

(1986) 02 KAR CK 0017

In the Karnataka High Court

Case No : Writ Appeal No"s. 387 to 396 of 1981

Inspector of Central Excise and Others

APPELLANT

Vs

S.T. Venkataramanappa and Others

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 19, 2 (11), 24, 29, 3 (1)

Citation : (1986) 9 ECC 60 : (1986) 24 ELT 484

Hon'ble Judges : R.S. Mahendra, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K. Shivashankar Bhat, for the Central Government, for the Appellant; M.R. Lakshmikantaraj Urs, for the Respondent

Judgement

Purraswamy, J.—These appeals are by the appellants who were the respondents (revenue) and are directed against the common order dated 21-11-1980 of Srinivasa Iyengar, J., allowing Writ Petitions Nos. 3510, 3511, 7400 to 7407 of 1979 filed by the respective respondents who were the petitioners.

2. The respondents are growers and curers of tobacco in the places licensed under the Central Excises and Salt Act of 1944 (Central Act No. 1 of 1944) and the Central Excise Rules of 1944 framed thereunder ("the Act and the Rules"). As curers of tobacco, the respondents are exigible to excise duty under the Act.

3. On different dates, the respondents sold different quantities of tobacco grown and cured by them to one Shri K. Subramanyam, a power of attorney holder of one Sri P. Nanjappan of Padupalyam Gobi of Tamilnadu State, a licenced warehouseman and a dealer in tobacco, without however, making payment of excise duty chargeable on such tobacco under the Act. On effecting such sales, the respondents delivered such tobacco to Subramanyam, issued him with requisite transport passes and reported that fact also to the Superintendent of Central Excise of the area. For reasons that are unnecessary to notice and examine, the cured tobacco sold by the respondents neither reached Padupalyam Gobi nor Nanjappan made payment of the excise duty on the same. In that view,

the Superintendents of Hiriya and Tumkur evidently with the approval or concurrence of their superior officers by separate but identical demands called upon them to make payment of the duty due thereon under the Act. On receipt of those demands, the respondents in Writ Appeals Nos. 387 to 390 and 394 of 1981 who were the petitioners in Writ Petitions Nos. 3510, 3511, 7400, 7401 and 7405 of 1979 paid the excise duty demanded from them under protest and the others did not make payment of the amount demanded from them. But, all of them approached this Court under Article 226 of the Constitution challenging the demands made against them and seeking for appropriate reliefs. On consolidating their writ petitions, Srinivasa Iyengar, J. by a common order made on 21-11-1980 has allowed them quashing the demands and directing refunds to those who had made payments. Hence, the appeals.

4. Sri K. Shivashankar Bhat, learned senior standing counsel for the Central Government appearing for the appellants has urged that on intimation of transfers and receipt of such transfers by the Superintendents of the areas, where there was curing, the curers of tobacco or manufacturers were not absolved from payment of excise duty under the Act and the view expressed by the learned Judge to the contrary was not sound.

5. Sri M. R. Lakshmikantaraj Urs, learned counsel for the respondents in supporting the order of the learned Judge relied on a ruling rendered by Ramanujan, J. of the High Court of Madras in *E.M. Karuppannan v. Union of India and Others* [1978 E.L.T. 481] and the views expressed by Taraporevala and Parikh in their treatise "the Law of Central Excise" Second Edition at page 615 under the heading "curers obligation".

6. Before the learned Judge, the respondents maintained that on sales and delivery of tobacco and requisite intimation of transfers their liability for payment of excise duty under the Act completely stood extinguished notwithstanding its non-payment by the purchaser. In resisting the same, the appellant urged that the liability for duty on curers never stood extinguished and that on the failure of the purchasers they were liable for the same. On these rival contentions, referring to definition of "proper officer" occurring in Rule 2(xi), Rules 19, 24 and 29 the learned Judge expressed thus :

"..... The only grievance made is that the proof of receipt of the goods at the warehouse destination is not given or accepted. That is an irrelevant circumstance so far as absolving the liability of the petitioners are concerned in regard to the payment of excise duty."

* * * Therefore no sooner than the curer reports the transfer of ownership to the proper officer and the same is acknowledged by the proper officer, his liability to pay the excise duty comes to an end."

In order to decide whether this is correct or not, it is first necessary to notice the rules of construction, the charging section of the Act and Rules 9, 19, 24, 29 and 49 that bear on the same.

7. A machinery provision in a fiscal statute should be so interpreted as to make the charging provision of that statute effective is now well settled. In *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, Bhagwati, J. (as His Lordship then was) referring to various passages of Lord Denning and Learned Hand has elaborately explained the principle of progressive construction of statutes in these words :

"..... The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formula because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the Legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and, as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hands when he said :

"..... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing; be it a statute a contract or anything else. But, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

8. We must not adopt a strictly literal interpretation of S. 52, sub-s. (2), but we must construe its language having regard to the object and purpose which the Legislature had in view in exacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which S. 52, sub-s. (2) appears, because, as pointed out by judge Learned Hand in the most felicitous language :

"..... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate re-course to the setting in which all appear, and which all collectively create."

In *McDowell and Co. Ltd. Vs. Commercial Tax Officer*, the Supreme Court reviewing all the earlier cases reiterating the same had expounded that tax measures should not be interpreted as to provide for evasion of taxes. In *C. Arunachalam Vs. Commissioner of Income Tax, Karnataka, Bangalore*, a Full Bench of this Court reiterating the progressive rule of construction of statutes has expressed thus :

"So far as the fiscal statutes are concerned, we must remember one more principle. The provisions in a fiscal statute are not to be so construed as to furnish a chance of escape and a means of evasion. In case of doubt, the fiscal statute should be construed in favour of and beneficial to the subject."

Bearing these principles we must ascertain the true scope and ambit of the provisions that bear on the question.

Section 3(i) of the Act which is the charging section reads thus :

"3. Duties specified in the First Schedule to be levied (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the First Schedule."

On the true nature of the duty or tax levied under the Act a Constitution Bench of the Supreme Court in *R.C. Jall Vs. Union of India* (UOI), referring to the earlier leading cases of the Federal Court and Privy Council in *AIR 1939 1* (Federal Court) and *The Province of Madras v. Messrs. Boddu Paidanna and Sons* 1978 E.L.T. 272 : (AIR 1942 F.C. 33) expressed thus :

"Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, its ultimate incidence will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the import, that is, it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience...."

In *Ahmed Hussain Khan Vs. State of Andhra Pradesh*, the Supreme Court (vide para 12) had followed the same. the Taxable event is the manufacture of goods and the person immediately and primarily liable to pay the duty or tax under the Act is the manufacturer. the elaborate and detailed provisions made in the Act or the various Rules again to borrow the very words of the Supreme Court in *Jall*'s "confuses the incidence of taxation with the machinery provided for the collection thereof". In *Bombay Tyre International Limited*'s case the Court has reiterated the same principle. With respect to the learned Judge, we are constrained to say that in accepting the somewhat tenuous plea of the respondents, His Lordship had overlooked these aspects.

9. With the above back drop we must read Rules 9, 19, 24, 29 and 49 of the Rules together and ascertain their true scope and ambit. They read thus :

"Rule 9. Time and manner of payment of duty : (1) No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for consumption, export, or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these rules or as the Collector may require, and except on presentation of an application in the proper form and

on obtaining the permission of the proper officer on the form :

Provided that such goods may be deposited without payment of duty in a store-room or other place of storage approved by the Collector under Rule 27 of Rule 47 or in a warehouse appointed or licensed under Rule 140 or may be exported under bond as provided in Rule 13 :

Provided further that such goods may be removed without payment or on part-payment of duty leviable thereon if the Central Government, by notification in the Official Gazette, allow the goods to be so removed under Rule 49 :

Provided also that the Collector may, if he thinks fit instead of requiring payment of duty in respect of each separate consignment of goods removed from the place or premises specified in this behalf, or from a store-room or warehouse duly approved, appointed or licensed by him, keep with any persons dealing in such goods an account-current of the duties payable thereon and such account shall be settled at intervals, not exceeding one month, and the account-holder shall periodically make deposit therein sufficient in the opinion of the Collector to cover the duty due on the goods intended to be removed from the place of production, curing, manufacture or storage.

(1A) Where a person keeping an account-current under the third proviso to sub-rule (1) makes an application to the Collector for withdrawing an amount from such account-current the Collector may, for reasons to be recorded in writing permit such person to withdraw the amount in accordance with such procedure as the Collector may specify in this behalf.

(2) If any excisable goods are, in contravention of sub-rule (1) deposited in, or removed from, any place specified therein, the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made within the period specified in Section 11A of the Act by the proper Officer, whether such demand is delivered personally to him, or is left at his dwelling house, and shall also be liable to a penalty which may extend to two thousand rupees, and such goods shall be liable to confiscation.

Explanation. - For the purposes of this rule, excisable goods produced, cured or manufactured in any place and consumed or utilised -

(i) as such or after subjection to any process or processes; or

(ii) for the manufacture of any other commodity, whether in a continuous process or otherwise, in such place or any premises appurtenant thereto, specified by the Collector under sub-rule (1), shall be deemed to have been removed from such place or premises immediately, before such consumption or utilisation.

Rule 19. Liability to duty.

(1) Duty shall become chargeable as soon as the products have been cured and are in a fit state for sale, or where manufacture proceeds sale, for manufacture and the curer shall be liable for the payment thereof and shall remain so liable

until the liability is to the knowledge and satisfaction of the proper officer, transferred as provided in Rule 29 to another person duly licensed to carry on business in such products :

Provided that no such liability for duty shall arise in respect of unmanufactured products cured by a curer in whose case a declaration is not necessary under the second proviso to rule 16.

(2) If any unmanufactured products, which have not been deposited in the curers' private store-room, are lost or destroyed by unavoidable accidents or natural causes before or after the curer renders the annual return under Rule 37 to the proper officer, the Collector may, in his discretion, remit the duty thereon :

Provided the notice of such loss or destruction is given to the proper officer within 48 hours after the discovery of the occurrence.

Rule 24. How Curer may disposed of his products.

(1) Notwithstanding the provisions of Rule 9, unmanufactured products (other than unmanufactured tobacco) shall, immediately after they have been cured be -

(i) cleared on payment of duty, or

(ii) deposited in a public warehouse appointed for the storage of such products, or

(iii) deposited in banded store-room on the curer's own premises, or

(iv) transferred to a wholesale dealer possessing a private warehouse licensed for the storage of such products, either to the dealer direct or through to broker for commission agent acting on his behalf.

(2) Whichever of the foregoing alternatives, the curer elects to adopt he shall not sell the products wholesale except to a person duly licensed under these rules to carry on business in such products or to a person so licensed to warehouse such products on which duty has not been paid.

Rule 29. Continuance of curer's liability for payment of duty :

When the curer sells unmanufactured products other than unmanufactured tobacco without payment of duty as provided in Rule 24, both the purchaser of the products and the person into whose possession the projects pass after purchase shall become liable for the payment of the duty due thereon; but the curer shall not be absolved from the liability laid upon him by Rule 19 until the transfer of ownership has been reported to, and acknowledged by the proper officer.

Rule 49. Duty chargeable only on removal of the goods from the factory premises or from an approved place of storage :

(1) Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premise specified

under rule 9 or are about to be removed from a store-room or other place of storage approved by the Collector under Rule 47 :

Provided that the manufacturer shall on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules, or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store-room or other approved premises :

Provided further that the proper officer may not demand duty due on any goods claimed by the manufacturer as unit for consumption or for marketing subject to such conditions as may be imposed by the Collector by other in writing.

(2) Notwithstanding anything contained in sub-rule (1), excisable goods made in a factory to which provisions of Chapter VII of these rules have been extended by the Central Government by notification in the Official Gazette, may be removed from the factory in which they are made to any warehouse licensed under Rule 140 for the storage of such goods and situated outside the licensed premises of the factory and subject to such exemptions, limitations and conditions as may, from time to time, specified in this behalf by the Central Government.

(3) Notwithstanding anything contained in sub-rule (1), the Central Government may, under circumstances of exceptional nature, allow, by notification in the Official Gazette, any excisable goods to be removed from the factory in which they are produced without payment of, or only on part payment of, duty leviable thereon subject to such conditions and limitations (including payment of interest on the balance amount duty) as may, from time to time, be specified by the Central Government. The manufacture of such excisable goods shall execute a bond in the proper form with such surety or security as the Collector may approve.

Explanation. - For the purpose of this rule, excisable goods made in a factory and consumed or utilised -

(i) as such or after subjection to any process or processes; or

(ii) for the manufacture of any other commodity,

whether in a continuous process or otherwise, in such factory or place or premises specified under Rule 9 or store-room or other place of storage approved by the Collector under Rule 47, shall be deemed to have been issued out of, or removed from such factory, place, premises, store-room or other place of storage, as the case may be, immediately before such consumption or utilisation".

Rule 9(1) declares that dutiable goods shall not be removed for consumption, export, or manufacture of any other commodity in or outside the place of manufacture until the excise duty chargeable thereon had been paid.

10. Rule 19 expressly deals with the liability for duty when there is curing of a

product and the same is ready or fit for sale. Under this rule the curer who is the manufacturer is always made liable for payment of duty notwithstanding its liability or its postponement as set out therein or other Rules. Rule 24 which only provides the manner and method of disposal of the produce by the curer nowhere absolves his liability for payment of duty created by the Act and Rules 9 and 19 of the Rules. With this we now come to Rule 29 which is the main plank of the respondents.

11. Rule 29 only enables the authorities to collect duty from the purchases or cured tobacco however expressly preserving the liability of the curer for the same at all event and at all times. The terms "transfer of ownership has been reported to and acknowledged by the proper officer" occurring at the end of this rule do not cut down the liability of the curer imposed in the earlier part of that very rule, by Section 3 of the Act and the other Rules noticed and analysed by us earlier. The rule does not completely, irrevocable and absolutely transfer the liability of the curer on the purchaser and make him and him alone as liable for duty completely absolving the curer, who as curer is primarily datable to duty under the Act. On the other hand, this rule is only an enabling provision which only authorises the authorities to collect duty from the purchaser also. We need hardly say that if the purchaser makes payment of excise duty, then and then only the authorities will not collect the same from the curer/grower. Except for this, this Rule has no other purpose to serve. on transfer of ownership and mere intimation thereon by the curer, Government neither becomes the owner of the same nor can supervise its course of movement its arrival and deposit by the purchaser. We are firmly of the view that the other construction propounded by the respondents, if accepted would lead to easily defeating or avoiding the excise duty under the Act and has therefore to be avoided by Court.

12. Rule 49 of the Rules does not support the case of the respondents but only supports the appellants in sustaining their plea.

. 13. We are of the view that the definition of the term "proper officer" occurring in Rule 2(xi) of the Rules had really no relevance to decided the question. Even if that term bears on the question, then also that term cannot be given a restricted meaning but must be read as applicable to the originating and the receiving officer also.

14. On an analysis of the charging provision, and all the related rules we are clearly of the view that the construction placed by the learned Judge with respect on every one of them and in particular on Rule 29 is not sound. We, therefore, express out inability to subscribe to the views expressed by his Lordship.

15. In Karuppannan's case, Ramanujan, J. in some what similar circumstances as in these cases had expressed thus :

"Having regard to the object and the purpose of Rule 31, requiring a transport permit in the prescribed form issued by the prescribed authority the curer is not liable to satisfy the proper officer in whose jurisdiction the licensed warehouse of

the transfer is located. the curer's obligation is only to satisfy the proper officer within whose jurisdiction the curing operations have been performed and to whom he is accountable for the stocks in his possession. I am, therefore, of the view that once the petitioner has satisfied the Excise Officer at Dharapuram about the transfer of ownership of the tobacco and the same has been acknowledged by that officer, his liability should be taken to have ceased under Rule 29. In my view, therefore, the order of the Superintendent of Central Excise, Integrated Divisional Officer, Erode, demanding a sum of Rs. 2,388.96 and affirmed by respondents 1 and 2 has to be set aside and is accordingly set aside."

Without reference to the views expressed herein Srinivasa Iyengar, J. had expressed the same view with which we have expressed our dissent. For those very reasons, with respect, we dissent with the views expressed by Ramanujan, J. in Karuppannan's case.

16. In their treatise on the law of "Central Excise" the authors have only reproduced the passage found in Karuppannans" case without an independent reasoning. We, therefore regret our inability to subscribe to the view expressed by the learned authors.

17. On the foregoing discussion, it follows that the demands made against the respondents who had not paid the duty, which had not been collected from the purchasers were legal and valid and the writ petitions filed by them were, therefore, liable to be dismissed.

18. In the result, we allow these appeals, set aside the common order dated 21-11-1980 of Srinivasa Iyengar, J. in Writ Petitions Nos. 3510, 3511, 7400 to 7407 of 1979 and dismiss them with no order as to costs throughout.

Order on the oral application made by the respondents for a certificate of fitness to appeal to the Supreme Court under Articles 113 & 134-A of the Constitution and for stay.

19. Immediately after we pronounced our judgment allowing the appeals and reversing the order of the learned Single Judge, Sri Lakshmikantaraj Urs, makes oral applications seeking for certificates of fitness to appeal to the Supreme Court against them under Articles 133 and 134-A of the Constitution of India on behalf of the respondents. Sri Urs submits that the questions decided by us involve substantial questions of law of general importance and they need to be decided by the Supreme Court. Sri Urs also prays for stay of the operation of our Judgment for a period of two months from this day.

20. Sri Shivashankar Bhat opposes the oral applications made by the respondents and their prayer for stay.

21. On the question raised and decided in these case viz., the owners obligation to pay excise duty on its sale transfer and intimation of transfer, there is conflict of judicial opinion, which has not been set at rest by the Supreme Court so far.

We are of the opinion that the cases decided by us raise substantial question of law of general importance and they need to be decided by the Supreme Court. We, therefore, allow the oral applications made by the respondents and grant certificates of fitness to appeal to the Supreme Court to the respondents against our Judgment in these appeals and direct Registrar to issue the necessary certificate in that behalf.

22. While some of the respondents have paid the amounts demanded from them, others have not paid the amounts demanded from them. In the cases of those respondents that have not made payments, they had the benefit of an order of stay when their cases were ending before the learned Single Judge which had not been discontinued in appeals. In these circumstances, it is proper to stay operation of our Judgment in so far as those respondents who had not made payments, for a period of two months from this day only. We therefore, stay the operation of our judgment in these appeals in so far as those respondents that had not made payments, for a period of two months from this day.