

(1987) 08 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 5178 of 1980

Raptakos Brett and Co. Ltd.

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 7

Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 124, 38(1)

Citation : AIR 1988 Mad 246

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : K. Ramu, for the Appellant; S. Veeraraghvan, Addl. Central Govt. Standing Counsel and P. Sadasivam, Government Advocate (Excise), for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner impugns the proceedings of the second respondent imposing a penalty on the petitioner under R.124

of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, hereinafter referred to as the Rules on the ground that there was wastage in

excess of the percentage fixed pursuant to R. 38(1) of the Rules in the manufacture of the preparations by the petitioner. The body of the impugned

proceedings runs as follows -

TV1 Raptakoss Brett & Co., Madras are holding a L-1 licence under M & TP (ED) Rules 1956 for, the manufacture, possession and sales of

medicinal preparations;

2. As per the report from the Deputy Commissioner (P & E) Madras. excess wastages were noticed in their preparations during Feb. 1980 as per

Annexure. (already sent). A show cause notice against levy of penalty under Rule

124 was issued to them in the reference second cited as excess

wastage beyond the permissible limit is a violation of Rule 380) of M & T P (ED) Rules, 1956.

3. The licences have explained that the limits of wastage have been prescribed without taking into consideration (i) the practical difficulties faced in

the process of manufacture, (ii) loss in the process itself and (iii) also such wastages get magnified even if a slight variation exists in the analytical

operations of their test laboratory and that of the Board.

4. Their explanation is not acceptable under Rule 124, penalty is leviable for violation of any of the rules or conditions of the licence and there is

violation of rule 38(1) in this case as the wastage limit fixed under that rule has been exceeded. The Board has carefully gone through their

explanation and finds that the licensee has contravened the conditions of the licence as well as the wastage limits fixed under Rule 38(I) of M & T P

(ED) Rules. 1956.

5. The licencees, are therefore, directed to pay a penalty of Rs. 400., (Rs. four hundred only) for the excess wastage as indicated in the annexure

for each of the batches of preparations in which such excess wastages were noticed. The total amount of penalty for all these batches prepared

during Feb. 1980 is Rs. four hundred (Rs. 400). The payment should be made in a fortnight's time.

2. Mr. K. Ramu, learned counsel for the petitioner, would first submit that Rule 38(1) when it empowered the State Government to fix the

percentage of wastage in the production of a particular medicinal or toilet preparation is beyond the rule making power reserved under Sec. 19 of

the Medicinal and Toilet Preparation (Excise Duties) Act 16 of 1955. Learned counsel for the petitioner has to concede that this point has not

been specifically taken in the affidavit filed in support of this writ petition. I do not think that it will be fair to the other side to permit the learned

counsel for the petitioner to raise this point touching the rule making power only in the course of his arguments. Hence I decline to probe into this

question.

3. However, secondly Mr. K. Ramu learned counsel for the petitioner, would submit that R. 124 speaks about the breach of the rules as a basis

for the levy of penalty. and, in the instant case, the, complaint is that R. 38(1)

was breached, but in R. 38 (1) there is no positive mandate that any particular medicinal or toilet preparation shall not involve wastage in excess of the percentage to be fixed by the State Government. According to the learned counsel even on the construction of the Rr. 38(I) and 124, there is no warrant for levy of penalty as done by the impugned proceedings of the second respondent. Rule 38(I) reads as follows

The State Government may, from time to time fix the percentage of wastage in the production of a particular medicinal or toilet preparation If the percentage content of pure alcohol in a preparation is found by the Chemical Examiner to exceed the highest allowable limit by more than 1.75 per cent by volume units or to be below the lowest allowable unit, its issue from the bonded manufactory shall be withheld.

Rule 124 runs in the following terms :-

A breach of these rules shall, where no other penalty is provided herein, be punishable with a penalty which may extend to one thousand rupees and with confiscation of the goods in respect of which such breach is committed.

4. We are concerned with the first portion of R. 38(I). It merely empowers the State Government from time to time to fix the percentage of wastage in the production of a particular medicinal or toilet preparation. There is no prescription or mandate specifically expressed in that rule that

the production of a particular medicinal or toilet preparation shall not exceed the percentage of wastage fixed by the State Government, from time

to time. Rule 124 contemplates a breach of the rules and not breach of any condition of the licence dehors the rules. In the absence of a specific

prescription or mandate laying down that the production of a particular medicinal or toilet preparation has either to conform to the allowable

percentage of waste or in other words shall not involve wastage in excess of the percentage fixed by the State Government from time to time, it is

not possible to bring in a concept of the breach of the rules within the meaning of Rule 124. A breach presupposes a prescription or a mandate,

which should be adhered to. It must be remembered that we are dealing with a taxing law, and that too penal provisions therein and if there is any

ambiguity, it has got to be resolved only in favour of the citizen and not in favour of the Revenue. In the absence of express provisions in the Rules

laying down a prescription or a mandate that the production of a particular

medicinal or toilet preparation shall not involve wastage exceeding the percentage fixed by the State Government from time to time, It is not permissible to complain that there has been breach of the rules and thereby fall back upon the penal provision of R. 124 to levy the penalty as done in the impugned proceedings of the second respondent. It is not the role of this court to add on to the language of Rule 38(I) to say that there is a prescription or a mandate to the above effect. Such a prescription or mandate cannot be a matter of implication. The principle to be applied in construing a penal law is that if in construing the relevant provisions there appears any reasonable doubt or ambiguity, it should be resolved in favour of the person, who would be liable for the penalty. Omissions will not be readily supplied in a penal law. Hence, sustaining the second contention put forth by the learned counsel for the petitioner, this writ petition is allowed. No costs.

5. Petition allowed