
(1986) 03 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3867 of 1980

Nizam Sugar Factory Ltd.

APPELLANT

Vs

Collector of Central Excise and Others

RESPONDENT

Date of Decision : 05-03-1986

Acts Referred:

Citation : (1986) 10 ECC 35 : (1987) 27 ELT 40

Hon'ble Judges : P.A. Choudary, J;A. Raghuvir, J

Bench : Division Bench

Advocate : Srirama Rao, for the Appellant; K. Nagaraja Rao for Central Government, for the Respondent

Judgement

Choudary, J.—The writ petitioner is a public limited company owned and controlled by the State Government of Andhra Pradesh. It is one of the largest and biggest manufacturers of sugar in this State. For the above purpose, it has set up various units of vacuum pan process factories in various parts of the State. One such unit is a Zaheerabad with which this writ petition is concerned. Production of sugar is leviable to central excise duty. In order to secure payment of excise duty on the manufactured sugar, the relevant Central Excise Rules of 1944 made under the Central Excises and Salt Act, 1944 insist upon observance of certain prescribed procedures for the removal of the manufactured sugar from and out of the godowns of the company which are required statutorily to be kept.

2. On 24.4.1978, the Superintendent of the Central Excise (Audit) along with his staff during their routine visit of the above unit found two lorries, viz., APG 953 and AAT 3790 loaded with 176 sugar bags intended to be transported to Co-operative Central Trading Society, Hyderabad and to Hyderabad Agricultural Co-operative Association Limited, Hyderabad. This transportation was found not to have been covered by any valid transport documents which are required under the Central Excise Rules of 1944. We repeat that the relevant Central Excise Rules of 1944 made under the Central Excises and Salt Act of 1944 insist upon the observance of statutorily prescribed procedure for the removal of the

manufactured sugar from and out of the godowns of the company which are required to be kept by the law. The purpose of these Rules would clearly be defeated if the observance (sic) of them is easily condoned by courts or even by the department. Rule 173Q, therefore, makes the non-observance of those Rules punishable with confiscation, fine and penalty.

3. Under rule 52-A, no excisable goods shall be delivered from a factory except under the authority of a gate pass made in the proper form, signed by the owner of the factory and countersigned by the proper officer. Rule 52 of the Rules says that, when the manufacturer desires to remove goods on payment of duty, he shall make an application in triplicate to the proper officer in the proper form, and shall deliver it to the officer at least twelve hours in advance. The officer shall thereupon assess the amount of duty due on the goods and on production of evidence that this amount has been paid into the Treasury, to the Collector or in the Reserve Bank of India, shall allow the goods to be cleared. Under rule 226, a producer of sugar, who is required to maintain an entry book, stock account, or warehouse register, is expressly required to keep correctly such books, accounts, or registers in the manner required, and shall not cancel, obliterate, or alter any entry therein except for correction of any errors with the sanction and in the presence of the proper officer. That rule says that any person who fails to enter the required particulars within the time prescribed under the relevant rule, shall be liable to penalty which may extend to Rs. 2000, the goods of which due entry has not been made in such books, accounts or registers are also liable to confiscation. Under rule 173G of the above Rules, a person liable to pay excise duty, called an assessee, is required to keep an account current with the Collector separately for each excisable goods, and, an account in Form R.G. 23. Account in R.G. 23 is also known as "Personal Ledger Account". Under rule 173F, an assessee shall himself determine his liability for the duty due on the excisable goods intended to be removed and shall not, except as otherwise expressly provided in the Rules, remove such goods unless he has paid duty so determined. In the case of manufacturers of excisable goods, who adopt the method of self-removal, the above rule would be satisfied by the manufacturer making appropriate entries in account books showing the quantity of excisable goods removed and the duty which the manufacturer, on his assessment is liable to pay thereon to the Central Government.

4. Now, on 24th April, 1978 when the Superintendent, Central Excise (Audit) and his staff inspected the above unit, they found that the transport of these 176 bags of sugar from the godowns of the writ petitioner-company was in violation of the above rules, viz., 52-A(5), 226, 173G and 173F. They specifically found that the manufactured goods were not entered in the books for several days. Combined with the above is the attempt to transport sugar without, at least in one case, preparation of a gate pass. These are serious violations of excise law no matter they were committed by an I.A.S. Officer or an ordinary businessman and if allowed to succeed, the interests of public revenue will suffer. Under public finance, such illegal evasion of taxes is more a detriment to the interests of other

segments of society which will have to bear the burden of this evaded tax. Accordingly, the Collector, Central Excise, called upon the petitioner-company in his show cause notice dated 17.10.78 to show cause why action should not be taken against it under the Excise Act and the relevant Rules for the alleged violation of the above rules. Along with the writ petitioner-company, the Andhra Pradesh Co-operative Marketing Federation Limited, Hyderabad, the Andhra Pradesh Co-operative Central Trading Society Ltd. Hyderabad and the owners of the lorries were also charged with under the applicable provisions of law of the Central Excise.

5. As no one other than the Nizam Sugar Company had filed this writ, we confine ourselves to the facts relevant for the disposal of its case. The writ petitioner-company submitted an explanation. In the explanation, it is not denied that the goods which were being transported were not covered by valid gate passes nor was it denied that the personal ledger account was not posted from 16th April, 1978 to 24th April, 1978. It was also not denied that between 18th April, 1978 and 24th April, 1978 any debit entry in the appropriate account books has been made showing the amount of duty payable on the goods which had been transported during the above period, i.e. 16.4.1978 to 24.4.1978. But the company has offered somewhat a strange explanation. It said,

"During the month for nearly a week, there were no despatches of sugar due to curfew in Hyderabad City depleting the stocks in the public distribution channels. Consequently later on, there was sudden rush of despatches and the clerk who is assigned to attend to central excise work, clearances of sugar and also supervise loading and unloading and stocking of sugar in sugar godowns was under considerable pressure and could not cope with the work under these extraordinary circumstances which resulted in inadvertent delay in making timely entries in R.G. 1 and PLA registers. Therefore, it is evident that there was absolutely no intention on the part of the factory to circumvent the Central Excise Rules in any way nor delay or defer the payment of legitimate central excise duty on the consignment despatches from the factory. The non-recording of the entries in the PLA registers.... was not intentional but purely due to the lack of time on account of the heavy pressure of despatches....."

Moreover, in this connection we would like to mention that N.S.F. Ltd., is a Government company and a series of records and documents are maintained at various levels to record accurately the production and despatches of sugar every day...."

6. Thus pleading, the writ petitioner-company prayed that the show cause notice may be withdrawn. The Collector by his carefully considered order dated 21st March, 1979 clearly disagreed with the plea of the writ petitioner. He found that the writ petitioner was guilty of transporting sugar on the day of the inspection without the authority of proper and valid transport permits; he also found the company guilty of production of inappropriate accounts. He also found that for period from 16th April, 1978 to 24th April, 1978, no entries were made in R.G. 1

register, and for the period from 18th April, 1978 to 24th April, 1978, no entries were posted showing the amount of excise duty payable to the Central Government. The Collector rejected the curfew explanation of the company. He said that the curfew in far away Hyderabad would not justify clearance of sugar without payment of duty. He observed that if the clerk was able to complete preparation of gate passes (not issue of them) and issue permits and other things for the removal of sugar, he should have had time to debit duty in the PLA for the goods. The Collector also observed that the party's argument was shown to be fallacious from the fact that 7530 quintals of sugar produced during 16.4.1978 to 23.4.1978 was not even entered in the R.G. 1, and that failure went without any explanation whatsoever from the writ petitioner. We notice that the theory of curfew propounded by the petitioner-company before the Collector does not even touch this aspect of the petitioner which is rather serious. The Collector naturally rejected the argument of the petitioner that the factory had sufficient money in the PLA to pay for these goods because sufficient money in the amount will not work to protect public revenue unless evasion is detected. The Collector also observed that though in respect of 176 bags seized from two lorries AAT 3790 and APB 953, a gate pass was prepared only in respect of 90 bags whereas for the balance of 80 bags not even a gate pass was prepared. The Collector commented that the failure to enter sugar production in the books from 16th April, 1978 to 23rd April, 1978 is too long a period to be put down to hurry in despatches, and that he could not see how the curfew in Hyderabad City could prevent at least entry of production in R.C. 1 and debiting of duty on clearance of sugar. The Collector said that, if anything, the Hyderabad curfew would have left the clerk with all the time at his disposal at the far away Zaheerabad. The Collector reasoned that the despatches from the godowns might have been dislocated was not the same thing as saying that the work at the factory also got dislocated. The Collector has thus rejected the argument of the writ petitioner that the writ petitioner was acting without any intention to violate the above rules. In substance the Collector endorsed the ancient Telugu proverb, "He alone is the thief who is caught."

7. On the above basis, the Collector confiscated 176 bags of sugar under rule 173Q of the Central Excise Rules, 1944 of confiscation and in lieu, a fine of Rs. 7000 was allowed to be paid within one month from the date of receipt of that order. He also confiscated 248 bags of sugar seized from the Hyderabad Central Trading Co-operative Society, Hyderabad and imposed a fine of Rs. 10,000 payable within one month from the date of receipt of the order. He also confiscated 68 bags of sugar seized from the Andhra Pradesh State Co-operative Marketing Federation and imposed a fine of Rs. 24,000 payable within a month. He also imposed on the writ petitioner a penalty of rupees on lakh to be paid within a month.

8. We were not told that from the above referred to orders of the Collector the other parties have preferred any appeals. We assume, therefore, that the company alone had further pursued and matter.

9. The writ petitioner-company had preferred an appeal against the above order of the Collector, Central Excise, Hyderabad, to the Central Board of Excise and Customs, New Delhi. The Board found that the goods were taken out from the storehouse and were loaded in two lorries without preparation of gate passes and debit entries in the PLA and commented that if they could prepare their own internal documents, there was no reason for their failure to comply with the statutory obligation under the Central Excise Rules. It also commented that R.G. 1 was not updated because production and clearance had not been noted therein for the period from 16.4.1978 to 24.4.1978. It had thus confirmed, in substance, all the findings of the Collector, Central Excise. Strangely, however, the Board had characterised these serious infractions of law admittedly committed by the company and for which there was no plausible explanation offered by the writ petitioner as mere irregularities that have occurred not so much out of mala fides but negligence. We regret to say that the Board of Central Excise had too easily swallowed the facile theory of bona fides of the company. Thus observing, the Board has confirmed the order of confiscation of sugar and imposition of the penalty on the writ petitioner, but reduced the amount of penalty from Rupees on lakh to Rs. 50,000 and also fines from Rs. 10,000 to Rs. 5,000 and from Rs. 24,000 to Rs. 12,000.

10. Against the order of the Board, the writ petitioner had preferred a revision to the Central Government. The revision was dismissed by Government by its order dated 15th February, 1980. The order found that no debit entries were made in the PLA in respect of 71 consignments involving a duty of Rs. 1.64 lakhs, and R.G. 1 was not posted with entries for about 10 days. The Government observed that a culpable state of mind is not required for offences under rule 173Q of the Central Excise Rules and the fact that there was no intention to evade payment of duty can only be urged as a ground in extenuation of the offences for the purposes of levying by the competent authority. Thus observing, the Government had dismissed the revision petition.

11. It is against the above revisional order of the Central Government confirming the orders of the Board and the Collector, the present writ petition has been filed.

12. Sri Srirama Rao, the learned counsel for the petitioner, in his prefatory remarks said that the writ petition is one filed mainly to vindicate the position of a Government-owned company and not so much for saving on money. We agree that if money is lost, only something is lost and if character is lost, everything is lost. We examine the matter over that angle. His principal argument is that in the absence of a finding as to guilty mind on the part of the writ petitioner, the order of confiscation and imposition of penalty and fine made by the authorities under rule 173Q should be quashed by this court under article 226 of the Constitution. He also urged that even in case any of the excisable goods have been found to have been removed in contravention of Excise Rules, it would not be right for the excise authorities to order confiscation and imposition of fine unless they find that there is a mala fide intention on the part of the writ

petitioner. In support of these contentions, which in many places are overlapping, the learned counsel for the writ petitioner mainly relied upon the judgments of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, ; Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, and State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another, .

13. In examining the applicability of these contentions of the writ petitioner to the facts of this case, we must first scrutinize the findings of the lower authorities on bonafides. We regret to say that there is no factual basis for the petitioner's submission. The findings of the Collector which we have set out in an earlier part of this judgment cannot be called certificates of good conduct and better intentions of the petitioner-company. The curfew explanation of the petitioner was considered by the Collector and was not only rejected but was held to be inapplicable to the failure of post relevant entries. We do not find from the record that any higher authority not excluding the Board had ever reversed the Collector's findings. Even the order of the Board which had merged in the revisional order and had thus ceased to exist did not categorically uphold the bona fides of the petitioner. Acting more out of fraternal solidarity and less out of the compulsions to safeguard public revenue made to tacit attempt to distribute the failure to post entries between mala fides and bona fides. It never excluded mala fides. The revisional order which is now presently under review did not say anything supporting the bona fides of the petitioner-company. The Collector in his order observed :

"The explanation is unsatisfactory as can be seen from the fact that in respect of 176 bags seized from two lorries AAT 3790 and APB 953, a gate pass was prepared only in respect of 90 bags whereas for the rest not even a gate pass was prepared. The failure to enter sugar production from 16.4.1978 to 23.4.1978 is too long a period to be put down to hurry in despatches. I do not see how the curfew in Hyderabad could prevent at least entry of production in the R.G. 1 and debiting of duty on clearance of sugar. If anything, the clerk would have all the time at his disposal because of the curfew. That the despatches may be dislocated is not the same thing as saying that the work at the factory also got dislocated."

14. We accept the above clearly reasoned finding of the Collector and reject the plea of the petitioner-company that it acted bona fide in not posting the entries in the statutory registers. We accordingly hold that the petitioner's failure to post the entries cannot be said to be bona fide.

15. In the above view, it would not strictly be necessary for us to examine the question how far the theory of mens rea is applicable to the acts of manufacturers that disregard the excise statute and the rules. However, in view of the fact that the learned counsel has argued this point at great length, we propose to express our view on this aspect of the matter. Excise revenue is one of the most important sources of the central income. Excise Act is an important instrument enacted to safeguard the central excise revenue. It requires the

manufactured goods to be entered into the statutory registers and provides for the storing of the manufactured goods in statutory godowns and prohibits the removal of those goods from the godown except on payment of the excise duty. However, in the case of those manufacturers who come under the scheme of self-removal, the excise goods are permitted to be removal by merely posting the necessary credit entries in the statutory books showing the excise duty payable to the Government. This is a scheme which depends for its operation on the honesty of the manufacturers. The Excise Rules, which provide for this scheme, must be interpreted in such a way as to ensure their usefulness and enforcement. If the presence of manufacturer's guilty mind is made by judicial process an essential ingredient of an act of violation of these rules, then the enforcement of these rules will largely become impossible. There is no textual warrant for such judicial interpretation. Rule 173Q says that if any manufacturer, purchaser or licensee of a warehouse removes any excisable goods in contravention of any of the provisions of the rules, such goods shall be liable to confiscation and also imposition of penalties. It appears to us in the context of statutory purpose the Legislature has used peremptory language creating an absolute liability that does not require the presence of any mens rea against those that remove goods without posting the relevant entries in the statutory books. When we contrast the language used in rule 730Q(1)(d) with the language used in 173Q(1)(a), this position becomes clearer. In 173Q(1)(d) the language connects the violation of the statutory provision with an intendment to evade the excise duty. But in 173Q(1)(a) the rules use no such formula. The difference in language between the two parts of the same rule 173A must be taken to be deliberate. The rule seeking the protection of the public revenue proceeds on the basis that the removal of excise goods from the godowns could not be intentional and could only be with knowledge of the manufacturer. It is a sort of conclusive presumption which the legislature is competent to enact. It, therefore, dispenses with the proof [of] any mental state of the manufacturer which sometimes the devil may know not. Speaking in practical terms it would not be conceivable that the excise goods from godowns would be regularly transported without the knowledge and intention of the manufacturer. It is open for the legislature to act upon such common knowledge and hold the manufacturer absolutely liable. What is forbidden under the excise law in this case is such a transportation which is not preceded by the necessary posting of the entries in the account books.

16. The decision in *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, is a case where Their Lordships were concerned with the possibility of an innocent third party being convicted. It is possible for his lorry to be used in the commission of an offence without his knowledge. It was in that context the words "shall be" in that case were interpreted by Third Lordships as being "not mandatory". Their Lordships have assigned three distinct reasons for so holding. The first reason is that it would be unjust to confiscate the truck of a person if he has no knowledge whatsoever of his truck being used for transporting opium.

Secondly, that it is a penal statute. Thirdly, that any other meaning would render the statute unconstitutional. We notice that there is vast contextual difference between the facts in the above opium case and our present Excise Act case. In our case it is not possible to conceive, though it may not be impossible to conjecture, that the removal of sugar would be without the knowledge or intent of the manufacturer. Secondly, we are here concerned with the safeguarding of public revenues and thirdly we are concerned with the enforcement of self-removal scheme, which operates on the basis of the honesty of the manufacturer of the excise goods. For these reasons, we do not think it appropriate to apply the rule of interpretation which Their Lordships of the Supreme Court had adopted in *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, in altogether a different context. In our opinion, the excise rules have created an absolute liability.

17. There is respectful authority for this view of ours. It is stated in *Crawford Statutory Construction* (Paragraph 275) that where a statute denounces as crimes acts *mala prohibita* (as distinct from criminal acts *mala in se*) such laws are either in the nature of police regulation or intended to protect the public or to promote the general welfare and that their enforcement does not call for the proof of a criminal intent unless the legislature so declares in apt words. The same author says :-

"Although *prima facie* and as a general rule there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such subject matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not. There is a large body of municipal law in the present day, which is so conceived. Bye-laws are constantly made regulating the width of thoroughfares, the height of buildings, the thickness of walls, and a variety of other matters necessary for the general welfare, health or convenience, and such bye-law are enforced by the sanction of penalties, and the breach of them constitutes an offence and is a criminal matter. In such cases, it would, generally speaking, be no answer to proceedings for infringement of the bye-law that the person committing it had *bona fide* made an accidental miscalculation or an erroneous measurement. The acts are properly construed as imposing the penalty when the act is done, no matter how innocently, and in such a case the substance of the enactment is that a man shall take care the statutory direction is obeyed, and that if he fails to do so he does it at his peril."

Courts held that in discarding the guilty mind theory, the subject matter of the relevant enactment will be of vital significance.

18. Lord Russell of Kilowen, in the case of *Coppen v. Morre* No. 2 (1898) 2 QB 306 pointed out that it was the intention of the legislature that would make the presence or absence of *mens rea* important. But it is agreed that the courts in ascertainment of the intent of the legislature must have regard to the subject matter of the relevant statute. In *The King v. Erson*, 17 CLR 506, 508, Griffith,

C.J., observed that the rule that mens rea is not a necessary ingredient of an offence applies to revenue statutes only. In *Hobbs v. Winchester Corporation*, (1910) 2 KB 471, a butcher who sold unsound meat was guilty of an offence without proof of any mens rea.

Following the above, we hold that mens rea is not a relevant ingredient of the liability under rule 173Q(1)(a) of the excise Rules.

19. The decision in *Hindustan Steel Ltd. Vs. State of Orissa*, would not be of any assistance to the petitioner-company because that was a case which did not deal with an absolute offence.

20. It is also argued by the petitioner-company that the imposition of fine of Rs. 4000 in lieu of confiscation without giving an option to two co-operative bodies is contrary to section 34 of the Central Excises and Salt Act. This argument is based upon an assumption that the goods in question belong not to the writ petitioner but to the co-operative societies. It may be noted the original order of the Collector had imposed the fine against which the co-operation societies had never made any complaint either before the Board or before the Central Government. All through the various stages of departmental inquiry, these goods are treated as belonging to the writ petitioner. The writ petitioner treated those goods as belonging to the writ petitioner and obtained the order revising the fines. We cannot, in this writ petition, hold, for the first time, that the goods belong not to the writ petitioner but to the co-operative societies. In that case, the complainty could have been made only by those societies. If those societies had never, not even have asked for an opportunity, surely the writ petitioner could not complain about it. In that view, we reject this argument.

21. In the above circumstances and for the above reasons, the writ petition fails and is dismissed with costs.

22. Sri Srirama Rao, the learned counsel for the petitioner seeks a certificate that this case involves points of law fit to be decided by the Supreme Court. We cannot so certify. Hence the oral request is rejected.