(1964) 07 KL CK 0007

In the High Court Of Kerala

Case No : O. P. No''s. 209, 259, 641 and 643 of 1963

M/s. Enoch Pharma — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 29-07-1964

Acts Referred:
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 19, 2(c), 3, 7

Citation : (1965) KLJ 314

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V.K.K. Menon, C.S. Padmanahha Iyer, M. Ramachandran and C.J. Balakrishnan, for the Appellant; M.U. Isaac for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

P. Govindan Nair, J.—These writ applications raise a common question about the validity of rule 38 (1) of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. This rule reads as follows:

38(1). The State Government may, from time to time, fix the percentage of wastage in the production of a particular medicinal or toilet preparation. Any wastage that exceeds the allowable limit and is not properly accounted for shall be charged with the duty together with such penalty not exceeding the duty leviable thereon as the Excise Commissioner may deem fit. If the alcohol in strength of a preparation is found by the Chemical Examiner to exceed the highest allowable limit by more than 3 proof degrees or to be below the lowest allowable limits its issue from the bonded manufactory, shall be withheld.

The petitioner seeks a declaration that Rule 38 (1) of the above rules is ultra vires the powers of the rule-making authority. The rule-making authority is the Central Government and power has been conferred by section 19 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 to frame Rules. The Section is in these terms:

19. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may-

(i) Provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of duty not paid;

(ii) Prohibit, absolutely, or with such exceptions, or subject to such conditions as the Central Government may think fit, the manufacture, or any process of the manufacture, of dutiable goods or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;

(iii) regulate the removal of dutiable goods from the place where they are stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;

(iv) regulate the production or manufacture of any process of production or manufacture, the possession and storage of dutiable goods or of any component parts or ingredients or containers thereof, so far as such regulation is essential for the proper levy and collection of duties levied under this Act;

(v) Provide for the employment of excise officers to supervise the carrying out of any rules made under this Act;

(vi) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for excise officers employed to supervise the carrying out of rules made under this act and prescribe the scale of such accommodation;

(vii) Provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering dutiable goods into and clearing goods from such warehouses or in the movement or dutiable goods from one bonded warehouse to another;

(viii) provide for the distinguishing of excisable goods which have been manufactured under licence, of materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act;

(ix) impose on persons engaged in the manufacture, storage or sale (whether on their own account or as brokers or commission agents) so far as such imposition is essential for the proper levy and collection of duties levied under this Act, the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and form of such records and returns, the particulars to be contained therien and the manner in which they shall be verified;

(x) require that dutiable goods shall not be sold or offered or kept for sale except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xi) provide for the issue of licences and transport permits and the fees, if any, to be charged thereof;

(xii) provide for the detention of dutiable goods, plant, machinery or material for the purpose of exacting the duty;

(xiii) provide for the confiscation of dutiable goods in respect of which a breach of any rule made under this Act has been committed, and also for the confiscation of any alcohol, drugs or materials by means of which the breach has been committed and of any receptacle, packages or covering in which such goods or articles and contained and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles and any implement or machinery used in the manufacture of such goods;

(xiv) provide for the levy of a penalty not exceeding two thousand rupees for a breach of any rule made under this Act;

(xv) provide for the procedure in connection with such confiscation and the imposition of such penalty, the maximum limits up to which particular classes of excise officers may adjudge such confiscation or penalty, appeals from orders of such officers and revision of such orders by some higher authority, the time-limit for such appeals and revisions and the disposal of goods and articles confiscated;

(xvi) authorize and regulate the compounding of offences against, or liabilities incurred under this Act or the rules made thereunder;

(xvii) authorise and regulate the inspection of factories and provide for the taking of samples or for the making of tests of any substance produced therein and for the inspection or search of any place, conveyance or vessel used for the production, storage, sale or transport of dutiable goods in so far as such inspection or search is essential for the proper levy and collection of the duties levied under this Act.

(xviii) provide for the grant or a rebate of the duty paid on dutiable goods which are exported out of India or shipped for consumption on a voyage to any port outside India;

(xix) exempt any dutiable goods from the whole or any part of the duty levied under this Act where in the opinion of the Central Government, it is necessary to grant such exemption in the interest of the trade or in the public interest;

(xx) notify in the Official Gazette lists of the names and descriptions of preparations which would fall for assessment under any particular item of the

Schedule for regulating their manufacture, transport and distribution;

(xxi) authorize particular classes of excise officers to provide by written instructions for supplemental matters arising out of any rule made by the Central Government under this section.

(3) where any confiscation or penalty, has been adjudged in respect of a breach of any rule under this Act, which is also an offence u/s 7, the person concerned shall not be prosecuted under that section.

(4) All rules made by the Central Government under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

The rule in question has been framed, it is admitted, by virtue of the power conferred on the Central Government by sub-section 1 of Section 19.

The argument advanced by counsel on behalf of the petitioner, stated briefly, is that a glance at the Medicinal and Toilet preparations (Excise Duties) Act, 1955 and the relevant sections of the statute would make it clear that the scope and ambit as well as the purpose of the statute is only the imposition of duty on "dutiable goods" defined as such in the statute and regarding which a charge has been imposed by section 3 of the Act.

2. To understand the above contention, one fact has to be borne in mind. The duty and the penalty imposed by virtue of rule 38 (1) is not a duty imposed on any medicinal or toilet preparations specified in the schedule to the Act. It is also admitted in the counter affidavit filed on behalf of the State Government, that the duty is imposed on spirit supplied to the manufacturer who has been licensed to manufacture medicinal and toilet preparations specified in the schedule to the Act and which according to the computation made in accordance with Rule 38 has been unaccounted for.

3. The Act is in general, intended to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp and other drugs. Dutiable goods is defined in the Act u/s 2 (c) in these terms:

2. (c) "dutiable goods" means the medicinal and toilet preparations specified in the schedule as being subject to the duties of excise levied under this Act;

And section 3 provides that:

There shall be levied duties of excise, at the rates specified in the schedule, on all dutiable goods manufactured in India.

It is clear from these provisions that duty as such is only levied on "dutiable goods" as defined in the Act and which are specified in the schedule to the Act. Spirit is admittedly not one of those goods. What is therefore sought to be done by the Rule is to impose a duty on goods other than those on which a duty can be imposed or has been imposed by the statute. This is clearly in excess of the powers conferred by the statute and so cannot be provided for by the rule making authority. Rules can be made only to carry out the purposes of the Act. Rule 38 has provided for something in excess of the scope and ambit of the Act and so the framing of such a rule is clearly in excess of the powers of the rule making authority. The provision for the imposition of duty contained in Rule 38 cannot therefore stand. A fortiori the provision for the imposition of penalty must also fail. On the short ground stated above I hold that the first part of rule 38 (1) of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 is ultra vires the powers of the rule making authority and cannot therefore sustain the levy that has been made on the petitioners. I direct that no imposition will be made on the petitioners by way of duty by virtue of rule 38 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. I allow these writ applications on the above terms, but make no order as to costs.

