

(1982) 09 MAD CK 0018
In the Madras High Court
Case No : Writ Appeal No. 499 of 1978

Maritime Collector of Central Excise	Vs	APPELLANT
East Asiatic Company (India) Ltd.		RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

Central Excise Rules, 1944 — Rule 10A
Central Excises and Salt Act, 1944 — Section 11

Citation : (1994) 69 ELT 202

Hon'ble Judges : K.B.N. Singh, C.J; Venugopal, J

Bench : Division Bench

Advocate : K.N. Balasubramaniam, Central Government Standing, for the Appellant;

Judgement

K.B.N. Singh, C.J.—This appeal has been filed against the order dated 15-6-1978 of Natarajan, J. allowing Writ petition No. 4228 of

1976 filed by the respondent herein. In the writ petition, the respondent herein prayed for the issue of a writ of Certiorarified Mandamus to call for

the records relating to the respondent on the file of the first appellant in C. No. VI/Y/15/19/63- EC and quash the order passed therein dated 12-

4-1971 as ultimately confirmed by the second appellant herein by his order No. 766 of 1975 dated 12-11-1975 and consequently direct the

refund of the sum of Rs. 1,31,240.77 being the amount withheld and adjusted against the subsequent refunds due to the respondent herein. The

appellants herein held that the two demands made on the respondent herein are legal and valid and they are therefore amounts payable to the

Government in terms of Rule 10A of the Central Excise Rules, 1944 (hereinafter referred to as the Rules), and by virtue of the powers conferred

u/s 11 of the Central Excises and Salt Act, 1944 (hereinafter called the Act), deducted a sum of Rs. 1,31,240.77 from the amount payable to the respondent as refund on export of vegetable non-essential oil (hereinafter referred to as VNE oil). The learned single Judge quashed the orders of the Revenue authorities for the reasons stated in the order, against which the present appeal has been filed by the Department.

2. Short facts of the case may be stated as follows :-

The respondent was engaged in manufacturing VNE oil for home consumption as well as for export. During the months of March, April and May

1963, the respondent exported out of India certain quantities of processed VNE oil and claimed the ad hoc rebate of duty under Notification No.

197/62 dated 17-11-1962 besides the full amount of duty paid on the processed VNE oil exported. The claim for rebate was granted and a sum

of Rs. 1,59,683.77 was refunded to the respondent by means of two cheques dated 20-4-1963 and 19-7-1963. On subsequent investigation and

verification, the Central Excise authorities found that the respondent herein had manufactured processed oil out of unprocessed oil produced in the

same factory and a quantity of 1,212.050 M.T. out of the exported quantity of 1,474.730 M.T. of processed oil did not suffer duty at the

unprocessed stage. The authorities, therefore, demanded repayment of a sum of Rs. 1,03,505.50 and a further sum of Rs. 27,735.27 on the

ground that the ad hoc rebate on processed oil can be claimed only if the oil had suffered duty at the unprocessed stage. As the demands dated

27-8-1963 and 10-1-1964 were not honoured, the department sought to withhold refund amounts payable for the future period to the respondent

so as to adjust the amount towards the demands raised.

3. On 27-4-1965 the respondent called for certain particulars from the Department and after the particulars were furnished, the respondent on 24-

6-1965 sent a reply wherein it categorically asserted that the demand by the Department for a refund was incorrect and the demand was also

barred by limitation. It seems that the respondent has also filed an appeal against the demand before the Appellate Collector. Nothing seems to

have happened for more than five years. On 28-11-1970 a notice was issued to the respondent proposing to confirm the demand and also

proposing to adjust the aforesaid amounts out of the amount due to the

respondent lying in the hands of the Department, and he was asked to show cause, within ten days. The notice may usefully be quoted here :

Please refer to your letter (MSD : GR : Management Department) dated 6-11-1970.

2. It is proposed to confirm the demands issued by the Assistant Collector of Central Excise (Technical), Madras, in his letter C. No.

VI/Y/15.7.63-Claims dated 27-8-1963 and D.D. 2 No. 61152/61 dated 10-1-1964 for Rs. 1,03,505.50 and Rs. 27,737.61 respectively under

Rule 10-A of the Central Excise Rules 1944, as there had been "no levy" of the raw VNE oil used for the processing oil in the first instance.

3. It has also been proposed to adjust the two amounts covered by the above two demands from out of the amount due to you lying in the hands of the Department.

4. If you are aggrieved of the above proposed action, you may make a representation to the undersigned. If you are desirous of having personal representation to the undersigned, the same may be intimated and a date will be fixed. If no reply is received within ten days of this letter, action will be taken as indicted in paras 2 and 3 of this letter"".

In the reply dated 2-12-1970, the respondent made a grievance that the appeal filed by the respondent before the Collector of Central Excise had

not yet been disposed of. It was asserted therein that the Department has no legal claim against the respondent and that the claim is also barred by

limitation and cannot be recovered. The Collector rejected the objections of the respondent and came to the conclusion that the amount was

payable in terms of Rule 10-A of the Rules and the Department has power u/s 11 of the Act to deduct the amount from the amount payable to the

respondent as refund on export of a subsequent consignment. On appeal, the order of the Collector was confirmed and even the revisional

authority, namely, the second respondent confirmed the said order. It is as against the said order the writ petition was filed and as already stated,

the writ petition was allowed by the learned single Judge of this Court.

4. The learned single Judge referred to the Bench decision of this Court in W.P. Nos. 265 and 266 of 1967 Murugan and Company Vs. Deputy

Collector of Central Excise and Others, which held Rule 10A of the Rules as ultra vires the Act and held that Rule 10-A which is the foundation of

the claim having been declared ultra vires, the demand cannot be sustained and therefore quashed the same. It may be mentioned here that for

holding Rule 10-A ultra vires, the Bench has followed the ratio laid down in Citadel Fine Pharmaceuticals Pvt. Ltd. v. The District Revenue Officer

1973 I MLJ 99 and the one in Parker and Co. Vs. Union of Indias (UOI) and Others, .

5. Mr. K.N. Balasubramaniam, Central Government Standing Counsel, urged two points in support of the appeal. Firstly, he urged that u/s 11 of

the Act, the demand was payable, although it was barred by limitation. He also submitted that a claim not enforceable in law is not necessarily a

bad claim, and when the Department has certain amounts at its disposal which are to be refunded to the respondent, by virtue of the power u/s 11

of the Act, the Department has power to adjust it against the amount of demand.

6. Section 11 of the Act on which reliance is placed reads as follows :-

S. 11 : Recovery of sums due to Government :- In respect of duty and any other sums of any kind payable to the Central Government under any

of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted

under the Central Boards of Revenue Act, 1963 (LIV of 1963) to levy such duty or require the payment of such sums may deduct the amount so

payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or

control, or may recover the amount by attachment and sale of excisable goods belonging to such person : and if the amount payable is not so

recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the

Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to

recover from the said person the amount specified therein as if it were an arrear of land revenue"".

This section lays down that in respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of

this Act or the Rules, the officer empowered under the Act may deduct the amount so ""payable"" from any money owing to the person from whom

such sums may be recoverable. The question is whether the claim which is

admittedly barred by limitation, could be deducted from the money due to the respondent u/s 11 of the Act.

7. Learned counsel for the respondent relied on the decision of the Supreme Court in *New Delhi Municipal Committee Vs. Kalu Ram and*

Another, wherein the Supreme Court held that the word "payable" in Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act,

in the context in which it occurred, meant "legally recoverable". The relevant portion of Section 7 of the said Act runs as follows :-

S. 7 : Power to recover rent or damages in respect of public premises as arrears of land revenue :

(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay

the same within such time and in such instalments as may be specified in the order".

Interpreting the word "payable", the Supreme Court held as follows :-

"Payable" generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the

amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate

Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination

must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source

or foundation of a right to claim a debt otherwise time-barred.

8. The above-said decision is a complete answer to the argument of the learned counsel for the appellants on the first point raised by him. As there

is no dispute that the claim is barred by limitation, Section 11 of the Act cannot be of any help to the appellants.

9. Mr. K.N. Balasubramaniam next submitted that under the general law of debtor and creditor, the Department is entitled to realise the amount

claimed and adjust it from the money due to the respondent. Reliance is placed on Section 60 of the Indian Contract Act which reads as follows :-

S. 60 : Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the

creditor may apply it at his discretion to any lawful debt actually due and payable

to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits"".

In the Indian Contract Act, the heading ""appropriation of payments"" begins with Section 59 and ends with Section 67. Section 59 of the Contract

Act provides that where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under

circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied

accordingly. The question is whether Section 60 of the Contract Act can be attracted in the instant case. It must be pointed out that this is not a

matter of contract, but the payment made by the respondent and the refund to be made by the Department as per the provisions of the statute

having distinct rules on the point as to how the duty has to be realised and how refund has to be made. Even assuming that Section 60 of the

Contract Act or the general principles were to apply, from what we have stated earlier, it is manifest that before the Department wanted to

appropriate the amount payable to the respondent, the Department asked the respondent to show cause why the amount should not be

appropriated, and two definite stands were taken by the respondent in reply. Firstly, that the claim was untenable and also barred by limitation and

secondly Section 11 of the Act will not be applicable where the demand itself is barred by limitation. The respondent having taken objection to the

adjustment of the amount, even of general principle, the appellants were not entitled to adjust. After the objection was raised by the respondent,

there was no justification for the appellants to appropriate the amount towards a time-barred claim. No other point has been urged before us. The

appeal therefore fails and is dismissed. There will be no order as to costs in this appeal.

10. After the judgment was delivered, Mr. K.N. Balasubramaniam, learned counsel for the appellants, made an oral request for certificate under

Article 133(1) of the Constitution to appeal to the Supreme Court. The appeal having been decided by us on the basis of the decision of the

Supreme Court, we are not satisfied that the case involves any substantial question of law of general importance which in our opinion needs to be

decided by the Supreme Court. The prayer for certificate is therefore rejected.