
(2000) 11 AP CK 0075
In the Andhra Pradesh High Court
Case No : Appeal No. 658 of 1987

Madduru Obulapathi

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 87, 87(3), 9(1), 97

Citation : (2001) 1 ALT 544 : (2001) 1 AnWR 30

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : G. Rama Sarma and K. Venkatesh, for the Appellant; Govt. Pleader for Prohibition and Excise, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—This appeal was filed by the Plaintiff against the Judgment and decree dated 30-7-1986 in O.S. No. 55 of 1984 on the file of the Subordinate Judge, Proddatur, dismissing the suit of the plaintiff.

2. The facts set out in the plaint are briefly narrated as under:

The plaintiff was a L2 licensee granted by the 2nd defendant on 19-7-1972 for the purpose of pharmacy that was being run by him under the name and style of Krishna Ayurveda Pharmacy at Proddatur town, Cuddapah district, engaging in manufacture of Drakshasava and Draksharista, initially for a period of one year after having been satisfied that he had complied with all required conditions contemplated under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 (hereinafter for brevity referred to as "the Rules"). The licence of the plaintiff was being renewed from year to year till 1976 and he had also applied for renewal of licence for the year 1976-77. The Sub-Inspector of Excise, Proddatur, by his report dated 20-3-1976 recommended for the renewal of the licence of the plaintiff stating that he inspected the pharmacy on 20-3-1976 and that the preparations were in accordance with the Board's Formula and the

samples sent to Kurnool for chemical examinations, were proved correct and they were passed in Crime No. 1510/75 LAB-Ex., dated 6-10-1975 of chemical examiner, Kurnool. The 3rd defendant herein by his proceedings dated 19-4-1976 directed the Circle Inspector of Excise and Sub-Inspector of Excise, Proddatur not to release the stocks i.e., 400 litres of Drakshasava and further directed to seal the stocks until -further orders. In pursuance of the proceedings of the 3rd defendant, the Excise Sub-Inspector, Proddatur, seized the entire stock of 400 litres of Drakshasava, closed the pharmacy and the plant on 6-5-1976 and the key was taken away by him and thereafter the plaintiff had no access to the same nor stocks were released to the plaintiff by the defendants from that date. The same was also intimated by the Excise Sub-Inspector, Proddatur to the 3rd defendant by his letter dated 6-5-1976. The plaintiff addressed several letters dated 3-1-1977, 16-1-1977 and also on 25-7-1977 requesting the 2nd defendant to renew his licence for the years 1976-77 and 1977-78, as non-renewal of licence of the plaintiff is getting loss and if the licence is not renewed the plaintiff will have no other alternative except to proceed legally and to get the amounts from the Excise Department for the loss occurred to the plaintiff. The 2nd defendant issued a show cause notice dated 30-12-1977 to the plaintiff alleging that the Assistant Commissioner of Excise (Enforcement), Cuddapah, inspected the pharmacy of the plaintiff on 24-2-1977 and noticed that the manufacturing room does not conform to M & T (E.D.) Act and Rules, and that 400 bulk litres of Drakshasava was shown in the stock register, but on verification 320 bulk litres was found short and the remaining 80 bulk litres was colourless aromatic liquid without alcohol smell containing in five cans, and demanding the plaintiff to pay Rs. 11,537-50 paise towards the excise duty within 15 days, failing which the licence should be cancelled under Rule 87 of the Rules. The plaintiff submitted his explanation on 6-3-1978 denying the allegations made in the show cause notice. The 3rd defendant without even giving an opportunity of being heard to the plaintiff passed orders dated 21-12-1979 cancelling the licence of the plaintiff and directed the plaintiff to pay an amount of Rs. 11,537.50 paise towards the differential duty, without referring to any of the submissions made by the plaintiff. Aggrieved by the said orders passed by the 3rd defendant, the plaintiff preferred an appeal before the Government of Andhra Pradesh, which was dismissed by orders dated 22-6-1984 vide Memo No. 30/E2/84-2 without giving any opportunity to the plaintiff or being heard on flimsy and whimsical grounds in an illegal manner and directed the Commissioner of Excise to recover an amount of Rs. 11,537-50 paise towards the differential duty. The defendants by their inordinate delay without taking proper action have allowed 400 litres of Drakshasava to get deteriorated. Therefore, the plaintiff filed the suit seeking declaration that the orders of cancellation of the licence in his favour is illegal; for mandatory injunction directing the defendants to renew the L2 licence of the plaintiff for the previous years and current year and for future years subject to the rules and conditions; declaration that the orders of the defendants regarding levy and collection of Rs. 11,537-50 paise as illegal; and for permanent injunction restraining the defendants and their employees from collecting the

said amount from the plaintiff and to direct the defendants to pay Rs. 20,000/- towards damages with future interest at 12% per annum.

3. The 3rd defendant filed a written statement admitting that the plaintiff was a holder of L2 licence and he was permitted to manufacture Draksharista, Drakshasava, Amrutharista and Abhayarista and the L2 licence was renewed for the year 1975-76. It is stated that the plaintiff has applied for the renewal of the said licence for the years 1976-77 and 1977-78 and the 3rd defendant sent the renewal proposals to the 2nd defendant for the year 1976-77. When the 3rd defendant was about to submit the renewal proposals after completion of scrutiny for the year 1977-78, on 24-2-1977 the Assistant Commissioner of Excise, Cuddapah, inspected the plaintiff's pharmacy and noticed certain irregularities i.e., the book balance was shown as 400 bulk litres of Drakshasava and on verification it was found that there was 80 bulk litres only and thus 320 litres were found short and in view of the said irregularities, the 3rd defendant could not recommend for the renewal of the licence for the year 1977-78. Therefore, the licence of the plaintiff was not renewed for the year 1977-78. The 3rd defendant admits the fact that he directed the Circle Inspector and the Sub-Inspector of Excise, Proddatur, not to release the stocks and also to seal the stocks until further orders in view of the telegraphic instructions of the Board of Revenue (Excise), Hyderabad, in which it was informed that the excise duties were revised on all preparations under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 with effect from the Mid night of 15-3-1976/16-3-1976. It is further stated that the Excise Sub-Inspector, Proddatur, seized 400 bulk litres of Drakshasava on 6-5-1976 and kept the same in one of the two Vatts in the premises of the plaintiff, which was sealed on the same day. It is further stated that a show cause notice dated 30-12-1977 was issued to the plaintiff by the Commissioner of Excise. It is further stated that the plaintiff manufactures the Ayurvedic preparation under L2 licence without any bond and the duty should have been paid on completion of manufacturing operation itself. So, the plaintiff has to pay a sum of Rs. 11,537.50 paise towards differential duty and short duty. It is further stated that the explanation dated 6-3-1978 of the plaintiff to the 2nd defendant was rejected and so the 2nd defendant was forced to cancel the licence issued to the plaintiff on 21-12-1979 and not on 21-12-1977 as averred in paragraph No. 6 of the plaint. It is further stated that the appeal filed by the plaintiff to the Government of Andhra Pradesh, Hyderabad, was rejected by the Government after careful examination of the material available on record. The seizure and sealing of the stocks by the 3rd defendant is legal and valid since the plaintiff contravened the rules. The cancellation of the licence is on account of serious irregularities committed by the plaintiff and therefore, the plaintiff is not entitled for mandatory injunction of renewal of licence in his favour. The 3rd defendant denied the allegation that on account of the failure on the part of the defendants to take proper action, the 400 bulk litres of Drakshasava got deteriorated and that the defendants are liable to pay damages to the plaintiff. It is further stated that the plaintiff is not at all entitled for any of the reliefs prayed

in the suit.

4. In view of the respective pleadings, the Court below framed as many as five issues. During the trial, on behalf of the plaintiff, P.W.1 was examined and Exs.A-1 to A-10 were marked. On behalf of the defendants, D.W.1 was examined and Exs.B-1 to B-4 were marked.

5. On appreciation of evidence and the material on record, the Court below, on issue No. 1 i.e., whether the impugned demand notice Ex.A-3 dated 30-12-1977 issued by the 2nd defendant is illegal, held that as per Rule 9(1) of the Rules it is mandatory on the part of the plaintiff to pay duty as soon as the commodity is manufactured. It is further held by the Court below that the plaintiff failed to prove that the impugned demand made on him is illegal and, therefore, he is not entitled either for the declaration that the demand is illegal or for the consequential permanent injunction. With regard to issue Nos. 2 and 3 i.e., whether the plaintiff is entitled to declaration and the injunction claimed in the suit, the Court below held that the plaintiff has committed certain irregularities and that therefore the officials were justified in cancelling L2 licence of the plaintiff for alleged irregularity of non payment of revised tariff and, therefore, the Court below rejected the reliefs sought for by the plaintiff in the suit. With regard to issue No. 4 i.e., whether the plaintiff is entitled to claim damages, the Court below held that the plaintiff did not adduce any evidence to show that there was deterioration in the quality of Drakshasava seized by the Excise Sub-Inspector and further the Rule 87(3) of the Rules clearly lay down that where a licence is revoked or suspended, the holder of the licence shall not be entitled to claim any compensation. It is further held by the Court below that the claim of the plaintiff regarding the damages is barred by limitation and ultimately the Court below dismissed the suit of the plaintiff.

6. The learned Counsel for the appellant-plaintiff contends that the finding of the Court below that as per Rule 9(1) of the Rules it is mandatory on the part of the plaintiff to pay duty as soon as the commodity is manufactured, is contrary to the Rules. He further contends that the learned Judge ought to have noted that Rule 9(1) of the Rules does not say that excise duty is payable as soon as the commodity is manufactured. Further, the finding of the Court below upholding the seizure and sealing of 400 bulk litres of Drakshasava by Excise Officials on the ground that the excise duty was not paid, is wholly illegal and therefore, the impugned demand made on the petitioner is wholly illegal. The learned Counsel further contends that the learned Judge gravely erred in holding that without paying the duty payable by the plaintiff the plaintiff is not entitled to seek renewal of his licence and further the learned fudge erred in holding that there was deficiency of 320 litres of Drakshasava on the date of inspection. Further, the Court below erred in holding that the authorities are justified in cancelling L2 licence of the plaintiff for the alleged irregularity of non-payment of revised tariff.

7. The learned Counsel for the appellant-plaintiff submits that under Rule 9(1) of the Rules, the plaintiff is liable to pay excise duty only at the time of removing

the goods from the factory premises. In the present case, the question of removal of the goods by the plaintiff does not arise as the respondents-defendants seized the premises. Further, the respondents-defendants have revised the excise duties from the midnight of 15/16-3-1976 and accordingly demanded the appellant-plaintiff to pay the differential duty for the releases made so far by the appellant-plaintiff. But the respondents-defendants have not made it clear either in their written statement or in their evidence that they are entitled to collect the revised excise duty even on the stocks released by the above said date with retrospective effect. Therefore, the finding arrived at by the Court below that the appellant-plaintiff is liable to pay the revised excise duty for the stocks already released is illegal and liable to be set aside. It is submitted by the learned Counsel for the appellant that the Excise Sub-Inspector, Proddatur seized the entire stock of 400 litters of Drakshasava and closed the pharmacy and the plant on 6-5-1976 and the key was taken away by him and thereafter the plaintiff had no access to the same nor stocks were released by the defendants from that date and that the Assistant Commissioner, Enforcement made an inspection after lapse of seven months and that therefore, the appellant-plaintiff cannot be held liable for the deficit in Drakshasava and also not liable to pay any excise duty as such for the said deficiency. Therefore, the Court below should not have held that the appellant-plaintiff is liable to pay the differential duty towards Drakshasava. To that effect, the respondents-defendants have not considered the explanation offered by the appellant-plaintiff.

8. Rule 9(1) of the Rules reads as under:

"No dutiable goods shall be removed from any place where they are manufactured or any premises appurtenant thereto, which may be specified by the Excise Commissioner 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 Excise Commissioner may require:

Provided that such goods may be deposited without payment of duty in a warehouse or maybe exported out of India under bond as provided in Rule 97:

Provided further that the Excise Commissioner 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 warehouse keep with any person dealing in such goods an account-current of the duties payable thereon and such account shall be settled at intervals not exceeding three months, and the account-holder shall periodically deposit a sum therein sufficient in the opinion of the Excise Commissioner to cover the duty on the goods intended to be removed from the place of manufacture or storage."

9. From this rule, it is clear that no dutiable goods shall be removed from the premises where they are manufactured until the excise duty leviable thereon has been paid. In this case, it is not the case of the plaintiff or the defendants that

the plaintiff removed the goods from the premises. On the other hand, the manufactured goods were seized by the excise authorities on the ground that the appellant-plaintiff has committed certain irregularities. Therefore, the finding arrived at by the Court below that the plaintiff is liable to pay duty as soon as the commodity is manufactured is erroneous and is liable to be set aside. Further, the Court below erred in holding that without paying the duty, the appellant-plaintiff is not entitled to seek renewal of his licence. Therefore, the appellant-plaintiff is entitled for the reliefs as sought for in the suit.

10. In the result, the appeal is allowed with costs and the judgment and decree of the Court below are set aside and the suit of the plaintiff is decreed as played for.