

(1979) 03 AHC CK 0076

In the Allahabad High Court

Case No : First Appeal No. 107 and 108 of 1969

Union of India (UOI)

APPELLANT

Vs

The Elgin Mills Co. Ltd.

RESPONDENT

Date of Decision : 07-03-1979

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36, 40
Civil Procedure Code, 1908 (CPC) — Section 80, 9

Citation : (1980) CENCUS 17 : (1990) ECR 278 : (1979) 4 ELT 640

Hon'ble Judges : R.S. Singh, J;K.N. Seth, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.N. Seth, J.—These appeals arise out of two suits instituted by the Elgin Mills Company Ltd, against the Union of India, in suit No. 87 of 1967 a decree for recovery of Rs. 34,840.60 said to have been paid in excess by the plaintiff on account of Excise duty on cloth was prayed for. In suit No. 37 of 1967 a decree for recovery of Rs. 41,112.65 on account of Excise duty paid during the period 3.1.1963 to 10.9.1963 was claimed. In the former suit it was alleged that by Notification No. 111/62, dated 13th June, 1962 the Government of India enforced certain rates of Excise duty on gray cloth and processed cloth. This notification was enforced with effect from 24th April, 1962. A clarification of the said notification was given by the Government of India, Department of Revenue by letters No. P4/16162CXVH, dated 11th July, 1962 addressed to all Collectors, Central Excise, that the rate of Excise duty on bleached process cloth was higher than that for gray cloth of the corresponding Quality by 5 nP. per square metre. According to the plaintiff excessive duty amounting to Rs. 34,840.60 was paid during the period 24th April, 1962 to 2nd January, 1963 treating the accrued cloth as bleaching cloth. A claim for refund was made to the Collector, Central Excise, Kanpur, on 6th February, 1963. The Assistant Collector, Central Excise, Kanpur, rejected the claims by his order dated 29th June, 1964. Thereafter the plaintiff preferred a revision petition before the Central Government on 23rd

February, 1968. The Central Government on 3rd May, 1966 rejected the revision petition. It was pleaded that the plaintiff paid the entire sum of Rs. 34,840.60 under mistake in ignorance of the clarification letters or the Revenue Authorities who charged excess excise duty illegally from the plaintiff in respect of clearance of secured cloth during the period 24th April, 1962 to 2nd January 1963. A notice u/s 80 of CPC dated 3rd June, 1966 was served on the defendant on 8th June, demanding refund of the aforesaid amount but to no avail and hence the suit.

2. In suit No. 33 of 1967 it was claimed that a sum of Rs. 41,112.65 had been illegally realised by the defendant out of the credit balance in the Account Current of the plaintiff with the defendant Revenue Authorities in respect of accrued cloth cleared during the period 3rd January, 1963 to 10th September, 1963 treating the cloth as bleached cloth which attracted the higher rate of duty.

3. The suits were contested primarily on the ground that the Excise duty had been correctly levied as the cloth in question was bleached and not accrued as alleged by the plaintiff. It was contended that the plaintiff company itself had described the fabrics cleared as medium bleached cloth. It was further asserted that the Chemical Examiner, on the basis of his tests, had advised that the fabrics in question were bleached. It was further pleaded that the suits were barred by time.

4. In suit No. 87 of 1967 the written statement was got amended by incorporating the plea that the orders of the Central Excise Authorities and the Central Government were final and binding on the plaintiff, that the suit for refund of the Excise duty was not maintainable and further that the suit was barred by the provisions of section 40 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). Other pleas raised in defence are not relevant for the decision of these appeals.

5. In the trial court the two suits were consolidated. Oral and documentary evidence adduced in suit No. 87 of 1967 was directed to be read in the connected suit also.

6. The trial court decreed both the suits on the findings that the cotton textile goods in question were scoured and not bleached fabrics and that Excise duty had been paid under a mistake treating them as bleached or processed fabrics and that the excess Excise duty paid by or realised from the plaintiff Company was refundable and the suits for their recovery were not barred by limitation.

7. It is not necessary to enter into the merits of the dispute whether excess Excise duty had been recovered wrongly treating the cotton textiles in question as bleached or processed fabrics as in our opinion both the suits were not maintainable. In this connection we may point out that although a specific plea was raised in suit No. 87 of 1967 by amending the written statement that the suit was not maintainable but no specific issue on that point was framed by the trial court. However, non-framing of the issue has not caused any prejudice to the plaintiff and since the question is purely one of law the appellant is entitled

to raise it at the appellate stage.

8. The jurisdiction of the civil court to try all suits of a civil nature is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. This is the purport of section 9 of the Civil Procedure Code. It is well settled that exclusion of the jurisdiction of the civil court is not readily to be inferred. The Act does not expressly exclude the jurisdiction of the civil court in matters covered by the same. The question is whether it is impliedly barred- The task to determine whether the jurisdiction of the civil court is impliedly barred is normally a difficult one. In such a case the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it would be relevant and might even become decisive. If the enquiry reveals that statute creates a special right or liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf it becomes relevant to examine further whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. After an exhaustive survey of the cases dealing With the problem, the Supreme Court in *Dhulabhai etc. v. State of Madhya Pradesh* and *Anr.* AIR 1967 S.C. 78 laid down certain principles out of which the principles relevant for our purpose are as follows : -

"(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive....

it is necessary to see if the statute creates a special right or a liability and provides for the determination of the determination of the right or liabilities and further down that all questions about the said right and liability shall be determined by tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry."

9. The principles laid down in *Dhulabhai's* case (*supra*) have been affirmed by the Supreme Court in *The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.*, and *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, . In the light of these principles we may examine

the provisions of the Central Excises and Salt Act. Section 36 of the Act confers revisional power on the Central Government.

10. It is obvious that the Act creates special rights and liabilities, and provides a special machinery for resolution and adjudication of disputes in respect of them. By Sub-section (2) of Section 35 the appellate order has expressly been made final subject to the power of revision conferred by section 36. Although there is no express bar to the jurisdiction of courts but the statute gives finally to the appellate orders. On the principles set out in *Dhulabhai's case* (supra), the civil court jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a civil suit. In the present suit the civil court was called upon to interpret the notification dated 13.6.1962 as clarified by the subsequent letters dated 4th July, 1962. and 11th July, 1962 and to determine whether Excise duty had been correctly levied treating the cotton textiles as bleached or processed cloth. If there exists adequate remedy under the Act to adjudicate upon such a dispute, the civil court jurisdiction must be deemed to be impliedly excluded. Under the Act the Central Excise Officer determines the amount of Excise duty leviable on the article chargeable with duty. If a person feels aggrieved by his decision, he has a right of appeal. The Appellate Authority is authorised by section 35(1) to make such further enquiry and pass such order as it thinks fit confirming, altering or annulling the order appealed against. Section 36 provides for a revision petition to the Central Government. It cannot be disputed that the appellate and revisional power like the one conferred by Sections 35 and 36 of the Act have to be exercised judicially and objectively and in accordance with the settled principles of natural justice as they affect vested civil rights of persons. It is thus clear that the Act provides an adequate remedy for adjudication of the disputes which the plaintiff wants to be resolved in the Civil Court.

11. We are conscious of the fact that the first principle enunciated in *Dhulabhai's case* makes an exception in those cases where it is alleged that the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure to attract the exception it was urged that the Excise Authorities erroneously classified the cotton textiles in question as bleached or processed fabric instead of classifying them as a scoured cloth and on that erroneous basis refused to refund the amount collected or realised as Excise duty on the basis of the rate applicable to bleached or processed fabric. In this connection reliance was placed on *The Union of India v. Mansingka Industries Private Ltd.* 1919 E.L.T. (158) : 1976 Tax. L.R. 1791. In that case the Excise duty was levied not only on the hydrogenated vegetable oil but also on the value of the container and the freight charges for transporting of the excisable goods was also taken into consideration for purposes of levying Excise duty. It was on these facts that the court came to the conclusion that the levy of Excise duty was wholly outside the law and it could not be a mere question of an error in the exercise of jurisdiction and consequently the suit was held to be maintainable. The decision in *Union of India*

(UOI) Vs. Tarachand Gupta and Bros, was also or no assistance to the respondent. In that case the respondents held an import licence permitting them to import parts and accessories of motor cycles and scooters. The imported goods arrived in two consignments, by two different ships. According to the respondents the goods so imported by them were motor cycle parts which their licence authorised them to import. The Custom Authorities on the contrary held that they constituted 51 sets of "Rise Mopeds complete in a knocked down condition". The supreme Court took the view that the items so imported could not be limped together to constitute other articles, namely, motor cycles and scooters in C.K.D. condition. The Collector had no power to adopt such a process. Though the Collector had embarked upon the enquiry with jurisdiction but in adopting that process he acted in excess of jurisdiction during the course of enquiry. In this view of the matter it was held that this was, therefore, not one of those cases where between two competing entries the statutory authority applied one or the other, though in error, and where a civil court cannot interfere.

12. In the instant case the sole dispute was whether the cloth in question was to be treated as scoured or bleached. The Excise Authorities may have committed an error but it would still be an order within the Act not open to challenge in a civil court. In this connection we may refer to the decision of the Supreme Court in *Firm Seth Radha Kishan (Deceased) represented by Hari Kishan and Ors. v. Administrator Municipal Committee, Ludhiana* AIR 1968 SC 1547. In that case the dispute was as regards the rate of tax payable by the appellant for salt brought into the limits of the Municipality. The rate depended upon the character of the salt. The ascertainment of the said fact was a necessary step for fixing the rate. The Municipal Committee ascertained the character of the salt and fixed the rate. This was challenged in the suit. It was urged that if the Municipality levies a tax on an article and leviable to tax under the Act, a suit would lie, and therefore, the same legal position should apply even to a case where the Municipality levies the tax in respect of an article under an entry not applicable to it. The Supreme Court did not see any analogy between the two illustrations and observed that in the former the Municipality did not act under the Act, but in the latter it only commits a mistake or error in fixing the rate of tax payable in respect of a particular commodity. This was acting under the Act and the dispute was only on a matter of detail and such a mistake can be corrected only in the manner prescribed by the Act. The suit was held to be barred. The ratio of this case fully applies to the facts of the present case.

13. A similar question arose before this court in First Appeal no.287 of 1974, *The Union of India v. The Delhi Cloth and General Mills Co. Ltd.* decided on 1-12-1971. In that case the plaintiff company alleged that in the season 1959-60 it produced 86,661 rods. 5 seers sugar in excess of the average sugar produced in the preceding two seasons. It was entitled to rebate on this quantity at the rate of 5,63 per cwt. The Inspector of Central Excise, however, refused to allow rebate in respect of 12, 724 mds. 10 seers out of this excess production on ground that this quantity produced in damaged condition and was reprocessed by the factory

in the season 1960-61 and so it was not entitled to the rebate claimed. The plaintiff Company applied to the Assistant Collector Central Excise for refund of Rs. 52, 573.90 on the aforesaid ground. The Assistant Collector rejected the application. The plaintiff Company filed an appeal u/s 35 before the Collector, Central Excise who dismissed the appeal and upheld that order of the Assistant Collector. Thereafter the plaintiff Company instituted a revision before the Central Government which was also dismissed. The plaintiff Company then instituted a suit for recovery of the disputed amount. The trial court decreed the suit. On appeal by the Union of India this Court review the decree and held that the correctness of the assessment of the Excise duty could not be questioned in the Civil Court and the suit was impliedly barred on the principle enunciated in Dhulabhai's case. We are in respect full agreement with the view expressed in the aforesaid case,

14. The exception entrapped in the first proposition laid down in Dhulabhai's case does not arise for consideration since no allegations have been made in the paint that the Central Excise Officer or the appellate authority or the revisional authority contravened the fundamental principles of judicial procedure.

15. In view of cur decision that the suits instituted by the plaintiff Company were barred it is not necessary to express any opinion on the pleas of limitation based on section 40 of the Act.

16. In the result, the appeals are allowed. The decrees of the court below are set aside. Both the suits are dismissed with costs throughout.