

(1973) 11 GAU CK 0001
In the Gauhati High Court
Case No : Second Appeal No. 189/71

Union of India (UOI) and Another

APPELLANT

Vs

Silchar Electric Supply Co. Ltd.

RESPONDENT

Date of Decision : 30-11-1973

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 192, 194, 194(3), 9
Central Excises and Salt Act, 1944 — Section 3
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1977) 1 ELT 157

Hon'ble Judges : D.M. Sen, J

Bench : Single Bench

Judgement

D.M. Sen, J.—This is an appeal by defendant No. 1 Union of India and defendant No. 2 Collector of Customs and Central Excise, Shillong against the judgment and order of the learned District Judge, Silchar, affirming the judgment and decree of the learned Assistant District Judge, Silchar, decreeing the plaintiff's suit for a sum of Rs. 6,395.12 P. with costs.

2. The plaintiff, namely Silchar Electric Supply Company Limited, had filed a suit against defendant Nos. 1 and 2 for recovery of a sum of Rs. 6,395.12 P. alleged to have been paid in excess as Central Excise duty for purchase of furnace oil from defendant No. 3, namely M/s. Burma Oil Company (India Trading) Limited was impleaded as a proforma defendant in the suit, but the plaintiff did not claim any relief against that defendant vide paragraph 8 of the plaint. Plaintiff's case is that it had been granted a license under the Central Excise Rules, 1944 (L. 6 No. I/SIL/DGVL/63), whereby he was entitled to purchase the oil in question from defendant No. 3 free of any Excise duty. He had, however, paid a sum of Rs. 3205.05 on 18.12.63 as duty for purchase of a consignment of the furnace oil from defendant No. 3. He had also paid a sum of Rs. 3190.07 as excise duty on 25.01.64 for similar purchase of furnace oil from the said company, defendant No. 3. The plaintiff's contention is that since it was not required to pay any excise duty for the aforesaid purchases, it is now entitled to refund of the

amount paid by it to defendant No. 3 from defendants 1 and 2, since defendant No. 3 paid the said amount to defendants 1 and 2.

3. So far as the claim to the sum of Rs. 3,190.07 is concerned it appears that since it had been paid in January 1964, when admittedly the licence, granting the concession to the plaintiff, had expired, it would not be entitled to any refund. In other words, since even according to the plaintiff's claim, the exemption that was allowed to it was only for the year 1963. any excise duty paid by plaintiff in January 1964 would not be covered by such exemption and the plaintiff would accordingly be not entitled to any refund thereof.

4. We now have to consider how far the plaintiff's claim for recovery of the sum of Rs. 3205.05 paid as excise duty on 18.12.63 is recoverable from defendants 1 and 2.

5. No doubt, in December 1963 the plaintiff had been granted the license under which it was eligible to purchase furnace oil without payment of any excise duty. Nevertheless, the plaintiff had paid the excise duty to defendant No. 3, from whom it had purchased the furnace oil and which excise duty he now claims back from defendants 1 and 2.

6. We have to examine whether any claim for refund lies against defendant 1 and 2 for the said sum paid by the plaintiff to defendant No. 3 against whom no relief has been claimed by the plaintiff in his plaint.

7. The learned senior Government Advocate has taken the stand that since the amount had been paid not to defendant No. 1 or No.2, but to defendant No. 3, no right enforceable against defendant No. 1 or No. 2 is available to the plaintiff. This is a matter of some importance and requires careful examination. u/s 3 of the Central Excises and Salt Act (1 of 1944) (hereinafter called "the Act"), an excise duty may be levied and collected in the prescribed manner from the producer or manufacturer of the excisable goods. It will thus be clear that power of the Union of India to levy and collect the excise duty is only from the manufacturer or the producer of such goods. The ultimate consumer or the buyer is, therefore, not liable to pay any excise duty himself to defendant No. 1, the Union of India. The Union Government's power is restricted only to levy and collection of such duty from the manufacturer or the producer and similarly it is only the producer or manufacturer who is under an obligation to pay such excise duty to the Union. The plaintiff, therefore, is a complete stranger to or not within the contemplation of Section 3 of the Act, as it stands. No doubt the excise duty which has been levied on the manufacturer of the producer, may be eventually passed on to the ultimate consumer or buyer, but so far as the statute is concerned, the liability for paying the tax is on the manufacturer or producer, as the case may be, and the right to collect the same by the Union of India is only against such manufacturer or producer. In my opinion, therefore, (the plaintiff, who was not a manufacturer or a producer and who was, therefore, not required to pay any excise duty to the Union of India directly is in no position to claim

refund from the Union of India because the plaintiff had made no payment to the Union of India. It may perhaps enforce a claim if all other conditions are satisfied, against the defendant No. 3).

8. The grant of a license L-6 No. I/SIL/DGVL/63 merely enables the plaintiff to buy the furnace oil free from excise duty. If, however, the plaintiff had paid excise duty despite the grant of such license, his claim for refund may possibly be against the defendant No. 3 or the recipient of the duty from the plaintiff, but cannot, in my opinion, be against the Union of India.

9. The claim also suffers from some other infirmities, Rule 11 of the Central Excise Rules, 1944, hereinafter called "the Rules", reads as follows :

"11. No, refund of duties or charges erroneously paid, unless claimed within three months. No duties or charges which have been paid or have been adjusted in an account-current maintained with the Collector under Rule 9, and of which repayment wholly or in part is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be refunded unless the claimant makes an application for such refund under his signature and lodges it with the proper officer within three months from the date of such payment or adjustment, as the case may be."

10. The above will make it clear that the Collector may make refund only to the person who has paid him the excise duty on grounds of inadvertence, error or misconstruction and on condition that the person concerned makes an application for such refund under his signature and lodges it with the proper officer within three months from the date of such payment or adjustment, as the case may be. In the instant case, the claim for refund was not made by the defendant No. 3; even if we conceive that a claim could have been made directly by the plaintiff against the Union of India, the plaintiff has not been able to show that any such claim was made within the period of three months, as required under Rule 11 of the Rules. In my opinion, Rule 11 precludes any refund, when a period of three months has elapsed from the date of the payment. Therefore, even if the defendant No. 1 had any obligation under common law or otherwise to make refund of a sum received by it, since the claim had not been made within three months, there is no legal liability on the defendant No. 1 to allow the refund.

I also have to take note of Rules 192 to 194 of the Rules. The plaintiff has not been able to satisfy me by any cogent evidence that the requirement of Rules 192 to 194 had been complied with; Sub-rule (3) of rule 194 may hereby reproduced :

"(3) Within seven days after the close of each month, every person licensed to use excisable goods without payment of duty for special industrial purposes shall submit to the proper officer a monthly return in the proper Form, showing the nature and quantity of such goods used and of commodities manufactured the manner of manufacture, and such other particulars as the Central Board of

Revenue or the collector may, by general or special order, require."

It will be clear from the above provisions that the nature and quantity of excisable goods obtainable under -any license on a concessional rate, must be shown at the close of each month with particulars as specified therein to the Central Board of Revenue or the Collector of Customs. It is not clear whether such report containing the necessary particulars was ever submitted to the Central Board of Revenue or the Collector with regard to the furnace oil purchased on 18.12.63, in other words, it is not clear what the nature and quantity of the furnace oil purchased and stored in accordance with Rules 192 or 194, compliance with which along would entitle the plaintiff to get the necessary concessions. After taking into consideration all the grounds submitted by the learned counsel for both the sides, I am of the opinion that no relief is available against defendant No. 1 and defendant No. 2, since the plaintiff did not pay any sum towards excise duty to those two defendants. If plaintiff has any right for refund, it might have been against defendant No. 3 and certainly not against defendants No. 1 and No. 2.

11. Mr. Senapati, the learned counsel appearing on behalf of the plaintiff respondent, has submitted that he may be allowed to amend the plaint in order to claim relief against defendant No. 3; and he has invoked the power of this court under the provision of Order 6, Rule 17, Civil Procedure Code. In my opinion, the power of the court under this provision of law is discretionary. An amendment under this rule should normally be refused where it would introduce a totally different, new and inconsistent case or its affect would be to substitute one distinct cause of action for another or change the character of the suit. In my opinion, the amendment, as prayed for by Mr. Senapati, would certainly change the entire character of the suit by modifying the cause of action as well. In my opinion, therefore, this prayer at this stage has no merit.

12. In the result, I find that this appeal must succeed, since the plaintiff has not been able to satisfy me that he has any enforceable claim against defendant No. 1 and defendant No. 2. The appeal is allowed. The judgment and decree of the court below are set aside. I make no order as to costs.