(1966) 01 KL CK 0004

In the High Court Of Kerala

Case No : S.A. No. 1264 of 1961

State of Kerala APPELLANT

Vs

The Pharmaceuticals and Chemicals (P) Ltd. RESPONDENT

Date of Decision : 15-01-1966

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2

Citation : (1966) KLJ 613

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;S. Velu Pillai, J

Bench : Division Bench

Advocate : Mani J. Meenattoor and Govt. Pleader, for the Appellant; V.K.K. Menon and C.P. Sankara Pillai, for the Respondent

Final Decision : Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.—The point to be decided in this appeal relates to the interpretation of Rule 11 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. The said rule is as follows: Recovery of duties or charges short-levied or erroneously refunded--When duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of an excise officer, or through mis-statement as to the quantity or description of such goods on the part of the owner or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded, the person chargeable with the duty or charge, so short-levied, or to whom such refund has been erroneously made, shall pay the deficiency or repay the amount paid to him in excess, as the case may be, on written demand by the proper officer being made within six months from the date on which the duty or charge was paid or adjusted in the owner''s account-current, if any, or from the date of making the refund.

The facts necessary to decide the question are stated below. The respondent-plaintiff is a limited Company engaged in the manufacture and sale of chemicals and pharmaceutical preparations having its registered office at Trivandrum.

Under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Central Act, and the Rules framed thereunder, the Kerala State is authorised to levy and collect duties of excise on dutiable goods under the Act. The excise duty was collected by the Excise Inspector who was the officer-in-charge of the respondent''s factory at the rate of Rs. 5/- per gallon on all the preparations issued from the factory from 1-4-1957 to 13-5-1957. The duty was enhanced to Rs. 17.50 per gallon by the notification dated 9-3-1957 issued by the Government of India fixing 1-4-1957 as the date from which the enhancement of duty would take effect. The notification was published in the Gazette of India dated 23-3-1957. But the Excise Inspector who was the officer in-charge of the factory of the respondent collected duty only on the basis of the Rules in force prior to the said notification. On 31-5-1957 the appellant the State Government issued notice to the respondent making a demand of Rs. 9431.50 being the excise duty short-levied in respect of the preparations issued from 1-4-1957 to 13-5-1957. The suit was instituted by the respondent against the appellant for a declaration that the said notice was without jurisdiction and for an injunction restraining the appellant from taking steps for the realisation of the amount of the demand. The suit was dismissed by the learned Munsiff, but on appeal the suit was decreed by the learned first Additional District Judge of Trivandrum.

D. W. 1 is the Excise Inspector who was in charge of the respondent''s factory. Rule 2, clause (xiv) of the Rules defines "officer-in-charge" thus:

''officer-in-charge'' means an officer of the Excise Department of any State appointed by the collecting Government to supervise work in a binded manufactory or a bonded warehouse and includes officers of any other Department similarly appointed.

Ext. P. 5 contains the copy of the Official Memorandum dated 19-3-1957 sent by the State Government to the Secretary, Board of Revenue, and forwarded to D.W. 1 with the endorsements of the Board of Revenue and the Assistant Excise Commissioner, Trivandrum. The endorsement made by the Secretary to the Board or Revenue is dated 28-3-1957 and is as follows:

Copy along with a copy of the Medicinal and Toilet preparations (Excise duties) Manual forwarded to the Asst. Excise Commissioner, Trivandrum and Inspector of Excise, Kozhikode. The Asst. Excise Commissioners and the Inspector of Excise, Kozhikode are requested to take such action as may be necessary to enforce the Act and the Rules contained in the Manual from 1-4-1957 or such other date as may be subsequently notified. The receipt of the mentioned manual should be acknowledged.

The endorsement by the Assistant Excise Commissioner is to the following effect and is dated 9-5-1957:

Copy with copy of enclosure forwarded to the Excise Inspector, Pharmaceutical Works, Pettah, Trivandrum. Orders of the Board regarding date on which the Act is to come into force has not been communicated by Board. Further instructions will be issued on receipt of orders of the Board.

The learned Judge took the view, that the short-levy occasioned was due to the directions contained in the endorsement of the Assistant Excise Commissioner in Ext. P. 5 and for the applicability of Rule 11 the short-levy should have been the result of inadvertence, error, collusion or mis-construction on the part of the officer-in-charge who collects the duties under Rule 44. It was contended by the learned advocate appearing for the respondent that the expression "excise officer" in the earlier clause of Rule 11 denotes an "officer-in-charge" as defined in Rule 2, clause (xiv) of the Rules. The term "excise officer" occurring in Rule 11 is not defined by the Rules. The following definition of "excise officer" occurs in Section 2 clause (d) of the Act:

''excise officer'' means an officer of the Excise Department of any State and includes any person empowered by the collecting Government to exercise all or any of the powers of excise officer under this Act.

The learned advocate for the respondent referred to Rule 2, clause (iii), Rules 9, 40 and 44 in support of his argument. We are of the view, that these Rules afford no guidance in the matter. Rule 2 (iii) defines "bonded manufactory". Rule 9 prescribes the time and manner of payment of duty. Rule 40 deals with the issues of alcoholic preparations from a bonded manufactory on payment of duty and prescribes the procedure for the same. Rule 44 fixes the responsibility for the correct collection of duty and penalty on the officer-in-charge. These Rules do not in any way support the contention of the respondent to restrict the meaning of the expression "excise officer" in Rule 11 to the officer-in-charge of the factory who is empowered to collect the duty and penalty under Rule 44. It was contended by the respondent that Rule 11 contemplates short-levy through collusion on the part of an excise officer and this is possible only if the term "excise officer" in Rule 11 is construed as "officer-in-charge". It is not possible to accept this contention. The term "excise officer" in Rule 11 also includes "officer-in-charge." It was further contended that "excise officer" in the earlier clause of Rule 11 means "officer-in-charge" while for the latter part of Rule 11 it must mean "proper officer". The latter part of Rule 11 enjoins the issue of a demand for the payment of the deficiency or refund of the amount paid in excess by "proper officer" and not by "excise officer". The "proper officer" is defined in Rule 2 clause (xv) meaning "an excise officer in whose jurisdiction the premises of the manufacture of any dutiable goods, or of any person engaged in the process of manufacture of, or trade in such goods or containers thereof, whether as manufacturer, wholesale dealer, or intended manufacturer or wholesale dealer, are situated". When in Rule 11 we find the expression "excise officer" and also the expression "proper officer" and in other Rules the expression "officer-in-charge" it is not possible to construe the term "excise officer" in Rule 11 as meaning only the officer-in-charge.

2. Ext. P. 5 discloses that the endorsement made by the Secretary, Board of Revenue, is dated 28-3-1957 and directed the Assistant Excise Commissioner to

enforce the Act and the Rules from 1-4-1957 and the endorsement by D. W. 1 is dated 9-5-1957. It follows that the omission on the part of D. W. 1 to communicate the order of the Revenue Board to the officer-in-charge in time to enable the proper collection from 1-4-1957 and the mistake contained in the endorsement of D. W. 1 dated 9-5-1957 in Ext. P. 5 led to the short-levy. The short-levy therefore was the result of inadvertence or error on the part of D. W. 1 who is an "excise officer" within the meaning of Rule 11. In this view, the decree and judgment of the learned appellate Judge cannot stand. In the result, we set aside the decree and judgment of the lower appellate court and allow the second appeal with costs throughout.