

(1978) 08 CAL CK 0011

In the Calcutta High Court

Case No : Criminal Revision No. 942 of 1978

Kedak Nath Goenka and Others

APPELLANT

Vs

Superintendent of Central Excise and Others

RESPONDENT

Date of Decision : 28-08-1978

Acts Referred:

Central Excises and Salt Act, 1944 — Section 9, 9(1), 9C, 9C(1)

Citation : (1978) 2 ELT 538

Hon'ble Judges : P.C. Borooah, J;A.N. Bannerjee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.C. Borooah, J.—The five petitioners and the opposite party No. 3 are Directors of Messrs Premier Irrigation Equipment (Private) Limited having its registered office at 17/1C, Alipore Road, Calcutta-27 and its factory at Boral in the District of 24 Parganas. The company is licensed under the Central Excise Rules to manufacture aluminium tubes from aluminium strips.

2. On March 10, 1978 the Superintendent of Central Excise, Centralised Preventive Organisation, Calcutta, filed a petition of complaint in the court of the Chief Judicial Magistrate, Alipore, 24 Parganas, against the petitioners and the opposite party no. 3 alleging inter alia, that on November 10, 1974 when officers of the Centralised Preventive Organist on visited the factory of the company at Boral and verified the stock of aluminium pipes lying in the approved store-room, he detected a shortage of 30,688.5 metres of pipes of different sizes valued at Rs. 10,78,498.57 p. and involving Central Excise duty of Rs. 4,31,399.37 p. It was further alleged that when on November 11, 1974 the officers of the said organisation searched the factory and the head office of the company, they found in the factory that 38,998.5 metres of aluminium pipes valued at Rs. 12,66,638.54 p. and involving Central Excise duty of Rs. 5,06.653/-had been stored in an open yard outside the approved store-room without an account being kept in the statutory register of the company and that on search of the

head office records and documents were seized which revealed that during the period between January 1, 1973 to November 10, 1974 the company had manufactured and removed from its factory a total quantity of 1,12,739.8 metres of aluminium pipes valued at Rs. 22,05,971.55 p. and involving basic and auxiliary duty amounting to Rs. 8,82,388.61 p. and there was no account for the same in the statutory records, and that the central excise duty leviable thereon had not been determined and paid.

3. The petitioners and the opposite party No. 3 were sought to be implicated for the commission of an offence u/s 9 of the Central Excises and Salt Act, 1944 (hereinafter the Act) inasmuch as they were held to be responsible to the company for the conduct of the business of the company at the relevant time when the offence was committed.

4. Mr. J.N. Ghose, learned Advocate appearing for the petitioners, has submitted that u/s 9(1) of the Act any person who commits any of the offences mentioned in the said section has been made liable for prosecution. Therefore, according to Mr. Ghose there should have been a specific averment in the petition of complaint to the effect that the Directors who have been implicated by virtue of their office were personally responsible for the acts of commission or omission for which they have been sought to be made liable u/s 9 of the Act. Mr. Ghose has pointed out that apart from what has been stated in paragraph 10 there is not a single sentence anywhere else in the petition of complaint which seeks to implicate the petitioners or the opposite party No. 3. Mr. Dilip Kr. Dutt, learned Advocate, appearing for the opposite party No. 3, has adopted the arguments of Mr. Ghose.

5. Mr Anjan Kumar Mukherjee, learned Advocate appearing on behalf of the Superintendent of Central Excise, namely, the opposite party No. 1, has argued that the petition of complaint read as a whole makes it clear that the petitioners and the opposite party No. 3 were responsible for the commission of the offence u/s 9 of the Act. Mr. Mukherjee has further argued that reading Section 9 and Section 9C of the Act together it is clear that it was the intention of the framers of the Act to make the Directors of a company vicariously liable unless they could show that they did not have the requisite mens rea.

6. In the instant case we are concerned with Section 9(1), Sub-Clauses (b) and (bb) of the Act which reads as follows :-

"9 (1) Whoever commits any of the following offences, namely :-

* * * * (b) evades the payment of any duty payable under this Act;

(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal:

* * * * shall be punishable..."

On a reading of the aforesaid section it is clear from the words "whoever commits" that a person is made personally liable for an offence committed under the Act and the liability cannot be extended to any other person merely by virtue of any office or position he holds in a company or firm. In order to extend the liability for an offence committed under the Act to any individual, it has to be specifically averred in the petition of complaint that particular person is personally guilty of any act of commission or omission which tantamounts to an offence punishable under the Act.

7. In the petition of complaint filed by the opposite party No. 1 against the petitioners and the opposite party No. 3 they have been sought to be implicated by the averments made in paragraph 10 which is as follows :-

"That the accused persons have committed an offence punishable u/s 9 of the Central Excises and Salt Act, 1944 inasmuch as they were responsible to the company for the conduct of business of the company at the relevant time when the offences were committed."

On a reading of the aforesaid paragraph it is apparent that the petitioners and the opposite party No. 3 were sought to be made liable by virtue of an assumption that they were responsible to the company for the conduct of its business at the relevant time when the offences were committed. There is no averment that the petitioners and the opposite party no. 3 or any of them were guilty of any specific act of omission or commission which would tantamount to an offence u/s 9(1), Sub-Clauses (b) or (bb) of the Act.

8. We must accordingly hold that the petition of complaint taken at its face value does not make out a prima facie case against the petitioners or the opposite party No. 3 u/s 9 of the Act. The proceedings as such pending against the petitioners and the opposite party No. 3 have to be quashed.

Section 9C(1) of the Act is in the following terms :

"In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution."

The purport of the aforesaid section is to impute the requisite mens rea to a person who is being prosecuted under any of the provisions of the Act and the onus is on the accused to prove that he did not have the requisite mental state. It does not mean that if a person is not legally liable to prosecution under the Act and has been implicated as an accused, Section 9C would be automatically attracted and the existence of mens rea presumed. Therefore the submission of Mr. Mukherjee cannot be accepted.

9. In the result, this application succeeds, the Rule is made absolute and the proceedings pending against the petitioners and the opposite party No. 3 in the

court of the Chief Judicial Magistrate, Alipore, in Case No C-247 of 1978 is quashed.