(1966) 05 AHC CK 0012

In the Allahabad High Court

Case No : Second Appeal No''s. 1062 and 1063 of 1959

Union of India (UOI) APPELLANT

Vs

Ghasi Ram Laxmi Narain RESPONDENT

Date of Decision : 11-05-1966

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A
Central Excises and Salt Act, 1944 — Section 35, 37, 40

Citation : AIR 1967 All 546

Hon'ble Judges : S.N. Katju, J

Bench : Single Bench

Advocate : Jagdish Swarup, for the Appellant; Swami Dayal, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Katju, J.—These are two appeals preferred by the defendant the Union of India, Second Appeal No. 1063 of 1959 arises out of suit No. 684 of 1956 which was instituted by the joint family firm of Messrs Prabhu Lal Ram Ratan Das through its Karta Sri Deoki Nandan. It prayed for an injuction res train ins the defendant from realising a sum of Rs. 1091/8/. from the plaintiff Second Appeal No. 1062 of 1959 arises out of suit No. 736 of 1956 which was instituted by Messrs Ghasi Ram Laxmi Narain through Sri Ghasi Ram praying for a permanent injunction restraining the defendant from realising Rs. 2845/4/- from the plaintiff firm

The plaintiffs in both the suits were dealers in tobacco and they sold tobacco under permits obtained from the Central Excise Department, Agra, to Messrs Ram Lal Jagannath, dealers in tobacco at Jhansi. It was alleged that duty of -/6/- per lb was paid on the aforesaid goods in accordance with law, but subsequently on 21-3-1956 notices were issued to the plaintiffs under Rule 10A of the rules framed under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) calling upon the plaintiffs to pay an additional duty at /-8/-per lb. on the aforesaid goods.

The plaintiffs made representations to the department and failing to get the appropriate relief from the departmental authorities instituted the two suits in appeal. The plaintiffs alleged inter alia, that the proper duty of -/6/- per lb. had been paid and no additional duty could be levied on them. It was further alleged that the notices were in fact under Rule 10 of the Central Excise Rules, 1944 (hereinafter called the rules) framed u/s 37 of the Act and since they were sent after three months of the date when the duty was initially paid on the goods they were barred by time and the plaintiffs could not be asked to pay any additional duty on the said goods.

2. The defendant contended, inter alia, that there was short levy and the proper duty payable on the said goods was at the rate of -/14/- per lb. and since the duty of -/6/- per lb, had been paid by the plaintiffs they were liable to pay the additional amount of /8/- per lb. It was further contended that the notices issued by the department to the plaintiffs were under Rule 10-A and, therefore the question of limitation did not arise at all. The defendant also challenged the jurisdiction of the civil court to entertain the two suits.

3. The trial court decreed the plaintiffs'' writs and its decision was affirmed on appeals by the lower appellate court. The defendant the Union of India has come in second appeals to this court.

4. Learned counsel for the appellant argued that the action of the Central Excise Department to issuing notices to the plaintiffs demanding an additional sum by way of excise duty could not be questioned in a civil court and second, the notices were under Rule 10-A and not under Rule 10. The relevant provisions of the Act are as follows:

Section 36. Appeals.--(1) 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 inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order specified against:

Provided

(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by Section 36, be final.

Section 36. Revision by Central Government--. The Central Government may on the application of any person aggrieved by any decision or order passed under this Act or the rules made thereunder by any Central Excise Officer or by the Central Board of Revenue and from which no appeal lies, reverse or modify such decision or order.

Section 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 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.

He argued that Sections 35 and 36 of the Act provide for remedies for a person aggrieved by any decision or order passed by a Central Excise Officer. If a person has any such grievance it is open to him to proceed in the manner prescribed by the provisions of the aforesaid sections and he can challenge the order by way, of appeal or revision. He emphasized that the provision in Section 36 Sub-section (2) of the Act gives finality to an order passed in appeal which it subject only to the power of revision conferred by Section 36. If a person who was aggrieved by any order by a Central Government Officer and had pursued the remedy as provided for under Sections 36 and 36 then he has to remain content with the orders passed under Sections 36 and 36 and it is not open to him to seek any further redress in a court of law. He contended that an order passed by a Central Excise Officer could only be challenged by way of appeal or revision u/s 35 or 36 of the Act and it could not be questioned in a civil Court.

If the contention of the learned counsel is correct, the obvious result would be that the action of the Central Excise authorities concerned could not be challenged before a civil Court and the suits should be dismissed on that ground alone. Learned counsel further referred to the provision of Section 40 of the Act and contended that it barred the present suits. Section 35 makes it clear that the procedure prescribed under it has to be adopted when a person feels aggrieved by any decision or order passed by a Central Excise Officer under the Act or the rules made thereunder. If the act impugned or challenged by a person is an act of a Central Excise Officer done not under the Act or the rules made thereunder, but in excess of his powers under the Act and the rules, then it could not be said that such an act of a Central Excise Officer could not be challenged before a civil court. It has, therefore, to be seen in the present case whether the Central Excise Officer had acted within hit powers in demanding the additional excise duty from the plaintiffs.

This leads to the question whether the notices issued to the plaintiffs were under Rule 10 or under Rule 10-A. Learned counsel for the appellant strenuously argued that it is not within the competence of the civil courts to examine the question whether the notices were under Rule 10 or under Rule 10-A. That was a matter for the consideration of the Central Excise Officer. If he thought that the proper notices were notices under Rule 10-A then in such a case the civil court could not embark on an inquiry for finding whether the proper notices should be under Rule 10 or under Rule 10-A. Learned counsel contended that once the

Officer had issued notices under Rule 10-A, the civil court could not reconsider the question and come to its own finding that the proper rule was 10 and not Rule 10-A. He contended that the action of the Officer and the orders passed by him were in good faith and, therefore, u/s 40 no suits lay against the Central Government in respect of the orders passed by the Officer.

It was alleged by the plaintiff that the excise duty had been levied at the proper rate on 29-4-1953. It has been found by the lower appellate court that the plaintiffs did not suppress any fact at the time when they were required to pay the excise duty on the goods that were sent to Jhansi. The goods were sealed by the departmental authorities at Agra and it could not be said that the plaintiffs were guilty of any misrepresentation which had resulted in short levy of excise duty from them. The Court below expressed the view that the short levy was due to inadvertence on the part of the departmental authorities and the Officer could only act under Rule 10 within three months from the date on which the duty had been paid, viz. 29-4-1953. The clear case of the plaintiffs was that even if they were required to pay any additional duty, the Central Excise Officer could only act under Rule 10 and his action in issuing notices under Rule 10-A was illegal.

Rule 10 mentions the circumstances under which the duty charged had been short levied and empowers the Officer to demand the balance of the dues from a person. He has however to act within three months from the date on which the duty charged was paid. Rule 10-A is a residuary provision which would he attracted only in those cases where the rules do not make any specific provision for the collection of any duty or deficiency in duty. The provision of Rule 10-A could only apply when the matter is beyond the ambit of Rule 10. Where the provisions of Rule 10 are clearly attracted, then it is obvious that Rule 10-A would not at all apply. There is no provision In Rule 10-A with regard to the time within which the demand could be made by the Excise Officer. Therefore in the present case since the demand was made after three months from the date when the duty was initially paid the action was under Rule 10-A and not under Rule 10. The plaintiffs have challenged the validity of the notices issued by the Excise Officer under Rule 10-A

The question, therefore, was whether the Officer had acted within the powers conferred on him under the Act or the rules in issuing notices to the plaintiffs under Rule 10-A. The plaintiffs challenged the Officer''s authority to issue the notices under Rule 10-A and contended that the action of the Officer was unwarranted and was beyond the powers conferred on him under the Act or the rules framed thereunder. That was not a matter which could only be decided by the Central Excise Officer, the question raised was whether the Officer had acted within his powers or had acted illegally in issuing the notices of demand to the plaintiff. It was for the court to examine the validity of the said notices and to see whether the Officer had acted in exercise of the powers conferred on him under the Act or the rules. It could not, therefore, be said that the civil court had no jurisdiction to examine whether the Officer was acting within his powers.

5. The question was considered by the AIR 1940 105 (Privy Council) and by the Supreme Court in Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, and Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, In Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, it was observed:

"Non-compliance with the provisions of the Statute to which reference is made by the Privy Counsel must, we think, be non-compltance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction."

In the present case if the Officer had not complied with the provisions of Rule 10 and in flagrant disregard of those provisions had chosen to act under Rule 10-A, then it must be held that the proceedings were illegal and without jurisdiction. It was further observed:--

"The exclusion of the jurisdiction of Civil Courts to entertain civil cases will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of some of the matters covered by the said statute."

6. As mentioned above, Section 35 of the Act pointedly refers to the decision or order by a Central Excise Officer "under this Act or the rules made thereunder". If the Officer had acted not under the Act or the rules made thereunder but in an arbitrary manner, then clearly Section 35 would not be applicable. The provisions of Section 40 give protection to the Central Government or 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". If an action is brought in respect of any such order or act done in good faith, then no liability could be fastened on the Central Government or against any Officer. But if the suit is not in respect of any order or act, but challenges the validity of any such order or act, then it could not be said that the suit could be barred by Section 40. Section 40 protects the Central Government, or any of its officers in regard to any consequence arising out of any order or act passed or done in good faith. Where, however, the order or the Act itself is assailed or challenged, then the matter would not be within the ambit of Section 40 of the Act.

7. In Union of India v. Vittappa Kamath AIR 1957 Marl 110 it was observed as follows:

"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 Aiyer, J. in The State of Madras Vs. A.M.N.A. Abdul Kader Tharaganar Firm, is relied upon. There the learned Judge was of the opinion following The Province of Madras Vs. Chekka

Satyanarayanamurthy, that in such matters the civil court 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 (i) must be interpreted in the light of this view. ..."

I respectfully agree with the aforesaid view of the Madras High Court.

8. It, therefore, cannot be said that the suits are barred either by Section 35 or Section 40 of the Act.

9. Learned counsel for the respondents relied on Deo Prayag Singh Vs. Uttar Pradesh Government, and Smt. Abida Begam and Others Vs. Rent Control and Eviction Officer, Lucknow and Another, and on the decision of the Supreme Court in Lala Ram Swarup and Others Vs. Shikar Chand and Another, . There is ample support in the aforesaid decisions for the proposition that where the authority exceeds the powers conferred upon it or makes an order disregarding the conditions subject to which and the limits within which it can pass an order, the civil courts can certainly interfere.

10. I have no hesitation in holding that the Central Excise Officer had acted arbitrarily and beyond his powers in sending the notices of demand to the plaintiffs. I agree with the decision of the Court below.

11. The appeals fail and are dismissed with costs.

