(1961) 05 AHC CK 0031

In the Allahabad High Court

Jwala Prasad Misra and Another APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 22-05-1961

Acts Referred:
Central Excises and Salt Act, 1944 — Section 3, 37, 9

Citation : (1962) CriLJ 407

Hon'ble Judges : W. Broome, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

W. Broome, J.—This criminal revision application is directed against orders passed by Sri H. K. Das Tondon Second Class Magistrate of Farnikhabad, refusing to "drop a case pending again1 the applicants u/s 9 of the Central Excises and Salt Act.

2. It appears that the two petitioners maintain warehouses licensed by the central excise authorities under the provisions of the, Central Excises and Salt Act for the storage of tobacco; and the prosecution allegations are at when these warehouses were inspected by the authorities in the first week of February 1959, only 198 bags could be found on the non. duty paid premises as against 278 bags which should have been in stocky while on the duty-paid premises 14 bags and some loose tobacco were found instead of 7 bags and one drum. The total amount''" of duty of which the petitioners are said to have defrauded the Government comes to Rs. 24,000/-.

3. The main contention of the applicants, is that no excise duty could legally be recovered from them because they are not producers or manufacturers. This argument is based on the remarks made by Gwyer, C. J,, in Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, (1938) In the matter of AIR 1939 1 (Federal Court) :

In my opinion the power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of or in connection with, manufacture or production, and that extends no further.'''' The case in question related to the constitutionality of a tax imposed by the Government of the Central Provinces and Berar on retail sales of motor spirit and lubricants, the contention of the Government of, India being that this tax was in effect an excise, duty and that by imposing it the. Provincial Government was encroaching on the federal field, "duties of excise on tobacco and other goods manufactured or produced in India" being reserved for the Federal Legislature by entry (45) in the Federal Legislative List set forth in Schedule 7 of the Constitution Act. The Federal Court held that the Act was not ultra vires the Provincial Legislature, Gwyer, C.J., defining the separate federal and provincial spheres in the following manner:

The Central Legislature will have the power to impose duties on excisable articles before they become part of the general stock of the Province, that is to say at the stage of manufacture or production, and the Provincial Legislature an exclusive power to impose a tax on sales thereafter.

It is to be noted, however, that in this same ruling it has been conceded that ''excise duty is not necessarily confined to the stage of production or manufacture of the goods. Gwyer, C.J.. observes:

In practically all cases it is the producer or manufacturer from whom the duty is collected. But there can be no reason in theory why an excise duty should not be imposed even on the retail sale of an article, if the taxing Act so provides. Subject always the legislative competence of the taxing authority, a duty on home produced goods will obviously be imposed at the stage which the authority find to be the most convenient and the most lucrative, wherever it may be.

The specific point decided by this ruling is that the Central Government cannot levy a tax On the retail sale of goods in the guise of excise duty. It cannot be treated as authority for the proposition that excise duty cannot be lived at stages in the distribution of goods earlier than retail sales. Indeed Jayakar, J., in the same case has expressed an opinion that runs counter to the view taken by Gwyer, C.J., on which the applicants rely. His analysis of the legal position is:

(1) That, as regard''; goods centrally excisable, taxes on their sale within the Provinces for purposes of consumption, when such taxes are in no way connected with their provinces manufacture, etc. within the Province, but are imposed or their sale m the Province merely as existing; articles of trade and commerce. should be exclusively within the competence of the Provincial Legislature.

2. That, say as aforesaid, all duties of excise on those goods, whether levied and collected at the stage of manufacture, production or any subsequent stage up to consumption (exclusive of sale in the Province, as stated above), should remain exclusively within the competence of the Centre.

4. The Federal Court ruling is therefore not particularly helpful for tine determination of the point in issue in the present case viz., whether the petitioners, who are storing tobacco in a licensed warehouse, are liable to pay excise duty,, All that can be said with any degree of assurance on the basis of this ruling is that excise duty can be lawfully imposed by the Central Government at the stage of manufacture or production and that it cannot be imposed at the stage of retail sale. The case of the petitioners would appear to fall somewhere between these two extremes, for they are neither .producers nor manufacturers, nor are they engaged in retail sale. It is to be noted however that they store tobacco after it has been gathered and cured but before it has been subjected to any process of manufacture; and it seems to me in the circumstances that they are more closely connected with the stage of manufacture and production than with the stage of retail sale. Even if the dictum of Gwyer, C., J., is to be accepted and followed therefore, excise duty can be legitimately recovered from them for it will be deemed to be levied "in connection with manufacture or production''.

5. Section 3 of the Central Excises and Salt Act 1944 lays down that:

There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goads 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.

Tobacco, both unmanufactured and manufactured, has been, included in the First Schedule of the Act and is excisable. And the manner of collection of the duty has been prescribed in the Rules framed by the Central Government under the ''powers conferred by Section 37 of the Act. Rule 7 of these Central Excise Rules runs as follows:

7. Recovery of duty. Every parson who produces, cures or manufactures any excisable goods or who stores such goods in a warehouse, shall pay the duty or duties livable on such goods, at such time and place and to such person as may be designated in or under the authority of these Rules, whether the payment of such duty or duties is secured by bond or otherwise,

Under this Rule four classes of, persons have been made liable for payment of duty viz., producers, curers, manufacturers and stores, Rule 24 imposes a liability on curers of unmanufactured tobacco, immediately after the curing, either to clear the products by payment of duty Or to deposit them in a public warehouse a bonded storeroom or a private warehouse licensed for the storage of such products; and the petitioners'' warehouse presumably comes under the last category. The procedure for licensing such warehouses is given in Rule 140, as follows:

The Collector shall by order in writing, from time to time approve and appoint public warehouses and may in like manner license private warehouses for the storage of excisable goods on which duty has not been paid, and may direct in what parts or divisions of such warehouses, and in what manner and on what terms such goods may be stored and how and in what manner such warehouses, or parts or divisions thereof, shall be secured by lodes fastenings or otherwise, and may require, in the case of a public warehouse, the keeper and, in the case of private warehouse, the licensee to furnish a bond in the proper Form, with surely or sufficient security, in such amount as under such conditions as the Collector approves, binding Himself to pay the duty due on the goods deposited therein, or for the due and safe removal of such goods from one part or division of any warehouse to any other part or division of the same warehouse, or to any other warehouse, and for the due observance of the terms, conditions and requirements of the Act, these Rules, and any orders made here, under in, respect thereof.

6. Until the products stored under these I conditions are released from the warehouse on payment of duty they obviously cannot be considered as having become "part of the general stock of the Province'', and consequently, even according to the dictum of Gwyer, C.J., quoted above, the Central Government will have the power to impose excise duties on them. The realising of the duty at the stage of storage instead of at the stage of primary production is clearly only for the sake of convenience; and storage must be treated as ancillary to production or manufacture. The stage of sale when the Provincial or State Legislature has the power to impose taxes, comes later, after the goods as released from the warehouse and set free for general distribution.

7. My conclusion therefore is that there is not illegality in the levy of excise duty from the petitioners and that prima facie they are liable to prosecution u/s 9 of the Central Excises and Salt Act for evasion of payment of the duty. This revision application is accordingly rejected. Let the record be returned xo the court below, so that the trial may proceed.