

(1993) 12 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No's. 20461 and 20452 of 1989

Raletronics Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Central Excise Act, 1944 — Section 11 A, 18, 22
Central Excise Rules, 1944 — Rule 2 (ii) (k), 209A, 4

Citation : (1994) 45 ECC 116 : (1994) 71 ELT 26

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : Shri G. Chanderkumar, for the Appellant; Shri Ashok Harnahalli, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

1. The first petitioner in W.P. 20461/89 is a Company engaged in the manufacture of television (T.V.) sets at Bangalore. For the sake of convenience it will be referred as the "Manufacturing Company". The petitioner in the other W.P. 20452/89 is referred for the sake of convenience as Bush India which is not carrying on any manufacturing activity in Karnataka but elsewhere.

2. The Manufacturing Company sells the T.V. sets to several dealers including Bush India. The T.V. sets are sold ultimately in the trade name of the particular manufacturers or sellers as in the case of Bush India. The Manufacturing Company filed its price list u/s 4 of the Central Excises and Salt Act, 1944 ("the Act" for short) read with Rule 173C of the Rules in respect of the articles manufactured by it. Price lists were approved. The price list mentioned the price of the T.V. sets and the discount allowable to the wholesale dealer and only thereafter wholesale price was arrived at. Subsequently, by a notice dated 3-10-1989 the Manufacturing Company was asked to show cause as to why differential duty on the two models referred in the notice should not be demanded u/s 11A of the Act. The notice also proposed to impose penalty on the Manufacturing Company. The notice stated that the Manufacturing Company

suppressed the cost of raw materials and using of certain items/components which are essential for the manufacture of the T.Vs. and there was an attempt to undervalue the assessable value of T.Vs. to fall below Rs. 5,000/- in order to evade higher rate of duty. Prior to the issuance of the above notice, the factory premises of the Manufacturing Company was searched and various records, files and documents were seized on 20-3-1989. On 14-3-1989 the administrative premises of the Manufacturing Company was searched and many documents were seized. The writ petition further states that the second respondent carried out investigation with regard to the value at which the T.V. sets were sold by the Manufacturing Company, throughout India without the knowledge of the Company and the second respondent seems to have seized a large number of documents from various places in India. The petitioners contend that the second respondent has only a limited territorial jurisdiction and therefore he had no jurisdiction to investigate outside the said jurisdiction and seize the documents situated beyond his territorial jurisdiction. In the second writ petition Bush India challenges the show cause notice issued to the said Company by the second respondent proposing to levy penalty under Rule 209A of the Rules on the ground that Bush India and two others named in the show cause notice knew or had reasons to believe that the excisable goods manufactured by the Manufacturing Company were liable for confiscation and that Bush India and two others referred in the notice concerned themselves in aiding, abetting, planning, selling and dealing with the said excisable goods. Since Bush India is located outside the territorial jurisdiction of the second respondent his competence to issue notice and initiate proceedings against Bush India is under challenge.

3. The first question to be considered pertains to the competence of the second respondent-Collector to cause an investigation to be held outside his territorial jurisdiction. There is no doubt that the manufacturing activity of the Manufacturing Company is at Bangalore. Therefore, the question is whether the second respondent could have collected materials by getting investigations conducted elsewhere which have a bearing on the alleged tax evasion at Bangalore. Mr. Chanderkumar, learned Counsel for the petitioners, relied on the definition of the term "Collector" in Rule 2(ii)(k) of the Central Excise Rules, 1944 to contend that the term "Collector" is defined with reference to the territories referred in the said rule and not beyond the said territory. Therefore, the learned Counsel contended that the territorial and functional competence of the second respondent is confined to the said territory. As per Section 2(b) of the Act "Central Excise Officer" means any Officer of the Central Excise Department, etc., invested by the Board with any of the powers of a Central Excise Officer. Therefore it was contended that the power of the second respondent is confined to the power regarding the matter within the territory in respect of which power was invested with him. The learned Counsel referred to Section 12A providing for the powers of Central Excise Officers. Rule 4 was referred, which contemplates the appointment of the officers by the Board. Thereafter the learned Counsel relied upon several notifications issued by the Board investing a few officers with

all India jurisdiction. For example Notification No. 429/86 dated 30-9-1986 was referred to point out that the Collector of Central Excise, Pune was invested with the powers of the Collector, Central Excise, to be exercised by him throughout the territory of India for the purposes of investigation and adjudication of such cases as may from time to time be assigned to him by the Board. A few more similar notifications were also referred to by the learned Counsel to illustrate how the powers are exercised with reference to all India and that in the absence of such a notification the Collector at Bangalore cannot stretch his jurisdiction to investigate the facts outside his territorial jurisdiction. Therefore it was contended that the material collected by the second respondent cannot be relied upon by him and the show cause notice issued was without jurisdiction.

4. The learned Counsel for the respondents, on the other hand, contended that the jurisdiction of the authority depends upon the place where the cause of action arises for any proceeding to be taken and when the alleged tax evasion occurred at Bangalore the second respondent has every jurisdiction to go into the question, for which purpose he may collect the material from whatever source he can gather and that in the instant case the second respondent got the investigations done outside his territorial jurisdiction through the respective competent officers of the said places. The learned Counsel also pointed out that when an assessee has several factories located at different places, a notification is issued empowering one of the officers of the department to exercise an all India jurisdiction to avoid the practical difficulty of making a proper assessment order. This does not mean that when a factory is situated at Bangalore the Collector at Bangalore is denied of any power to investigate into the alleged tax evasion by the manufacturer at Bangalore and this investigation can be effectively conducted only by collecting materials from other places because the assessable value of an article shall have to be gathered by reference to various factors. For example, in the instant case, the information with the respondents reveal that the Manufacturing Company and Bush India and a few of the directors adopted a device to show on record that a higher discount is allowed though as a fact no such high discount was allowed to the wholesale dealers. This could be verified and information could be collected only by investigating the transactions held outside the territorial jurisdiction of the second respondent because the various dealers are situated outside the said territory. The very purpose of the investigation will be lost if such a meaningful jurisdiction is not read into the jurisdiction of the second respondent. The learned Counsel for the Department also referred to the definition of the term "proper officer" found in Rule 2(xi), which reads thus :

""proper officer" means the officer in whose jurisdiction the land or premises of the producer of any excisable goods, or of any person engaged in any process of production of, or trade in, such goods or containers thereof whether as a grower, curer, wholesale dealer, broker or commission agent or manufacturer, or intended grower, curer, wholesale dealer, broker, commission agent or manufacturer, are situate;"

I find considerable force in this submission of the Standing Counsel for the Central Government. The second respondent is vested with the jurisdiction to enforce the provisions of the Act in respect of the excisable goods manufactured within his territorial jurisdiction. However the tax evasion activity may involve investigation not only within the said territory but also outside. If the manufacturer at Bangalore and a dealer at Bombay join hands to evolve a device in order to reduce the tax liability, the authority at Bangalore necessarily should have the power to investigate not only at Bangalore but have the appropriate material collected from outside his territorial jurisdiction. It cannot be the purpose of the law that in every case the second respondent should approach the Board to invest him with the further power to cover the area of investigation situated beyond his ordinary territorial jurisdiction. Second respondent is not interfering in any manner with the jurisdiction of a similar authority situated elsewhere. In fact Section 14 indicates that any Central Excise Officer duly empowered the Central Government in that behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any enquiry. Section 14 is not confined to the persons or the documents within the territorial jurisdiction of the concerned officer. Sections 18 and 22 provide for the search and seizure; all that they require is proper authorisation. In the instant case the materials were collected from various places in India through the officers having territorial jurisdiction over the said areas. The second respondent has not gone to those various places to collect the materials either by way of search or seizure. It is always open for the second respondent to rely upon the materials supplied to him by other officers of the department or by someone else. A person against whom proceedings are initiated is entitled to know the basis for the proposal only and not the basis for the anterior investigation held departmentally. This apart, it is now quite well settled that for the purpose of investigation u/s 11A of the Act the legality of the search and seizure under which the evidence was collected is entirely irrelevant. It is well settled now that illegality of search and seizure does not vitiate the relevancy of the evidence collected, vide *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, and *Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others*, The evidence collected under an illegal search does not get vitiated in any manner and if so, while considering the validity of show cause notice issued u/s 11A, it is entirely irrelevant to consider as to how the second respondent collected his evidence. Mr. Chanderkumar, learned Counsel, relied on a decision of the Tribunal reported in 1988 (16) ECR 507 as part of his argument to contend that the second respondent cannot go beyond his territorial jurisdiction for the purpose of investigation. On the other hand, the question before the Calcutta Bench of the Tribunal was slightly different. Under the Customs Act the cause of action arises initially when the act of import takes place and if so, the jurisdiction under the Act has to be exercised by the authority having the territorial jurisdiction over the place where the cause of action arises.

5. The statement that the jurisdiction is territorial-cum-functional has to be understood as a jurisdiction related to the cause of action. The decision of the Delhi High Court in *Duncan Agro Industries Ltd. Vs. Union of India*, in no way supports the contention of Mr. Chanderkumar. The power of investigation and collecting materials which may lead to further enquiry or adjudication is part of the machinery created by the law to prevent tax evasion. The machinery provisions in a fiscal legislation are to be liberally construed so as to effectuate the purpose behind the said machinery. Therefore, I am of the view that when the cause of action arises within the territorial jurisdiction of a particular officer, he is competent to have the matter investigated even in an area outside his jurisdiction. It is not a case of stretching the jurisdiction beyond his territory at all. The substance of the jurisdiction is to adjudicate on the question of taxability or tax evasion. This adjudication can be properly done in many cases by getting investigations done elsewhere to gather relevant material. It was then contended by the learned Counsel for the petitioners that copies of the documents relied upon in the show cause notice are not furnished to the petitioners and that it is not sufficient if the petitioners are permitted to inspect the documents. It was contended that the statements recorded earlier are to be conveyed to the petitioners by the supply of copies. The show cause notice refers to 27 mahazars, 37 statements and a large number of documents. The learned Counsel for the petitioners referred to the decision in *Sanghi Textiles Processors Pvt. Ltd. Vs. Collector of Central Excise*, Para 4 reads as follows :

"On the ground that the respondent refused to furnish copies of the documents relied upon in the show cause notice and such refusal amounted to denial of reasonable and adequate opportunity, the petitioner filed W.P. No. 12190 of 1989 on the file of this Court seeking a writ of mandamus for setting aside the show cause notice dated July 6, 1989. That writ petition was dismissed by this Court on September 6, 1989. Aggrieved by that decision, the petitioner preferred SLP No. 11569 of 1989 before the Supreme Court. The SLP was disposed of by the Supreme Court on November 15, 1989 with a direction to the respondent herein to sift the seized documents in order to identify the documents essentially necessary for the Excise Department and reimburse the reasonable expenditure incurred by the petitioner in taking copies of the documents which it considered necessary. A further direction was given to the respondent herein to return to the petitioner such of those seized documents which the department did not seek to rely, within four weeks."

The above was relied upon to contend that the Supreme Court had in a similar matter directed the department to supply the copies of the seized documents.

6. The aforesaid observation only summarises the factual position involved in the said decision. It is not an authority to hold that copies of all the documents referred should be furnished. The requirement is to furnish copies of the materials relied upon in the show cause notice and not of the documents and other materials just referred. There is a difference between relying upon a

document and referring to the same. In the instant case the show cause notice at para 5 states that the allegations are based on the statement of facts and annexures enclosed to the notice and that the Manufacturing Company is permitted to inspect/take extract of the seized documents on which the allegations are made. The petitioners made no attempt to take advantage of this offer made on 3-10-1989; instead writ petitions were filed straightaway on 13-11-1989. In the statement of objections at para 14 it is stated that :

"All annexures with copies of documents relied upon in the show cause notice have been supplied to the petitioners which have been duly acknowledged by the representative of the petitioners on 6-10-1989."

It is further stated that the petitioners were further informed on 31-10-1989 to peruse and take extract of the seized records.

7. It is quite clear that the petitioners have raised this plea for the sake of argument rather than pointing out a de facto illegality in the proceedings. It was then contended that the show cause notice issued is vague and uncertain. This contention need not detain us long because the show cause notice shall have to be read along with the annexures to the notice. The annexure gives the facts in great detail and the basis of the action is clearly brought out in the notice read with annexure.

8. In the writ petition filed by Bush India it was contended that it was located outside the territorial jurisdiction of the second respondent and the allegation made against the petitioner can be investigated and adjudicated upon only at Bombay.

9. I have already examined the scope of the jurisdiction of the second respondent. When the cause of action for the investigation and adjudication arose in Bangalore, it cannot be said that Bush India can escape the adjudicatory process against it by the second respondent. It is alleged against Bush India that it has connived and abetted with the Manufacturing Company to evolve a device to reduce the tax liability of the Manufacturing Company. Therefore, notice under Rule 209A was issued as to why penalty should not be imposed on Bush India Limited and two others. The subject matter and the cause of action fall within the territorial jurisdiction of the second respondent.

10. In the result, I do not find any merit in these writ petitions, they are accordingly dismissed. Rule discharged.