(1976) 01 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 2482 of 1973

Kerala Polythene Industries APPELLANT

Vs

Supreintendent of Central Excise, Trivandrum and Other RESPONDENT

Date of Decision : 07-01-1976

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 3, 3(1)

Citation : (1976) 5 CTR 221

Hon'ble Judges : Balakrishna Eradi, J

Bench : Single Bench

Judgement

Balakrishna Eradi, J.—The petitioner before us is a firm engaged in the business of manufacture of Polythence Lay Flat Tubings. By Notification No. 59/64 issued by the Central Government Polythene Lay Flat Tubings were exempted from levy of excise duty with effect from 1-3-1964. The said exemption was subsequently withdrawn by a Notification No. 101/70 dated 1-5-1970 issued by the Government of India in the Ministry of finance. Shortly thereafter, the product aforementioned was again exempted from payment of excise duty by another Notification dated 17-7-1970. The resulting position was that during the intervening period between 1-5-1970 and 17-7-1970 Polythene Lay Flat Tubings were assessable to duty under tariff Item 15A (2). Apparently because of ignorance regarding the withdrawal of the exemption as per the Notification dated 1-5-1970 the petitioner-firm which was enjoying the facility of self removal procedure had not credited to the Department the excise duty payable in respect of the Polythene Lay Flat Tubings removed from their factory during the period from 1-5-1970 to 16-7-1970. When this fact came to the notice of the Superintendent of Central Excise, Trivandrum (first respondent), he issued a notice to the petitioner as per Ext. P-I dated 26-3-1971 stating that the quantity of polythene sheet to the value of Rs. 38,044.75 cleared from the petitioners factory without payment of duty during the period from 1-5-1970 to 16-7-1970 was liable to be charged Basic Duty at the rate of 25% ad Valorem and also Special Excise Duty at the rate of 20% of the basic duty and calling upon the petitioner to show case why action should not be taken under Rule 10A of the Central Excise Rules for the levy and collection of the said duty from the petitioner. In reply to Ext. P-I the petitioner submitted a detailed representation dated 30th April 1971. Ext. P-2 is a copy of the said representation. After considering the points raised in Ext. P-2 the Assistant Collector of Central Excise, Trivandrum (second respondent) passed the order Ext. P-3 dated 20-8-1971 ordering that the petitioner should pay the duty of Rs. 11,413.45 in respect of the quantity of Polythene Lay Flat Tubings cleared from the petitioners factory from 1-5-1970 to 16-7-1970 as mentioned in the show-cause notice.

2. Against the Order Ext. P-3 an appeal was preferred the petitioner before the Collector of Customs and Central Excise, Cochin. Ext. P-4 is a copy of that appeal petition. That appeal was disposed of by the Appellate Collector of Central Excise, Madras (third respondent) by the order Ext. P-5 dated 7-8-1972 whereby he confirmed the action taken by the Assistant Collector Under Rule 10A for the levey and collection of the duty legally payable on the Polythene Lay Flat Tubings cleared from the petitioners factory during the period when the commodity was not exempt from payment of duty. Though the petitioner preferred a revision petition to the Government of India that was dismissed by the Central Government as per order Ext. P-7 dated 31-3-1973. After the rejection of the petitioners revision petition by the Government of India, the first respondent issued to the petitioner the communication Ext. P-8 dated 5-7-1973 demanding payment of duty in question within 10 days of the receipt of the said order. This writ petition has been brought by the petitioner seeking to quash Exts. P-1, P-3, P-5, P-7, and P-8.

3. The main contention urged before us by the learned advocate for the petitioner is that Rule 10A of the Central Excise Rules is ultra vires and void. Rule 10A is in the following term :-

10-A. Residuary powers for recovery of sums due to Government. - Where these Rule do not make any specific provision for the collection of any duty, or of any deficiency in duty if the duty has for any reason been short levied, or of any other sum of any kind payable to the Central Government under the Act or these Rules, such duty, deficiency in duty or sum shall, on a written demand made by the proper officer, be paid to such person and at such time and place, as the proper officer may specify.

4. It is argued on behalf of the petitioner that there is no provision in the Central Excise and Salt Act (I of 1944) conferring power on the Central Government to frame such a rule. In support of this contention strong reliance was placed by the petitioners counsel on two rulings of the Madras High Court reported in Agrawal Brothers vs. Union of India, (1972) II M.L.J. 476 and Citadel Fine Pharmaceutical Pvt. Ltd. vs. district Revenue Officer, earlier. The point which arose for decision in Citadel Fine Pharmaceuticals Pvt. Ltd. vs. District Revenue Officer, (1973) I M.L.J. 99 concerned the validity of Rule 12 of the Rules framed under the Medicinal and Toilet Preparations (Excise Duties) Act (XVI of 1955) which is a provision

substantially corresponding to Rule 10A of Central Excise Rules. The learned Judges held that since the parent enactment, namely, the Medicinal and Toilet Preparations (Excise Duties) Act was silent on the question of levy of duty on escaped turnover, Rule 12 in so far as it made a provision for assessing the escaped turnover was invalid since the charging power u/s 3 of the Act could not be extended by a rule. Even though Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 is a provision in language scope and content between section 3 of the Medicinal and Toilet Preparations (Excise Duties) Act (Act XVI of 1955) and section 3 of the Central Excise and Salt Act. To appreciate this it is necessary to read the two sections. Section 3 of the Medicinal and Toilet Preparation (Excise Duties) Act is in the following terms :-

3. Duties of Excise to be levied and collected on certain goods. - (1) There shall be levied duties of excise, at the rates specified in the Schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable -

(a) where the dutiable goods are manufactured in bond, in the State in which such goods are released from a bonded-warehouse for home consumption, whether such State is the State of manufacture or not;

(b) where the dutiable goods are not manufactured in bond, in the State in which such goods are manufactured.

(3) Subject to the other provision contained in this duties aforesaid shall be collected in such manner as may be prescribed.

Explanation.- Dutiable goods are said to be manufacture in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods.

Section 3 of the Central Excise and Salt Act reads :-

3. (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 the rate, set forth in the First Schedule.

(IA) The provisions of sub-section (I) shall apply in respect of all excisable goods other than salt which are produced or manufacture in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.

(2) The Central Government may, be notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff value of any article enumerated either specifically or under general headings, in the First Schedule as chargeable with any ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed for different classes or descriptions of the same article.

A comparative study of the two previsions reveals that there is a fundamental difference in their policy and scheme. u/s 3 of the Medicinal and Toilet preparations (Excise Duties) Act only the manner of collection of the duties is left to be prescribed by the rules and the levy of duty is to be made at the rates specified in the Schedule to the Act. In enacting Section 3 of the Central Excise and Salt Act the Parliament has empowered the rule-making authority to prescribe by rules the manner of levy of the duties and also the manner of collection of duties of excise on all excisable goods other than salt. Manifestly the rule-making power conferred by this section is very much wider in its ambit than the power conferred on the rule-making authority u/s 3 of the Medicinal and Toilet Preparations (Excise Duties) Act whereunder only the manner of collection of duties can be laid down by rules. Such being the position, the reasons stated by the Madras High Court in Citadel Fine Pharmaceuticals Pvt. Ltd. vs. District Revenue Officer, (1973) I M.L.J. 99 for declaring Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules to be ultra vires on the ground that the framing of such a rule was beyond the scope of the rule-making power conferred on the Central Government by Section 3(I) of the Medicinal and Toilet Preparation (Excise Duties) Act are not applicable to this case. The scope of the rule-making power conferred by Section 3(1) of the Central Excise and Salt Act is wide enough to embrace all matters relating to the manner in which both the levy and the collection of duties of excise on all excisable goods other than Salt are to be made. The provision contained in Rule 10A is fully within the scope of the said power. Hence we are unable to accept the contention advanced on behalf of the petitioner that Rule 10A is ultra vires the rule-making power conferred by the Act on the Central Government.

5. It is true that in Agrawal Bros. vs. Union of India (1972) II MLJ 477 one of the questions raised before the Madras High Court concerned the validity of Rule 10A of the Central Excise Rules. But it is seen from the judgment that the learned Judges did not have to consider the said question on the merits in view of the submission made by the Standing Counsel for the Central Government that he did not seek top sustain the demand on the basis of Rule 10A in the light of the earlier ruling of the same High Court striking down Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules. Inasmuch as the question relating to the validity of Rule 10A was not gone into by the Court, this decision cannot obviously be regarded as an authority supporting the petitioners contention that the said rule is ultra vires. As already stated by us the earlier decision of the Madras High Court reported in Citadel fine Pharmaceuticals Pvt. Ltd. vs. District Revenue Officer (1973) I MLJ 99 concerning the validity of Rule 12 of the Medicinal and Toilet Preparation (Excise Duties) Rules is clearly distinguishable.

6. There cannot be any doubt that on the facts and circumstances of the present case respondents 1 and 2 were perfectly justified in invoking the power conferred

by Rule 10A. Admittedly the petitioner had not credited to the Department the Duty payable in respect of the Polythene Lay Flat Tubings cleared from a the petitioners factory during the period between 1-5-1970 and 16-7-1970 even though the said article was not exempt from duty that time. The orders Exts. P-3, P-5, P-7 and P-8 do not, therefore, call for any interference.

7. The Original Petition fails and is dismissed, but in the circumstances without any order as to costs.

