
(1978) 03 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 506 of 1974

Inspector, Central Excise

APPELLANT

Vs

Bengal Paper Mills Co. Ltd.

RESPONDENT

Date of Decision : 21-03-1978

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A, 160, 56, 9(1)
Central Excises and Salt Act, 1944 — Section 35
Sea Customs Act, 1878 — Section 167(12A), 52A

Citation : (1978) 1 CALLT 284 : (1979) CENCUS 5 : 82 CWN 766 : (1978) 2 ELT 515

Hon'ble Judges : M.M. Dutta, J;D.C. Chakravorti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.C. Chakravorti, J.

M.M. Dutta, J.—This appeal has been preferred by the Central Excise Authorities and the Union of India against the judgment of P.K. Banerjee J. whereby his Lordship made the Rule Nisi obtained by the respondent on its application under Article 226 of the Constitution absolute.

2. The respondent the Bengal Paper Mill Co. Ltd. is a manufacturer and dealer of paper and board of various types and qualities and owns and runs a paper Mill at Ranigunj, in the district of Burdwan. During the period from March 1, 1963 to 31, 1963 the respondent removed from its factory 21,599.1 Kgs. paper alleged to be "5% Rag D. S. Azure Laid Gateway 51/78. 5-22.7 Kg ", after making applications in the A.R. 1 forms and paying excise duty under item 17 (3) of the First Schedule to the Central Excises and Salt Act, 1944, hereinafter referred to as the Act. On May 29, 1963, a sample of the said quantity of paper removed by the respondent from its factory was drawn by the Central Excise Authorities for the purpose of chemical test. The Assistant Collector of Central Excise, Asansol Division, by his letter dated August 6, 1963, informed the respondent that the

said sample was found to be Bond paper without any water-mark and, as such, was assessable under item 17 (2) of the First Schedule to the Act. The respondent preferred an appeal against the finding as contained in the said letter of the Collector of Central Excise. The appeal was dismissed. Thereafter, the respondent preferred a revisional application to the Central Government which has since been dismissed. During the pendency of the said revision case before the Central Government, the respondent received a notice of demand under Rule, 10A of the Central Excise Rules, 1944, hereafter referred to as the Rules. In the said notice of demand, it was inter alia alleged that as the said quantity of paper removed by the respondent from its factory during the above period was found on a chemical retest to be Bond paper, the respondent was liable to pay excise duty under item 17 (2) of the First Schedule to the Act at the rate of 50 paise per Kg. and 20% special excise duty and, as such there was a short levy of duty during the period in question. Accordingly, by the said notice of demand, the differential duty at the rate of 28 paise per Kg and 20% special excise duty on the said quantity of goods removed by the respondent during the said period was demanded under Rule 10A of the Rules. The respondent moved a writ petition against the said notice of demand and obtained the Rule Nisi out of which this appeal arises. The learned Judge came to the finding that Rule 10 and not Rule 10A applied to the facts and circumstances of the case and as the demand was made beyond the period of limitation as prescribed by Rule 10, it was barred. Upon the said finding, the learned Judge quashed the notice of demand and made the Rule absolute. Hence this appeal.

3. At the outset, Mr. Samarendra Nath Banerjee, learned Advocate appearing on behalf of the appellants has taken a preliminary objection as to the maintainability of the writ petition. It is contended by him that as an appeal lay against the said notice of demand u/s 35 of the Act, the writ petition was not maintainable in view of Clause (3) of Article 226 of the Constitution as amended by the Constitution (Forty-second Amendment) Act, 1976. Under Clause (3), no petition for the redress of any injury referred to in Sub-Clause (b) or Sub-Clause (c) of Clause (i) shall be entertained if any other remedy for such redress is provided for by or under any other law for time being in force. Clause (3), therefore, expressly excludes Sub-Clause (a) from the restriction contained in it. Sub-Clause (a) of Clause (1) of Article 226 provides for the enforcement of any of the rights conferred by the provisions of Part III of the Constitution. It thus follows that an alternative remedy will not be a bar when the right to be enforced is one of the rights conferred by the provisions of Part III. Clause (i) of Article 31 of the Constitution provides that no person shall be deprived of his property save by authority of law. Article 31 is included in Part III of the Constitution and it is not disputed before us that by challenging the impugned notice of demand, the respondent has sought to enforce its right to property within the meaning of Clause (i) of Article 31. It is, however, contended on behalf of the appellants that as the demand was made under the authority of law, it is not correct to say that the respondent was I sought to be deprived of its property without such

authority. In support of this contention, it is argued that the appellants were entitled to claim excise duty under the provision of Rule 9(2) of the Rules. We are, however, unable to accept this contention. The impugned notice of demand has been issued by the appellants under Rule 10A and not under Rule 9(2). Moreover, Rule 9(2) relates to removal of excisable goods without any assessment and payment of excise duty in contravention of Sub-Rule (1). In *N.B. Sanjana v. The Elphinstone Spinning and Weaving Mills Co. Ltd.* [1978 ELT (J 399)], it has been laid down by the Supreme Court that in order to attract Sub-Rule (2), the goods should have been removed clandestinely and without assessment. It is however, not the case of the appellants that the goods have been removed clandestinely or without any assessment. Rule 9(2) has, therefore, no manner of application.

4. It is next contended on behalf of the appellants that the respondent, which is a company, has no fundamental right as held by the Supreme Court in *The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others*, , and accordingly, there is no question of violation of any of the rights conferred by the provisions of Part III of the Constitution as contemplated by sub-clause (a) of Article 226(1). This contention is without any substance. In the case of *State Trading Corporation of India Ltd (Supra)*, it has been held by the Supreme Court that a company is not a citizen of India consequently it has no fundamental right as conferred on the citizen of India under Article 19 of the Constitution. It is not the decision of the Supreme Court that a person who is not a citizen is not entitled to any of the rights conferred by Part III of the Constitution; but what has been laid down is that in order to be entitled to the fundamental rights conferred by Article 19 of the Constitution, one must be a citizen of India which a company is not. The Supreme Court has made a pointed reference to a clear distinction made I between "persons" and "citizens" in Part III of the Constitution. The right to property under Article 31 of the Constitution is not restricted only to the citizens of India, but it is conferred on non-citizen as well.

5. In support of the contention as to the non-maintainability of the writ petition, the appellants have placed reliance on another decision of the Supreme Court in *Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others*, . In the case, an order as passed by the customs authorities confiscating the appellant's motor vessel "Eastern Saga" under Section. 167(12A) of the Sea Customs Act, 1878 for the contravention of Section 52A of the said Act which provides that no vessel constructed, adapted, altered, or fitted for the purpose of concealing goods shall enter or be within the limits of any port in India, or the Indian customs water. In that case, it as inter alia argued on behalf of the appellants that Section 52A was ultra vires Articles 14, 19 and 31(1) of the Constitution and, as such, is constitutional and invalid. In repelling the said contention, the Supreme Court made the following observation :

"We do not purpose to consider the ts of this argument, because the appellant is not only a company, but also a being company, and such is not entitled to claim the benefit of Article 19. It is only citizens of India who have been guaranteed the right to freedom enshrined in the said article. If that is so, the plea under Article 31(1) as well as under Article 14 cannot be sustained for the simple reason that in supporting the said two pleas, inevitably the appellant has to fall back upon the fundamental right guaranteed by Article 19(1)(f)."

Relying on the said observation, it is argued on behalf of the appellants before us that in order to avail itself of the provision of Article 31(1) of the Constitution, the respondent has to fall back upon Article 19(1)(f) and (g) of the Constitution or, in other words, the respondent must be a citizen of India having fundamental rights under Article 19(1) of the Constitution. This contention is wholly misconceived and does not arise in the facts and circumstances of the case. In the case before the Supreme Court the appellant, which was a foreign company challenged the constitutional validity of the provision of Section 52A of the Sea Customs Act on the ground that the said provision infringed its fundamental right guaranteed under Article 19(1)(f) of the Constitution. It was pointed out by the Supreme Court that as the appellant was not a citizen, it had no fundamental right as conferred on the citizens under Article 19(1) and so there could be no question of Section 52A being ultra vires Article 19(1)(f). The subsequent observation of the Supreme Court in the said case has made the position clear. It was observed :

"That whole argument is that the appellant is deprived of its property by operation of the relevant provisions of the Act and these provisions are Invalid. All that Article 31(1) provides is that no person shall be deprived of his property save by authority of law. As soon as this plea is raised, it is met by the obvious answer that the appellant has been deprived of its property by authority of the provisions of the Act and that would be the end of the plea under Article 31(1) unless the appellant is able to take the further step of challenging the validity of the Act, and that necessarily imports Article 19(1)(f).

* * * *

The plain truth is that certain rights guaranteed to the citizens of India under Article 19 are not available to foreigners and pleas which may successfully be raised by the citizens of the strength of the said rights guaranteed under Article 19 would, therefore, not be available to foreigners. That being so, we see no substance in the argument that if Section 52A is construed against the appellant, it would be invalid, and so, the appellant would be able to resist the confiscation of its vessel under Article 31(1)."

The above contention of the appellant is, therefore, rejected.

6. The principal point for consideration is whether Rule 10 or Rule 10A applies to the facts and circumstances of the case. The said rules are as follows:

* * * *

7. It has been already stated that before clearing the goods from its factory the respondent applied in the A.R.I, forms for the purpose of assessment of excise duty. In the applications, the goods were described as "5% Rag D.S. Azure Laid Gateway 51/78, 5-22.8 Kg." Excise duty was payable on such goods under item 17(3) of the First Schedule to the Act. After the officer concerned had made assessments of the excise duty payable on the goods under that item, the respondent paid excise duty as assessed before removing the goods. In the impugned notice of demand it was alleged that on re-test it was found that the goods that were cleared by the respondent during the period in question were Bond papers liable to assessment of excise duty under item 17(2). The respondent was accordingly called upon to pay the differential amount of excise duty.

8. The impugned notice of demand was admittedly issued beyond the period of three months as prescribed by Rule 10. There can be no doubt that if Rule 10 applies it must be held that the demand was barred. It is, however, contended on behalf of the appellants that as the respondent had suppressed the fact that the papers in question were Bond papers or, in other words, the respondent having wilfully made a mis-statement as to the description of the goods, Rule 10A and not Rule 10 applied. Under Rule 10, one of the grounds for short-levy of excise duty is mis-statement as to the description of the goods. It is argued by the appellants that "mis-statement" as contemplated by Rule 10 is a bona fide mis-statement and not a deliberate or wilful mis-statement or one based on deliberate suppression of facts. It is contended that the respondent deliberately suppressed the fact that the papers that were removed were Bond papers and made a mis-statement about the same in the said applications. It is difficult for us, nor is it within the scope of this appeal, to embark on the adjudication of the question whether the goods were of a particular quality or not. Assuming that they were of the description as alleged and the respondent had made a deliberate mis-statement about the same, we have to see which of the rules was applicable, and for that purpose it is necessary to construe the word "mis-statement" in Rule 10.

9. The word "mis-statement" has not been defined in the Act or in the Rules. According to Chambers Twentieth Century Dictionary, New Edition 1972, the word "mis-state" means "to state wrongly or falsely", but according to the Concise Oxford Dictionary, Fifth Edition, it means "state wrongly". As there is some difference between the two sets of meaning, let us see which of the two meanings is contemplated by Rule 10. In other words, whether the word "mis-statement" means "false statement" as well. Another ground of short-levy of excise duty under Rule 10 is collusion on the part of the officer. "Collusion" as per the Concise Oxford Dictionary, Fifth Edition, means "fraudulent secret understanding .." There can be no doubt that by collusion the rule refers to the collusion between the officer and the owner. As the rule does not limit the scope

of "collusion", it may be in respect of any matter resulting in the short-levy of excise duty. It may so happen that in a particular case the owner may, in collusion with the officer concerned, make a mis-statement about the description of the goods for the purpose of short-levy of excise duty. In such a case, the mis-statement would undoubtedly be a false statement, but it cannot be said that Rule 10 would not apply, for there is the collusion of the officer. So, if the meaning of the word "mis-statement" is confined only to unintentional "wrong statement", it would be difficult to reconcile such a meaning with an intentional mis-statement or a false statement made by the owner in collusion with the officer concerned. In our view, the word "mis-statement" in Rule 10 is not confined only to a bona fide wrong statement, but it also includes a false statement. If the word is given a narrow and restricted meaning, namely, that it only means a bona fide and unintentional wrong statement, it would be very difficult for the Excise authorities to decide whether a particular statement is a wrong statement, simpliciter or a false or fraudulent statement. The view which we take finds support from an unreported Bench decision of the Bombay High Court (Original Side Appeal No. 69 of 1963)-disposed/of on 1st/2nd July, 1965) which was challenged before the Supreme Court in the case N.B. Sanjana v. The Elphinstone Spinning and Weaving Co. Ltd. referred to above. It was held by the Bombay High Court that the word "mis-statement" would include not only innocent but even fraudulent mis-statements.

10. Much reliance has been placed on behalf the appellants on a Bench decision of the Gujarat High Court in *Shri Dinesh Mills Ltd. v. Union of India* 1974 (2) Tax LR 2313. What happened in that case was that certain fabrics were brought by the plaintiff company from a weaving factory with the permission of the Collector of Central Excise who had already exempted the goods in question from payment of duty. For subsequent years also full duty was not charged on the ground that the goods in question were not manufactured by the plaintiff. It was subsequently found that the plaintiff had obtained permission by misrepresentation and by concealing certain facts, and demand notices for payment of excise duty were issued by the Excise authorities under Rule 10A of the Rules. The Gujarat High Court, while holding that Rule 10A would apply observed that it was not because of any inadvertence, error, collusion or misconstructions on the part of the officer or through some mis-statement as to the quantity, description or value of such goods on the part of the owner or any other circumstances enumerated in the rule that duty had been short-levied. It is clear from the facts of the said case, before the Gujarat High Court that there was no mis-statement as to the description of the goods, but a false representation was made by the plaintiff company that the goods were not manufactured by it. The facts of that case are, therefore, quite different from those of the instant case before us. Similarly, the facts in the case of *Ramalinga Choodambikai Mills Ltd. Vs. The Government of India and Others*, , on "which reliance has been placed on behalf of the appellants, are also completely different. The questions that were involved in that case were whether periodical

test reports on the samples taken under Rule 56 of the Rules could be relied on for the entire period and whether there was violation of the principles of natural justice in connection with such tests. Further, it was found in that case that the additional demand could be sustained under Rule 9B of the Rules and the notice of demand was not vitiated by the wrong mentioning therein of Rule 10A. The above two decisions are, therefore, of no help to the appellants.

11. Lastly, the appellants have relied on a Bench decision of this Court in *Mahindra Nath Chatterjee v. The Collector of Central Excise and ors.-Cencus* (Vol. V) 430. We fail to understand how the decision in that case supports the contention of the appellants. In the facts and circumstances of that case it was held that the specific provision of Rule 160 of the Rules for the consequences of removal of goods without permission in the case of warehouse and not the general provision of Rule 10, would apply. That case has, therefore, no bearing on the questions involved in this appeal. No other point has been argued on behalf the appellants.

12. After considering the facts and circumstances of the case and the contentions made on behalf of the parties, we are of the view, that the learned Judge was perfectly justified in holding that Rule 10 applied and accordingly the impugned notice of demand was barred.

In the result, the appeal is dismissed, but there will be no order for costs.