

(1958) 03 PAT CK 0015
In the Patna High Court
Case No : A.F.A.D. No. 1386 of 1953

Union of India (UOI)

APPELLANT

Vs

Ayed Ram

RESPONDENT

Date of Decision : 10-03-1958

Acts Referred:

Central Excise Rules, 1944 — Rule 21, 211
Central Excises and Salt Act, 1944 — Section 33, 34, 40, 40(2)
Constitution of India, 1950 — Article 300
Limitation Act, 1908 — Article 62

Citation : AIR 1958 Patna 439 : (1958) 6 BLJR 354

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; R.S. Chatterji and Shankar Kumar, for the Respondent

Judgement

1. In the suit out of which this appeal arises the plaintiff alleged that on 3-7-1947, the Range Officer of the Central Excise Department seized an excess quantity of 1358 lbs. of non-duty paid tobacco from the shop of the plaintiff and that he also submitted a report against the plaintiff to the Collector of Central Excise, Calcutta, through the Superintendent, Central Excise, Ranchi, and the Assistant Collector of Central Excise, Patna. On the 26th June, 1948, the Collector of Central Excise, Calcutta, confiscated the seized tobacco & ordered that the same be released on payment of the duty imposed and a redemption fine of Rs. 200/- in lieu of confiscation.

The Collector of Central Excise imposed a further penalty of Rs. 100/- upon the plaintiff. This order was communicated to the plaintiff on 6-7-1948. The plaintiff alleged that he deposited the amount by two challans on 20-4-1949. Thereafter the plaintiff sent letters to the Department of Central Excise for, delivery of the seized tobacco to him, but the tobacco was not returned. The plaintiff has, accordingly, brought the suit against the Union of India for return of the seized tobacco or in the alternative for a sum of Rs. 2400/- being the market price of

the tobacco at the material point of time.

The defence to the suit was that the plaintiff did not deposit the redemption fine and the penalty within the period of three months as required by the rules and, therefore, the confiscation was complete. It was also contended that the suit was barred by limitation u/s 40 of the Central Excise and Salt Act, 1944 (Act I of 1944). Both the lower Courts have held that the deposit made" by the plaintiff was valid and the plaintiff was, therefore, entitled to return of the quantity of seized tobacco. The lower courts have, therefore, granted a decree to the plaintiff for a sum of Rs. 24007-, as claimed.

2. In support of this appeal it was argued by the learned Government Pleader that section 40(2) of Act I of 1944 operated as a bar. Section 40 of the Act is in the following terms:

"40. Bar of suits and limitation of suits and other legal proceedings: (1) No suit shall lie against the Central Government or against any officer of the Government in respect of any order passed in good faith or any act in "good faith done or ordered to be done under this Act.

(2) No suit, prosecution, or other legal proceeding shall be instituted for any thing done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of."

In our opinion the argument addressed by the learned Government Pleader is not correct and section 40 Of Act I of 1944 does apply to this claim of the plaintiff. Section 33 of the Act deals with the power of adjudication and states as follows:

"33. Power of adjudication. -- Whereby the rules made under this Act anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged:

(a) without limit, by a Collector of Central Excise.

(b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees by an Assistant Collector of Central Excise:

Provided that the Central Board of Revenue may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in Clause (b) of this section and may confer on any officer the powers indicated in Clause (a) or (b) of this section,"

Section 34 provides that

"wherever confiscation is adjudged under this Act or the rules made thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit".

In this connection rules 211 and 212 of the Central Excise Rules, 1844 are also

important. Rule 211 is in the following terms:

""211. On confiscation, property to vest in Central Government. (1) When anything is confiscated under these Rules such thing shall thereupon vest in, Central Government,

(2) The officer adjudging confiscation shall take and hold possession of the thing confiscated and every officer of Police on the requisition of such officer, shall assist him in taking and holding such possession".

Rule 212 states that

"articles of which confiscation has been adjudged and in respect of which the opinion of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Collector may direct".

In the present case it has been found by the lower appellate court that the deposit by the plaintiff of the redemption fine, penalty and duty was lawfully made on 20-8-1949. It does not appear from the record of this case on what date the confiscated tobacco was sold by the Central Excise Department, but It appears from exhibit C that the amount of sale proceeds was deposited in the Treasury on the 21-6-1950. It is therefore not unreasonable to assume that the sale took place long after 20-4-1949, when the plaintiff made the deposit. If this assumption is correct, it follows that the officers of the Department of Central Excise had no jurisdiction to sell the confiscated tobacco in the manner they have done. In other words, the action of the officers of the Central Excise Department in selling the confiscated tobacco was clearly ultra vires and such action on their part cannot be said to be anything done or ordered to be done under this Act" within the meaning of section 40 of the Act. We do not, therefore, think that the bar of section 40(2) of Act I of 1944 applies to this case.

We are, on the contrary, of opinion that this, case is governed by article 62 of the Limitation Act, which provides a limitation of three years for a suit for recovery of "money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use." If article 62 is applicable to this case, the suit brought by the plaintiff is well within time because the terminus a quo for the period of limitation is the date of sale which took place sometime after 20-4-1949, and before 21-6-1950, but the difficulty in the way of the plaintiff in this case is that the suit has been framed not as a suit for money having been received, but as a suit for damages for the tort of conversion. The damage claimed by the plaintiff is a sum of Rs. 2400/- being the market value of 1358 lbs, of seized tobacco.

Such a suit claiming damages for the tort of conversion cannot be brought against the Union of India in view of a long series of authorities: See, for example, the decision of the Bombay High Court in Shivabhajan Durgaprasad v. Secretary of State ILR Bom 314 (A). In that case a suit was instituted against the

Secretary in Council to recover damages on account of the negligence of a Chief Constable with respect to goods seized. It was contended on behalf of the defendant that the liability of the Secretary of State in Council was to be determined with reference to what would have been the liability of the East India Company were it still in existence.

It was held by Jenkins, C. J. and Aston, J. that the suit was not maintainable inasmuch as the Chief Constable seized the goods not in obedience to an order of the executive Government but in performance of a statutory power vested in him by the Legislature and that the seizure of the goods was not in any sense productive of benefit to the revenues of the Bombay Government nor was it a transaction out of which profit could be derived. It was further observed in this case that in order that a suit should lie against the Secretary of State in Council it must be one in which the East India Company might have been made liable and the liability alleged must be one incurred on account of the Government of India and that in such a suit the plaintiff must, in order that he should succeed, establish that the liability was incurred on account of the Government of India, so that he must show that it was incurred by some One competent for that purpose.

There is a decision of this High Court to the similar effect in *District Board of Bhagalpur Vs. Province of Bihar*, .

3. In view of the principle laid down in the above mentioned authorities, we hold that the plaintiff cannot sue the Union of India for damages for the tort of conversion of the confiscated tobacco. But since there is proof in the present case that the sale proceeds of the seized tobacco amounting to Rs. 650/- was deposited in the Government Treasury on 21-6-1950, and the Union Government was benefited to that extent, there is a duty cast upon the Union Government to return the proceeds of the sale of the confiscated tobacco. That is the view expressed by a Division Bench of the Calcutta High Court in *Kailash Chandra v. Secy*, of State ILR Cal 452 (C).

4. In the present case we are of opinion that the plaintiff is entitled to get a decree for refund of the amount of the sale proceeds, namely, Rs. 650/- which has found its way into the Government Treasury and to which extent the Government of India has been enriched. In other words, Rs. 650/- deposited on 21-6-1950, in the Government Treasury in favour of the Union Government is money received by the defendant for (he plaintiff's use and the plaintiff is entitled to the refund of this money on the principle of *ex-acquo et bono*. In other words, the plaintiff has in equitable claim for refund of the money which had been received by the defendant for the plaintiff's use.

5. For these reasons we hold that the decree passed by the lower appellate Court should be set aside and the plaintiff should be granted a decree to the extent of Rs. 650/- and proportionate costs in all She Courts, Accordingly, we modify the decree of the lower appellate court and allow the appeal to this extent.