

entire quantity of 570 bags of tobacco, was loaded in a country boat for being transported along the backwaters to Kayamkulam and Quilon. The further case of the petitioner is that the boat had passed through the sales tax check post at Aroor, it had been checked by the sales tax authorities and found to contain 570 bags of tobacco, but thereafter while negotiating the turbulent waters of the Vembanattu lake at Thanneermukkom, it met with an accident by colliding with a stake poll and capsized. Immediate salvage operations resulted in the recovery of 106 bags and the balance quantity of tobacco carried in the boat was lost in the water without any trace. The aforesaid accident is said to have taken place during the late hours of the night on the 29th July, 1961 (at about 2 A.M. on 30th July). On 30th July itself one of the partners of the petitioner firm informed the Central Excise Range Officer, Shertallai about the accident and the Range Officer and the Superintendent of Central Excise, Alleppey are said to have gone to the scene and gathered particulars. The quantity of 106 bags, which was recovered by the salvage operations was transported back to Cochin and warehouses there as instructed by the Central Excise Authorities. Thereafter, on 6-11-1961 the petitioner filed an application before the Collector of Customs and Central Excise, Cochin praying for remission of the duty, payable in respect of the entire consignment of 570 bags of tobacco on the ground of loss and destruction of the goods by reason of the accident that occurred while they were under transit from Cochin to the destinations at Kayamkulam and Quilon. On 27-2-1962 the Superintendent of Central Excise, Ernakulam issued a demand on the petitioner for payment of a sum of Rs. 68,963.80 being the duty leviable in respect of the consignment that was said to be lost. The petitioner was also threateived with action for cancellation of the licence issued to the firm in respect of its bonded warehouse at Cochin. Thereupon the petitioner came up to this Court by filing O.P. No. 630 of 1962 praying for the issuance of a direction to the Collector of Customs and Central Excise, Cochin and the Superintendent of Central Excise, Ernakulam to keep in abeyance the proceedings initiated against the firm for the collection of the duty and for the proposed cancellation of the warehouse licence pending final determination of the claim for remission of the duty made by the petitioner in the application dated 6-11-1961. By judgment dated 28th August 1963, this Court disposed of that writ petition with a direction to the respondents not to pursue the action for realisation of the duty initiated under the notice dated 27-2-1962 until the application moved by the petitioner for remission of duty under Rule 147 of the Central Excise Rules was finally disposed of. While issuing the said direction, this Court ordered that the petitioner should execute a bond in favour of the President of India for a sum of Rs 70,000/- to cover any possible claims that may eventually arise pursuant to the notice impugned in that petition, miking it clear that the said band will be enforceable by the Customs authorities only after the final disposal of the application filed by the petitioner-firm under Rule 147. We are informed that in compliance with the said direction issued by this Court the petitioner-firm has executed a bond in favour of the President of India for the sum of Rs. 70,000/-.

3. Thereafter the Collector of Customs and Central Excise issued to the petitioner two show cause notices as per Exts.P1 and P2 on 22-4-1964. By the first notice the petitioner was called upon to show cause why the firm should not be subjected to the imposition of penalty for contravention of Rule 161 (c) and (d) read with Rule 156B of Central Excise Rules, 1944 and why the duty of Rs. 68,963.80 being the duty payable in respect of the 370 bags of biri tobacco weighing 26122.65 Kgs. should not be demanded from the petitioner-firm under Rule 100 read with Rule 156B of the Central Excise Rules. By the second notice, Ext. P2, the petitioner was charged with having transported a quantity of 3577.75 Kgs. of non duty paid biri tobacco in 106 bags to Velliampuram near Thanneermukkom without any valid transport documents and thereby contravened Rule 33 (1) of the Central Excise Rules, 1944. This charge was laid on the assumption that the 106 bags of tobacco that had been salvaged from water was found to be of inferior quality and could not therefore have formed part of the consignment of 570 bags that was permitted to be cleared from the petitioner's bonded warehouse in Cochin under AR3-194 and 195 permits dated 28-7 1961. The petitioner-firm was therefore required to show cause why a penalty should not be imposed on it for contravention of Rule 32(1) of the Central Excise Rules and why the quantity of 3577.75 Kgs. of biri tobacco in respect of which the offence was alleged to have been committed should not be confiscated under Rule 32(2).

4. In the meantime, on 21-2-1964 another notice had been issued to the petitioner directing the firm to show cause why its petition dated 6-11-1961 for remission of duty should not be dismissed on the grounds firstly that Rule 147 of the Central Excise Rules, whereunder the prayer for remission had been made, applies to goods lodged in a warehouse and secondly that the alleged accidental loss of tobacco in the backwaters near Thanneermukkom reported by the firm was not genuine. Exts. P4 and P5 are the detailed replies submitted by the petitioner to the notices Exts. P1 and P3. The matter was ultimately disposed of by the Collector of Customs and Central Excise, Cochin by an elaborate order dated 19-8-1965, a copy of which was produced along with the Original Petition and marked as Ext. P7. By the said order the Collector rejected the request of the petitioner-firm for the remission of excise duty and called upon the petitioner to pay duty in respect of the entire quantity of 570 bags of biri tobacco under Rule 151 (c) read with Rule 160 of the Central Excise Rules on the ground that the said tobacco had been illegally removed by the petitioner from the said warehouse. The Collector also ordered confiscation of the salvaged tobacco contained in 106 bags by invoking the power conferred by Rule 32 of the Central Excise Rules. The petitioner-firm was however given an option to redeem the said quantity of tobacco on payment of a fine of Rs 1,000/- in lieu of confiscation and warehouse the same in their warehouse or clear the goods therefrom on payment of duty. Besides the above the Collector imposed on the petitioner a penalty of Rs- 500/- under Rule 32(2) for illegal transport of 106 bags of tobacco and also a further penalty of Rs 2,000/- under Rule 151(c) for illicit removal of

570 bags of biri tobacco from the petitioner's warehouse at Cochin.

5 Aggrieved by the aforesaid order passed by the Collector, the petitioner referred an appeal before the Central Board of Excise and Customs, New Delhi That appeal was disposed of by the Central Board as per its NeW Ext P9 dated 5-10-1971. After a fairly detailed discussion of the evidence available on record the Central Board arrived at the finding that the case put forward by the petitioner that the goods consisting of 570 bags of biri tobacco removed from the warehouse at Cochin had been loaded on best for transportation to KLAYAMKULAM and Quilon and that the said boat met with an accident resulting in loss and destruction of the goods save to the extent of 106 bags which was recovered in salvage in a badly damaged condition could not be accepted as true. The conclusion reached by the Central Board was that out of the 570 bags removed from the petitioner's warehouse in Cochin, 464 bags were not at all loaded in the boat which is alleged to have met with the accident and that the alleged accident itself was only a stage managed affair. In regard to the 100 bags of tobacco said to have been recovered from the backwaters by salvage operations the Central Board held that though there was reason to entertain a doubt that the tobacco Salvaged was not of the same quality as that which had been removed from the warehouse under the permits, the markings and numbers on the salvaged bags tallied with the entries in the transport permit and hence it was only fair to give the petitioner the benefit of doubt, in the absence of clinching facts to establish the charge that the tobacco contained in this 106 bags was not part of the consignment of 570 bags removed from the warehouse on 28- 7-1961 In this view the Central Board set aside the order passed by the Collector in so far as it directed the confiscation of the salvaged tobacco contained in 106 bags. The direction issued by the Collector for payment of duty by the petitioner was confirmed in respect of the missing 464 bags of tobacco and the penalties imposed on the petitioner by the Collector were also confirmed by the Central Board. The petitioner thereafter preferred a also petition before the Government of India u/s 36 of the Act challenging the order of the Appellate Authority in so far as it had gone revision petition was disposed of by the Government of India in a rather summary fashion as per the order Ext. P 11 dated 19th December, 1975 After very briefly setting out the purport of the action taken against the petitioner by the Collector and the Central Board of Excise and Customs, the order Ext. P 11 proceeded to state as follows :-

"Government of India observe that the entire case forms on facts. The alleged accident took place more than 14 years ago and looking into the dispositions as recorded at the initial stages and subsequently, Government of India do not find that any strong case has been made out for a reassessment of the facts. There is no ground to revise the findings of member Central Board of Excise and Customs. The duty should be paid for 464 bags of tobacco with the penalty as imposed by the Collector"

On receipt of the said order from the Government of India, the petitioner came

up to this Court by filing O.P. No. 2007 of 1976, out of which this writ appeal arises, seeking to quash Exts. P7, P9 and P11. The main complaint put forward by the writ petitioner was that in passing the order Ext. P9 the Appellate Authority had omitted to advert to the crucial facts and circumstances which, if considered, would have clearly shown that the case put forward by the petitioner that the goods in question had been loaded into the boat and had been subsequently lost in the backwaters on account of the accident to the said boat, was genuine and true. It is further urged in the Original Petition that the revisional authority had disposed of the revision petition in a rather summary manner under a misconception that it was not part of its function to review the findings of fact entered by the subordinate authorities and that by reason of such a defective approach, the petitioner had been denied a just and fair consideration of its case at the hands of the revisional authority. Another point that was taken in the writ petition was that the entire quantity of 570 bags of tobacco had been removed by the petitioner from the warehouse only on the strength of a permit duly issued by the Central Excise Authorities and hence there was no justification whatever for imposing on the petitioner any penalty under Rule 151(c) on the charge the Rules. warehouse otherwise than in accordance with the Rules.

6. The learned single Judge upheld the last contention of the petitioner and vacated the direction contained in the order Ext. P7 imposing a penalty of Rs 2,000/- on the petitioner-firm under Rule 151(c) of the Rules. The appellate and revisional orders were also consequently modified to the said extent. On the question of liability of the petitioner for payment of duty for 464 bags of tobacco, the learned Judge elaborately went into the contentions raised on both sides adverting also to certain aspects adduced in the case and ultimately came to the conclusion that there had not been a proper approach to the case by the revisional authority after due advertence of all the aspects brought out in the evidence and hence it was necessary in the interest of justice to direct the revisional authority to consider the revision petition afresh in the light of the observations contained in the judgment and determine whether on the material available on record the conclusions reached by the revisional and appellate authorities could be sustained. The order Ext. P7 was accordingly set aside by the learned Judge and the Government of India was directed to consider the matter afresh in accordance with law.

7. It was strongly contended before us by the learned Central Government Pleader appearing on behalf of the appellants that in a writ petition filed under Article 226 of the Constitution the learned Judge not to have conducted a detailed scrutiny of the evidence with a view to determine whether the finding of facts entered in the impugned orders could be legally sustained. According to the learned counsel for the appellants the learned single Judge has in his judgment proceeded virtually to reappreciate the evidence adduced in the case and to differ from the findings recorded by the original and first appellate authorities on the crucial question as to whether the case put forward by the writ petitioner in regard to the alleged accident to the boat was true and probable. On this basis it

is urged that the interference-made by the learned Judge with the revisional order Ext P 11 was not justified.

8. We do not think that the criticism levelled by the learned counsel against the judgment of the learned single Judge is correct or justified. It is true that certain aspects brought out in evidence have been referred to in the judgment of the learned single Judge, but that discussion was not by way of reappreciation of evidence, but only for pointing out that there was a glaring omission on the part of the original and appellate authorities to advert to certain aspects that were highly crucial and relevant, for a proper determination of the main question involved in the case. Such a course become necessary for the learned single Judge only because of the fact that the revisional order proceeded on the erroneous basis that it was not incumbent on the revisional authority to examine or review the findings of fact entered by the subordinate authorities and hence there was no discussion whatever contained therein about the contentions put forward by the writ petitioner in support of the challenge raised by it against the finding entered by the original and appellate authorities.

9. u/s 36(2) of the Act the Central Government is empowered to examine the correctness, legality or propriety of the decision or order passed by the Appellate Authority u/s 35 and to pass such order thereon as it thinks fit. It is certainly within the scope of the said power conferred on the revisional authority to examine the legality, propriety and correctness of the findings of fact entered by the appellate and revisional authorities and when a challenge has been raised by the revision petitioner against the findings of fact entered by the subordinate authorities adversely to it, the revisional authority is bound to consider the said matter and write a speaking order recording its conclusions and the reasons in support thereof- see *Moti Ram Vs. Suraj Bhan and Others*, , and *K.V. Mathai v. Subordinate Judge, Kottayam and Ors.* [1969 KLT 346 (S.C.)]. No doubt, as pointed out by this Court in *Boraswami Chettiar v. Nhandamandas Kunhiraman and Ors.* (1969 K.L.J. 227), the jurisdiction exercised by the Government of India u/s 36(2) being revisional in character, it is not expected to treat the proceedings as an appeal and substitute its own conclusions on questions of fact in the place of these arrived at by the subordinate authorities. But the revisional authority must, all the same, examine the legality, propriety and correctness of the findings entered by the subordinate authorities and in case it is found that a finding of fact can legitimately be characterised as "improper" in the sense of its being wholly unreasonable or perverse, it is the duty of the revisional authority to interfere with such finding and render justice between the parties. There is nothing in the order Ext. P 11 to show that this essential function has been discharged by the regional authority. An order passed u/s 36 (2) of the Act, in order to satisfy the minimal requirements of a "speaking order", must atleast contain sufficient material to indicate that the revisional authority has applied its mind to the relevant aspects brought out in the evidence and reached a conclusion on the question of legality, propriety and correctness of the findings recorded by the, subordinate authorities. In as much as Ext. PII did not satisfy

the said requirement of law, the learned Judge was, in our opinion, fully justified in setting aside the said order.

10. There is, however, some force in the submission made by the Central Government Pleader that some of the observations contained in the judgment of the learned single Judge are liable to be misconstrued as containing expressions of opinion by this Court regarding the credibility of the versions given by some of the witnesses or the probability or otherwise of the case put forward by the writ petitioner in relation to the alleged accident to the boat. In order to allay any apprehension in this regard we make it clear that the revisional authority is free to dispose of the revision petition afresh and arrive at its own conclusions on the questions of fact untrammelled by any of the expressions of opinion contained in the judgment of the learned single Judge with respect to the evidence adduced in the case. With this clarification, we confirm the judgment of the learned single Judge in so far as it has quashed Ext. PI 1 and directed a fresh disposal of the revision petition by the Government of India in accordance with law.

11. The only other question that remains is, whether the learned single Judge was right in setting aside the order Ext. P7 in so far as it has imposed on the writ petitioner a penalty of Rs. 2,000/- under Rule 151 (c) of the Rules. Admittedly, the petitioner removed the 570 bags of tobacco from" his bonded warehouse in Cochin only on the strength of permits issued to it by the authorities under Rules. It cannot, therefore, be said that there was any removal of goods from the warehouse by the petitioner otherwise than in accord- ance" with the Rules. We see no force in the contention advanced by the Central Government Pleader that in a case where permission granted to a licensee was for the purpose of rewarehousing in another warehouse situated in a different place the removal from the first werehouse has to be regarded as unsupported by authorities if the goods were not subsequently rewarehoused at the place of destination originally contemplated. Rule 151(c) will get attracted only if the owner of goods warehoused, by himself or by any person in his employ removes goods from a warehouse otherwise than as provided by the Rules. The petitioner had complied with the requirement in the Rule regarding the obtaining of a permit for the removal of the goods from his warehouse. It is no doubt true that the permit had been granted on the basis of the representation that the goods were to be transported from the petitioner"s warehouse at Mattancherry to the warehouse of two other persons at Kayamkulam and Ouilon respectively. Even if it is to be assumed for the purpose of discussion that the petitioner had deliberately failed to carry out the obligation for re- warehousing the goods in the warehouses of the two other persons at Kayamkulam and Ouilon, that will not convert the removal into one-made other- wise than as provided by these rules". Hence, we hold, with respect, that the learned Judge was fully right in holding that the Collector had acted illegally and without jurisdiction in imposing on the petitioner a penalty of Rs. 2,000/- on the ground of contravention of Rule 151(c). The contention of the Central Government Pleader in this regard will accordingly stand rejected.

The Writ Appeal is disposed of as above- The parties will bear their respective costs.