
(1956) 03 MAD CK 0008
In the Madras High Court

Union of India (UOI)

APPELLANT

Vs

G. Vittappa Kamath and Another

RESPONDENT

Date of Decision : 12-03-1956

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 17

Citation : (1956) 69 LW 716 : (1956) 2 MLJ 455

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—In this Second Appeal the appellant is the Union of India, represented by the Secretary, Ministry of Finance,

Government of India, New Delhi and the questions that arise are firstly whether a Civil Court has got jurisdiction to order refund of amounts

alleged to have been illegally collected as Central excise-tax on betel-nuts and secondly whether on the facts of the case there has been such illegal

collection. The respondents filed O.S. No. 183 of 1947 in the Court of the District Munsif, Mangalore, for refund of Rs. 502, stated to have been

illegally collected as Central excise-tax on cured betel-nuts. The trial Court held that the suit was not maintainable and dismissed the same. In

appeal the learned Subordinate Judge, South Kanara, came to a contrary conclusion and decreed the suit as prayed for and hence the present

Second Appeal.

2. Under the Indian Finance Act of 1944 the Government of India imposed an excise duty of two annas per pound on cured betel-nuts produced

on and after 1st April, 1944. The first plaintiff a dealer in arecanuts had already stocked-cured nuts by the end of March, 1944, which could not

be brought within the taxation under the Finance Act of 1944. The Sub-Inspector of Central Excise checked the pre-excise stock, i.e., the goods

which the first plaintiff had stocked with him before 31st March, 1944 and issued a certificate, Exhibit A-1, on 12th April, 1944, showing that the

first plaintiff was in possession of arecanuts cured before 31st March, 1944 and the quantity was 16 candies 1 maund which corresponded to

9245lb. On 17th and 19th of April, 1944 and 6th May, 1944, the first plaintiff sold 7 candies, 16 maunds, 25lb., out of the pre-excise stock to

one Ullal Hari Varman Nayak as per entries in Exhibit A-8 and a reference had been made to the pre-excise certificate, Exhibit A-1. Subsequently

the Assistant Inspector of Excise issued a demand order, Exhibit A-2, dated 2nd December, 1944, calling upon the first plaintiff to pay excise duty

of two annas per pound on 9245lb. which according to the first plaintiff was identical with the weight mentioned in the pre-excise certificate.

Against that demand order, there was an appeal to the Collector of Central Excise. Meanwhile as the stock had to be sold the goods were handed

over to the second plaintiff for sale and the quantity thus handed over came to 7 candies, 12 maunds and 12lb. This quantity was bonded and a tax

of Rs. 502 was collected whereupon the second plaintiff paid the amount under protest and filed a petition for refund. The Collector of Central

Excise dismissed it on 15th April, 1946 and on appeal to the Central Board of Revenue, the Order of the Collector was confirmed. The present

suit is for recovery of the illegal levy of Rs. 502.

3. The contention put forward on behalf of the Central Government is that the stock sold by the first plaintiff to the second plaintiff was not pre-

excise stock but that the first plaintiff was trying to use the pre-excise certificate as a shield against the imposition of duty on the goods cured after

31st March, 1944 and that was why exemption was cancelled.

4. At the very outset the contention raised on behalf of the Central Government was that even if the levy was illegal the Civil Court had no

jurisdiction in accordance with certain provisions of the Central Excises and Salt Act, 1944 and as such the-suit ought to be dismissed as not being

maintainable.

5. In this connection it is necessary to refer to the provisions of the Act before we deal with the question of maintainability of the suit in a Civil

Court for recovery of the illegal levy. Section 3 defines excisable goods as goods specified in the First Schedule as being subject to duty of excise

and excludes salt. Item No. 12 in the First Schedule relates to betel-nut cured and defines the same as follows:

"Betel-nut" means the fruit of the areca-palm (areca catechu) whether with or without husk, whether cured or uncured but does not include the fruit

while still attached to the tree.

The rate of duty is two annas per pound. Section 3 relates to duties to be levied and lays down that:

There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced

or manufactured in British India, and at the rates set forth in the First Schedule.

This section also speaks of salt with which we are not concerned. Section 37 relates to the power of the Central Government to make rules and

there-are various Sub-sections which define the purposes for which rules are to be made. Rule 7 in Chapter III relates to recovery of duty from

persons who-produce or manufacture any excisable goods. Rule 9 relates to the time and manner of payment of duty and Rule 54 is with regard to

submission of monthly returns by the manufacturers. There is no doubt whatever that if the goods in regard to* which an excise duty of Rs. 502

was collected, were cured before 1st April, 1944, no tax can be levied on them. That question will be discussed while dealing with the second

contention raised on behalf of the appellant. Section 35 relates to appeals and it is as follows:

Any person deeming himself aggrieved by any decision or order passed by a Central Excise-Officer under this Act or the rules made thereunder

may, within three months from the date of such decision or order, appeal therefrom to the Central Board of Revenue, or in such cases as the

Central Government directs, to any Central Excise Officer not inferior in rank to an Assistant Collector, of Central Excise and empowered in that

behalf by the Central Government. Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit,

confirming, altering-or annulling the decision or order appealed against; provided that no such order in appeal shall have the effect of subjecting any

person to any greater confiscation or penalty than has been adjudged against

him in the original decision or order.

6. Section 36 relates to revision by Central Government, and the important section which we have to consider in this connection is Section 40

which bars suits and lays down period of limitation for instituting suits and other legal proceedings.

7. It runs as follows:

No suit shall lie against the Central Government or against any officer of the Crown in respect of any order passed in good faith or any act in good

faith done or ordered to be done under the Act.

8. This section is somewhat akin to Section 17 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) which is to the following

effect.

Section 17. - (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the (State) Government, for any act done or

purporting to be done under this Act, without the previous sanction of the (State) Government.

(2) No officer or servant of the (State) Government shall be liable in respect of any such act in any civil or criminal proceedings if the act was done

in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

Section 18. - No suit shall be instituted against the Government and no suit, prosecution or other proceeding shall be instituted against any officer

or servant of the (State) Government in respect, of any act done or purporting to be done under this Act, unless the suit, prosecution or other

proceeding is instituted within six months from the date of the act complained of.

9. Learned Government Pleader places reliance on Section 35, Sub-clause 2, which states that every order passed in appeal under this section by

the Central Board of Revenue shall, subject to the power of revision conferred by Section 35 be final and reading that section with Sub-clause (1)

of Section 40 it is contended that no suit shall lie against the Central Government in respect of any order passed in good faith or any act in good

faith done or ordered to be done under the Act, It is useful to quote at this stage Section 40 of the Central Excise and Salt Act, 1944, which is to

the following effect:

No suit shall lie against the Central Government or against any officer of the Crown in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(a) No suit, prosecution or other legal proceeding shall be instituted for anything 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.

10. The argument is put in this way : According to well-known canons of interpretation of statutes where the liability to tax is not under the common law but is created under a special statute which itself provides for an appeal then the statute must be considered as a self-contained one and the civil Courts will have no jurisdiction to entertain suits regarding such reliefs. At page 116 of Craies on Statute Law the general rule is stated thus:

This general rule, when relating to the trial of new offences created by statute, was explained, by Willes, J., in *Wolverhampton New Waterworks*

Co. v. Hawkesford (1859) 6 C.B. 336 as follows:

There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at

common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at

common law : there unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party

suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but

provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability

not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it...The remedy

provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The

form given by the statute must be adopted and adhered to.

11. He also referred to *Maxwell on Interpretation of Statutes* (10th Edn.) page 129 to 131. The leading case on the subject as stated in the above

text-books is *Wolverhampton Waterworks Co. v. Hawkesford* (1859) 6 C.B. 337 :

141 E.R. 486, where the matter has been discussed by

Willes, J. The other case on which reliance was placed is *Neville v. London Express Newspaper, Limited* 1919 A.C. 368, and the decision of the

Privy Council in *Secretary of State for India v. Mask and Co.* (1940) 2 M.L.J. 140 : (1940) 3 F.L.J. 15 : 1940 L.R. 67 IndAp 222 : ILR 1940

Mad. 599 (P.C.) In the last-mentioned case Lord Thankerton dealt with the right to resort to civil Courts with regard to acts done under the Sea

Customs Act and it was held that the decision by an Assistant Collector on the duty leviable on imported goods is a decision within the meaning of

Section 188 of the Sea Customs Act and when the right of revision therefrom conferred by Section 191 has been exercised and an order under

that section is made, the order is final and the jurisdiction of the civil Court is excluded. At page 614 the following passage is found:

By Sections 188 and 191 a precise and self-contained Code of appeal is provided in regard to obligations which are created by the statute itself,

and it enables the appeal to be carried to the supreme head of the executive Government. It is difficult to conceive what further challenge of the

order was intended to be excluded other than a challenge in the Civil Courts.

12. The learned Government Pleader on the analogy of this decision strenuously argues that when u/s 35 of the Central Excises and Salt Act an

appeal is provided to the Central Board of Revenue whose decision subject to the power of revision conferred u/s 36 is final there can be no

further remedy even if the taxes are illegally collected so far as the party aggrieved is concerned.

13. On the other hand, the learned Counsel for the respondents invited our attention to a decision in *The Province of Madras Vs. Chekka*

Satyanarayanamurthy, to which one of us (Govinda Menon, J.) was a party. That related to interpretation of Sections 17 and 18 of the Madras

General Sales Tax Act and the question was whether civil Courts had jurisdiction to deal with actions arising under that statute. A large body of

case-law was discussed in that judgment and it is unnecessary to repeat the same here. We adhere to the view taken therein. What was decided in

that judgment is that the Madras General Sales Tax Act with its subsequent amendments has not ousted the jurisdiction of ordinary civil Courts

when the party is alleged to have been aggrieved by the administration of the

Act and that suits alleging that sales tax was levied illegally against the assesseees and that excessive amounts were collected from them as sales tax are maintainable. It was further held that Section 18 of the Act, which provides that no suit shall be instituted against the State unless the same is done within six months from the date of the Act complained of, necessarily implied that there is no prohibition against the filing of a suit. Sub-section (2) of Section 40 of the Central Excises and Salt Act has to be read in the same manner. That is, when it is stated that no suit or prosecution or other legal proceeding shall be instituted for anything done or ordered to be done under the 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, it certainly contemplates the filing of suits and as was stated in *The Province of Madras Vs. Chekka Satyanarayanamurthy*, if the section which is in the negative form is transformed in a positive manner it is clear that suits can be instituted if they are done within six months.

Then the only question is whether Sub-section (1) of Section 40 of the Central Excises and Salt Act bars the present suit. It is contended that the levy of tax is not contemplated by the first Sub-section to Section 40 of the Act and for that purpose the judgment of Panchapakesa Ayyar, J., in *The State of Madras Vs. A.M.N.A. Abdul Kader Tharaganar Firm*, is relied on. There, the learned Judge was of the opinion following *The Province of Madras Vs. Chekka Satyanarayanamurthy*, that in such matters the civil Courts have jurisdiction and the bar of a suit is only to protect the officers of the Government from being proceeded with for official acts done in good faith. There is much to be said in favour of this view and in our opinion Section 40 of the Central Excises and Salt Act, Sub-section (1) must be interpreted in the light of this view. But as has recently been held in *Collector of Customs v. Gokuldas* (1955) 1 M.L.J. 422, the jurisdiction of civil Courts to interfere with the orders of Customs authorities is not confined merely to cases of excess or lack of jurisdiction of these authorities but extends to the correction of errors apparent on the face of the record. After an elaborate discussion of all the case-law Rajagopala Ayyangar, J., has come to the conclusion that civil Courts have got jurisdiction. No doubt that case arose out of an application filed u/s 45 of the Specific Relief Act for issuing a writ in the nature of mandamus but

that does not make any difference whatever. We do not think that Sub-section (2) of Section 40 of the Central Excises and Salt Act deals with the same subject-matter as Sub-section (1), for the latter sub-section is very wide in its language and import and refers to suits, prosecutions or other legal proceedings in respect of anything done or ordered to be done under the Act. It may be that Sub-section (1) is intended to protect officers personally from actions but Sub-section (2) certainly contemplates other cases where relief is sought against the Government as such. That is implicit in Sub-section (2) that a right of suit at common law exists in view of the wide nature of the language used. It is unnecessary to restrict the effect of prohibition of filing of suits in respect of any act done within six months to personal remedies alone.

14. Then it is urged on behalf of the appellant that if acts are done in good faith civil Courts will have no jurisdiction and the learned Government

Pleader traced the development of the law regarding good faith from a very early decision in *Spooner v. Juddow* 4 M.I.A. 353, which was

considered in *Governor-General in Council v. Raleigh Investment Co. Ltd.* (1944) 1 M.L.J. 477, *Raleigh Investment Co., Ltd., v. Governor-*

General in Council (1947) 2 M.L.J. 16. In the last-mentioned case their Lordships of the Judicial Committee held that

a suit for a declaration that certain provisions of the Income Tax Act are ultra vires the Federal Legislature and that the assessment of the plaintiff

based on these provisions was illegal and wrongful and for payment of the tax paid on such basis

is in truth directed exclusively to a modification of the assessment and as such is barred by Section 67 of the Act. It was further held that

jurisdiction to question the assessment otherwise than by the use of machinery expressly provided by the Act would appear to be inconsistent with

the statutory obligation to pay arising by virtue of the assessment. But it seems to us that the Income Tax Act and the Central Excises and Salt Act

are not ad idem with regard to the provisions thereof. There is much greater similarity between Sections 17 and 18 of the Madras General Sales

Tax Act and Section 40 of the Central Excises and Salt Act and if according to the Madras General Sales Tax Act a suit would lie in respect of

illegal levy we see no reason why there should not be a suit with regard to illegal collection of tax under the Central Excises and Salt Act as well.

The result of the conclusions set out in the form of propositions at page 433 in Collector of Customs v. Gokuldas (1955) 1 M.L.J. 422 , are

directly applicable to the present case, though that decision dealt with powers of the High Court alone. Following the decision in The Province of

Madras Vs. Chekka Satyanarayanamurthy, , we hold that civil Courts have jurisdiction to entertain suits with regard to illegal recovery of Central excise-duty.

15. The further question is whether the stock of arecanuts under consideration which was stored in the warehouse on 5th January, 1945, is non-

excisable. There is ample evidence in the case to show that arecanuts in these parts are plucked only from November onwards and that it would

take two or three months for getting them dried. Such being the case the quantity of arecanuts found in the warehouse on 5th January, 1945, could

not have been the crop harvested in November or December, 1944. They must have been dried and cured prior to 1st April, 1944, in which case

they are not liable to be taxed. We agree on point No. 1 with the finding of the learned Subordinate Judge in paragraph 7 of his judgment that the

goods were pre-excite goods, relying upon the evidence of P.W. 1. The learned Subordinate Judge was of the opinion that the goods which were

sold to the second plaintiff on the 5th, 15th and 22nd of January, 1945, were goods which were cured prior to 1st April, 1944, and therefore

exempt from any taxation. If they are goods exempted from taxation and the same fact was known to the taxing authorities then it cannot be said

that the levy of tax on such goods was not done in good faith as due care and attention have not been bestowed in the matter of assessment of the

goods.

16. The decision of the lower appellate Court is right and the Second Appeal is dismissed with costs.