

(1963) 07 MAD CK 0026
In the Madras High Court
Case No : Writ Appeal No. 53 of 1961

The Collector of Central Excise		APPELLANT
	Vs	
V.K. Palappa Nadar		RESPONDENT

Date of Decision : 02-07-1963

Acts Referred:

Central Excise Rules, 1944 — Rule 223A
Central Excises and Salt Act, 1944 — Section 35, 36
Constitution of India, 1950 — Article 226

Citation : AIR 1964 Mad 111 : (1963) 76 LW 809

Hon'ble Judges : Ramakrishnan, J;Anantanarayanan, J

Bench : Division Bench

Advocate : Advocate General and Addl. Govt. Pleader, for the Appellant; N. Arunachalam, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—This writ appeal is filed under the Letters Patent against the decision of Ramachandra Iyer J. (as he then was), in W. P.

No. 590 of 1958. The prior facts, which led to the present proceedings, are briefly the following

2. The petitioner in the writ petition is a dealer in scented chewing tobacco, cigars and beedies, and he had a licence for maintaining a warehouse

for the storing" of tobacco. Under the rules, for the grant of such licence, the petitioner had to keep proper accounts of the stock of tobacco in the

warehouse. On a check by the excise authorities, his stock was found short by a substantial quantity. This made the petitioner liable to, certain

penalties, under the Central Excise Rules (1944), Rule 223-A. The Collector of Central Excise called upon him to show cause, why a penalty

should not be inflicted upon him for the shortage. After receiving the petitioner's

explanation, the Collector found that the explanation was not satisfactory, and imposed on the petitioner a penalty in a sum exceeding a lakh of rupees, under Rule 223-A, of the Central Excise Rules.

3. Section 35 of the Central Excises and salt act (Central Act I of 1944) gave the petitioner a right of appeal to the Central Board of Revenue, which he availed himself of, and thereafter, the Central Board of Revenue passed an order on his appeal to the following effect:

Having regard to all the circumstances of the case, the Central Board of Revenue hereby directs, without prejudice to the merits of the case,"

(italics (here in " ") ours the order dated 3rd March 1956 passed by the Collector of Central Excise Madras shall be vacated.

This order was passed on 25-7-1958, and was communicated to the petitioner on 5-8-1958. But three days earlier, the Collector of Central

Excise, Madras, issued a notice dated 2-8-1958, again under Rule 223-A of the Central Excise Rules, calling upon the petitioner to show cause

why a penalty should not be imposed upon him, in respect of the very shortage of the stored tobacco, which was the subject-matter of the

adjudication by the Central Board of Revenue, leading to the order above mentioned. The petitioner felt aggrieved by this fresh proceeding

commenced against him by the Collector of Central Excise, notwithstanding the order of the Central Board of Revenue passed in appeal. He,

therefore applied to the High Court, under Article 226 of the Constitution, for the issue of a writ of prohibition prohibiting the Collector of Central

Excise from making any further enquiry, in pursuance of the show cause notice dated 2-8-1958.

4. The learned Judge (Ramachandra Iyer J.) was of the opinion, that, in the absence of any direction in the appellate order of the Central Board of

Revenue, remanding the matter to the original Tribunal for fresh enquiry, the Collector of Central Excise had no jurisdiction to undertake a de

novo enquiry. The learned judge, there upon, granted the petitioner's prayer, and made the rule nisi absolute. From this decision, the present

appeal is filed by the Collector of Central Excise.

5. The main argument pressed before us, by the learned Advocate-General, who appeared for the appellant, is that the words in the aforesaid

appellate order of the, Central Board of Revenue, which have been italicised by

us, expressly reserve the merits of the case to be gone into by the original Tribunal, and therefore this gave jurisdiction to the Collector of Central Excise, to under take a de novo enquiry.

6. After careful consideration of the arguments of the learned Advocate General for the appellant and also of the respondent, we are of the opinion that, in the absence of any specific words in the order of the Central Board of Revenue, it is not possible to spell cut from its terms a precise direction for a de novo enquiry, giving jurisdiction to the Collector, for that purpose. Learned. Advocate General drew our attention to a decision of a Bench of this Court, comprising of Rajamarwar, Chief Justice and Venkatarama Aiyar J. in Janab N.S. Sattar Sahib Vs. State of Madras and Another, , which followed the judgment of Lord Goddard Chief Justice in Rex v. Northumberland Compensation Appeal Tribunal, 1951 1 KB

711. In that case, by a writ of Certiorari, the High Court quashed an order of the Madras Government, in a proceeding arising out of Section 64-A of the Motor Vehicles Act. It was held that, once the order was quashed, it would follow that the applicant would be able to go back to the appellate tribunal. In other words, once an order of Government was quashed in Certiorari, the applicant had a right to go to Government, acting u/s 64-A of the Motor Vehicles Act.

7. But the proceedings before the Central Board of Revenue, in this case, were initiated by way of appeal by the aggrieved party. In view of the wide nature of the powers conferred on the appellate authority u/s 35, it will not be proper, to draw an analogy between such powers and the power of Certiorari of the High Court under Article 226 of the Constitution. The powers u/s 35 are certainly far wider. To determine whether, in the present case, the proceedings are open to a de novo enquiry, one has necessarily to interpret the terms of the appellate order of the Central Board of Revenue. It will not be proper to draw an analogy from Certiorari proceedings.

8. Section 35 of the Central Act I of 1944 enacts a self-contained set of rules, for dealing with such matters. Initially, there is an issue between the State on the one hand and the subject on the other, leading to an enquiry of a penal nature, by an original Tribunal, namely, the Collector of Central Excise, followed by the infliction of the penalty of confiscation or fine or both. The

aggrieved party has a remedy, u/s 35, by way of appeal to the Central Board of Revenue. A period of limitation is prescribed for the appeal. Be appellate authority is given power to make further enquiry, if it considers necessary. Finally, it has got the power to pass in the appeal, such order as it thinks fit, "confirming, altering or annulling the decision or order appealed against". A limit is placed upon the maximum of the penalty, which the appellate authority is competent to impose. Then comes Section 35(2) which states that every order passed in appeal under that section shall be final, subject to the power of revision conferred by Section 36, on the Central Government. This power of revision can be exercised u/s 36 by the Central Government, either on the application of the aggrieved party, or by Central Board of Revenue, in cases where no appeal would lie. As pointed out by the Supreme Court in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, these tribunals exercise quasi-judicial powers. Though there are no specific rules for their procedure, they have got to observe the rules of natural justice. In the present case, the statute has defined their powers, and the tribunals have to act strictly under the terms of the statute. The provisions of Section 35, the gist of which has been given above, show that, when an appeal is filed before the Central Board of Revenue, the entire proceedings are taken out of the jurisdiction of the original Tribunal, which imposed the penalty, and are brought entirely within the jurisdiction of the appellate Tribunal. The appellate Tribunal has been given powers of the widest character, which will certainly include, as pointed out by the learned Judge (Ramachandra Iyer J.) a power of remand. Finality also attaches to the order of the appellate Tribunal subject only to the orders passed by the Revisional authority. This would clearly show that, after the disposal of the matter by the Appellate Tribunal, jurisdiction can be revived in the original Tribunal only if there are specific directions in the appellate order to that effect. If the appellate order merely annuls the original order without containing any other directions as frankly conceded by the counsel for the appellant there will be no power in the original Tribunal to initiate de novo proceedings. But the appellant wants to infer such a power in this case from (1) the use of the appellate order of the italicised words "without prejudice" and ;2) a secret communication sent by an official of the Central

Board of Revenue on 5-7-1958 to the Collector of Central Excise.

9. Taking up the last mentioned official communication, the learned Judge has mentioned in the order now in appeal, that this letter was submitted

by the learned Additional Government Pleader for the perusal of the Court, and the learned Judge held that a decision could not be based on the

basis of that letter, which should be treated only as an interpretation put by the officer who wrote that letter, upon the order of the Central Board of

Revenue. We agree, with this view of the learned trial Judge. Some of the contents of this letter are quite unhappy, because they purport to give a

direction as to the terms of the penalty to be inflicted, at the end of the de novo proceedings, and may have the effect of undermining the

confidence of the subject, in getting an impartial adjudication by a quasi-judicial tribunal. But we need not dwell further on this aspect of the matter

because the letter prima facie is marked "secret" and was intended only to be a direction of an administrative nature. By no stretch of interpretation

can this communication be treated as part and parcel of the appellate order of the Central Board of Revenue, whose terms are neither more nor

less than what has been extracted at the beginning of this judgment.

10. Taking up the first point, we agree with the view of the learned Judge that the italicised (here in " ") words, "without prejudice to the merits of

the case cannot as construed as equivalent to conferment on the Collector of Central Excise jurisdiction to make a de novo , enquiry. The italicised

(here in " ") words can mean, only that the appellate authority had not gone into the merits of the case, But has disposed of the matter on a

preliminary ground, the preliminary ground may embrace a diversity of reasons. It may be one of lack of jurisdiction In the original Tribunal; it may

be one of limitation or it may be one of a defect of procedure, going to the very root of the decision on one or more of these preliminary grounds, a

decision allowing an appeal, without going into the merits, can be given by an appellate quasi judicial tribunal. Therefore by reason of the disposal

in this case, without going into the merits, it will not be proper to spell out an order of remand. We cannot also go into any collateral circumstances,

to interpret the terms or the appellate order. The terms of the appellate order; o are in our opinion not sufficient for being construed as amounting

to an order of remand.

11. We, therefore, confirm the decision of the learned Judge, and dismiss the appeal. There will be however no order as to costs.