

(1980) 09 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 1012 of 1978

United India Roller Flour Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-09-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Central Excises and Salt Act, 1944 — Section 3

Citation : (1981) 8 ELT 66

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : K. Krishnamurthi Iyer, for the Appellant; K.N. Balasubramaniam, Addl. Government Standing Counsel, for the Respondent

Judgement

Padmanabhan, J.—The petitioners Messrs United India Roller Flour Mills Ltd., are manufacturers of wheat products such as Maida, Sojji,

Atta and Bran. In the Finance Bill No. 27 of 1971, presented to the Parliament on 28-5-1971, maida was proposed to be included under item 1-

F of the Central Excise Tariff. On the basis of the proposal to subject maida to excise duty, a sum of Rs. 32,004 calculated on the basis of an ad

valorem duty at 10 per cent was collected from the petitioners in respect of maida manufactured for the period from 29-5-1971 to 9-6-1971. The

Bill was passed by Parliament on 10-8-1971. The Act as passed did not levy excise duty on maida as was proposed in the Finance Bill. On the

very same day, the Government of India issued Notification No. 162, dated 10-8-1971, stating that maida would be exempt from payment of

excise duty. In view of this position, the petitioners applied to the Assistant Collector of Central Excise, Madras, for refund of Rs. 32,004, which

was provisionally collected from the petitioners by way of excise duty on maida. The Assistant Collector of Central Excise, Madras, dismissed the application by his letter dated 8-5-1972. Since the order of dismissal was communicated in the form of a departmental memo, the petitioners could not file an appeal. The petitioners, therefore, filed yet another regular application on 17-7-1975, for the refund. That application too was rejected by the Assistant Collector of Central Excise, Madras by the order dated 30-7-1975. The petitioners then preferred an appeal before the Collector of Central Excise, Madras. The appeal was also rejected on 17-11-1975. The petitioners' further revision to the Government of India was also rejected on 31-10-1977. The petitioners received a copy of the order only on 31-12-1977. This writ petition has been filed for the issue of a writ of mandamus directing the respondent, the Union of India, to refund the sum of Rs. 32,004 which was collected from the petitioners as excise duty on maida under the Provisional Collection of Taxes Act.

2. Mr. Krishnamurthi Iyer, learned counsel for the petitioners, contends that by virtue of the proposal in Finance Bill No. 27 of 1971, presented to the Parliament on 28-6-1971 the respondent Union of India had authority to make a provisional collection of excise duty on maida from the very date of the introduction of the Bill in the Parliament, that pursuant to that the petitioners paid the excise duty due on maida manufactured between 29-5-1971 and 9-6-1971, but however the Finance Act which was passed on 10-8-1971 did not contain a provision for the levy of excise duty on maida as was proposed in the Finance Bill, that on the very same day the Government of India issued Notification No. 162, stating that the maida would be exempt from levy of excise duty and that, in view of that, the Union of India is bound to refund the sum of Rs. 32,004, which was provisionally collected forwards excise duty from the petitioners on maida manufactured by them between 29-5-1971 and 9-6-1971. In this connection, the learned counsel relied on the decision of the Madhya Pradesh High Court in *Flour and Food Ltd., Indore v. Union of India*. (MP 164 of 1971).

3. Mr. K. N. Balasubramaniam, learned Central Government Standing Counsel, contended that along with the introduction of the Finance Bill in the Parliament on 28-5-1971, a notification was issued by the Union of India u/s

3 of the Provisional Collection of Taxes Act (Central Act XVI of 1931) declaring that the proposal to levy excise duty on maida would have immediate effect. The learned counsel further argued that though the declaration made by the Union of India was withdrawn by Notification No. 162, dated 10-8-1971, the notification No. 162, dated 10-8-1971, would not have any retrospective effect, and that the said notification had only prospective operation on the levy of excise duty on maida with effect from 10-8-1971. Consequently, the excise duty that was collected from the petitioners prior to 10-8-1971, and after 28-5-1971, was authorised by law. According to Mr. Balasubramaniam, Section 5(1) of the Act would not be attracted to the facts of this case, and consequently the petitioner would not be entitled to any refund. In other words, the contention of Mr. Balasubramaniam is that the collection of excise duty from the petitioners for the period from 28-5-1971 to 9-6-1971, was authorised by law and could not be held to be unauthorised under Art. 265 of the Constitution of India. According to the learned counsel, Section 5 of the Provisional Collection of Taxes Act would not be attracted, because the Bill was not passed in any amended form.

4. It is not disputed that Finance Bill No. 27 of 1971, which was presented to the Parliament on 28-5-1971, provided for the levy of excise duty on maida, that maida was included under item 1-F of the Central Excise Tariff and that an ad valorem duty of 10 per cent was proposed to be levied; it is also not disputed that the petitioners paid a sum of Rs. 32,004, towards excise duty on maida manufactured by them for the period 29-5-1971 to 9-6-1971. Sec 3 of the Provisional Collections of Taxes Act, 1931 reads as follows -

Where a Bill to be introduced in the Parliament on behalf of Government provides for the imposition or increase of a duty of customs or excise the Central Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under the Act.

5. It is not in dispute that the Finance Bill No. (2) of 1971 did contain a declaration that the provision in the Bill relating to imposition of excise duty on maida would have immediate effect. It is admitted that it was by virtue of the declaration made u/s 3 of the Act that the petitioners paid the

excise duty of Rs. 32,004.

6. The question that arises is whether in view of the fact that the Finance Act that was ultimately passed by Parliament did not contain a provision

for the imposition of excise duty on maida, the petitioners would be entitled to a refund of the duty already paid by them. Section 4 of the

Provisional Collection of Taxes Act reads as follows :-

(1) A declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced;

(2) A declared provision shall cease to have the force of law under the provisions of this Act;

(a) When it comes into operation as an enactment, with or without amendment, or (b) when the Central Government in pursuance of a motion

passed by Parliament, directs, by notification in the Official Gazette, that it shall cease to have the force of law, or (c) if it has not already ceased to

have the force of law under clause (a) or clause (b) then on the expiry of the seventy-fifth day after the day on which the Bill containing it was

introduced.

Section 5 of the Act reads as follows -

(1) Where a declared provision comes into operation as an enactment in an amended form before the expiry of the seventy-fifth day after the day

on which the Bill containing it was introduced, refund shall be made of all duties collected which would not have been collected if the provisions

adopted in the enactment had been the declared provision :

Provided that the rate at which refunds of any duty may be made under this sub-section shall not exceed the difference between the rate of such

duty proposed in the declared provision and the rate of such duty in force when the Bill was introduced.

(2) Where a declared provision ceases to have the force of law under clause (b) or clause (c) of sub-sec (2) of Section 4, refunds shall be made of

all duties collected which would not have been collected if the declaration in respect of it had not been made.

7. The following propositions emerge from Secs. 4 and 5 -

1. A provision to impose customs or excise duty in respect of which a declaration has been made u/s 3 of the Provisional Collection of Taxes Act

shall cease to have the force of law under the said Act when an enactment is passed with or without amendment.

2. The declaration shall cease to have the force of law u/s 3 of the Act when, by means of a motion, the Parliament directs the Central Government

to issue a notification that the declaration shall cease to have the force of law.

3. The declaration made u/s 3 of the Act will cease to have the force of law on the expiry of the seventy-fifth day after the day on which the Bill

was introduced in Parliament.

8. Here, there is no doubt that the Bill became an enactment on 10-8-1971, with amendment. I say that the Bill became an enactment with

amendment because the Central Excise Tariff included in the Bill stood amended by the deletion of maida which had been included under item 1-F

of the Central Excise Tariff in the Finance Bill. Consequently, the declaration made u/s 3 of the Act ceased to have the force of law by the

operation of Section 2(a) of the Act. Further, Sec 5(1) clearly states that where a declared provision comes into operation as an enactment in an

amended form before the expiry of the seventy-fifth day after the day on which the Bill containing the proposal was introduced in Parliament,

refund shall be made of all duties collected which would not have been collected if the provision adopted in the enactment had been the declared

provision. In other words, where the Finance Bill contained a provision for imposition of an excise or customs duty on a particular item and a

declaration was also made u/s 3 of the Act, the manufacturer is bound to pay the duty from the date of introduction of the Bill in Parliament.

However, if, ultimately when the Act is passed, the Act does not contain the same provision for the imposition of the said excise or customs duty

on the said goods as was proposed in the Finance Bill the person who would have paid the excise or customs duty as the case may be

provisionally in terms of the declaration made u/s 3 of the Act would be entitled to refund of the same.

9. Mr. Balasubramaniam, learned Central Government Standing Counsel, contended that in this particular case, the Finance Bill could not be

considered to have come into operation as an enactment with amendment since the Finance Act as passed totally deleted the proposed imposition

of excise duty on maida. I am unable to accept the contention of the learned

Central Government Standing Counsel. If a Bill can be said to have come into operation as an enactment with amendment when there is an alteration in the rate of excise duty imposed in the original Bill I am unable to understand how a Finance Bill cannot be said to have been passed with an amendment when the original provision to impose duty on a particular item (in this case maida) stands completely deleted in the enactment as has been finally passed.

10. The learned Central Government Standing Counsel then argued that in this case the declaration was withdrawn by the Government by the

Notification No. 162, dated 10-8-1971 and consequently Section 5(1) of the Act would not be attracted. It is not disputed that the Finance Bill

was passed by Parliament on 10-8-1971. Obviously the Notification No. 162 dated 10-8-1971, followed the enactment of the Finance Bill.

Therefore, it cannot be said that this is not a case where the Finance Bill has not been passed in an amended form. In such circumstances, the

petitioners would be entitled to refund.

11. An identical question came up for consideration before the Madhya Pradesh High Court in *Flour and Food Ltd. v. Union of India* (M.P. 164

of 1971) . A Bench of the Madhya Pradesh High Court consisting of the learned Chief Justice P.K. Tare and Justice G. L. Oza, upheld a claim for

refund. Before the Madhya Pradesh High Court, a manufacturer of maida who had paid excise duty for the period from 29-5-1971 to 12-6-1971,

in terms of the declaration made by the Union of India u/s 3 of the Provisional Collection of Taxes Act, claimed refund of the excise duty paid by

him on the ground that the Finance Act had deleted the provision for the imposition of excise duty originally contemplated in the Finance Bill. The

learned Judges observed as follows -

The Bills proposing a duty on the production of maida was presented in Parliament for the first time on 28-5-1971. Ultimately when the Finance

Act was passed on 10-8-1971, no duty was imposed on maida. It cannot, therefore, be doubted, and it is not also in dispute, that the duty on

maida, which was proposed in the Bill, was ultimately withdrawn. It has been provided in the Act that when a Bill is presented in the House the

duties proposed in it can be lawfully collected from the next day. But it is also clear from the provisions in the Act that when such a declaration

ceases to have any effect, the duty so collected has to be refunded. In the present case, it is not in dispute that ultimately the duty on maida was not imposed. Consequently the duty so collected should not be retained.

The learned Judge then referred to Section 5(1) of the Act and held that on that ground also the petitioner before them was entitled to an order of refund.

12. Mr. K. N. Balasubramaniam then referred to the decision of Varadarajan J. in W.P. Nos. 4503 of 1976 and 718 of 1977. The learned Judge

was not directly concerned with the question whether in such circumstances refund could be ordered. The learned Judge only stated that

notification No. 162, dated 19-8-1971, had no retrospective effect. We are not concerned with that question at all. This is clear case where the

provision for imposition of excise duty on maida in the Finance Bill was not implemented by including it in the Finance Act. It must, therefore, be

deemed there was no excise duty on maida at all. Consequently, the duty that was collected provisionally could not be retained and it has got to be

refunded to the petitioners.

13. In the said circumstances, the writ petition is allowed and rule nisi is made absolute. The petitioners will be entitled to their costs. Advocate's

fee is fixed at Rs. 250/- only.

Editor's Comments

As per the provisions of section 3 of the Central Excises and Salt Act, 1944, the duty of excise is on the production or manufacture of excisable

goods. Further, as per clause (d) of section 2 *ibid.*, the "excisable goods" means the goods as specified in the First Schedule to the Central Excises

and Salt Act. Therefore, the liability to excise duty is created as soon as any goods are specified in the First Schedule. By clause 40 of the finance

(No. 2) Bill, 1971, Tariff Item 1F, levying a duty of excise at the rate of 10 paise per kilogram on Maida was incorporated in the First Schedule

with effect from 28-5-1971 by virtue of the declaration made under the Provisional Collection of Taxes Act, 1931. However, by Notification

dated 10-8-1971, Maida was exempted from the whole of the duty of excise with effect from 10-8-1971.

Section 5 of the Provisional Collection of Taxes Act, 1931 provides that where a declared provision comes into operation as an enactment in an

amended form, the refund shall be made of all duties collected which would not have otherwise been collected if the provisions in amended form

would have been introduced. Therefore, in view of this section the manufacturers are entitled to refund when the duties of excise are charged

immediately on the introduction of the Finance Bill and are subsequently withdrawn or rate of duty is reduced by an amendment to such Finance

Bill. Thus, the provisions of this section are applicable only when the withdrawal of duty or reduction in rate of duty is effected because of the

amendment in the relevant Finance Bill and this is so because of the use of the word "enactment" in the said section.

Notification dated 10-8-1971 issued under Rule 8 of the Central Excise Rules, 1944 being a part of delegated legislation does not have the effect

of amending or deleting the Tariff Entry 1F itself as explained by the Supreme Court in the case of Healthways Dairy Co. Ltd. - 1978ELT(J457).

In this case the Supreme Court specifically held that if any goods specified in the First Schedule are exempted from the levy of excise duty under

Rule 8 of the Central Excise Rules, it does not mean that the manufacturers of said goods are not required to take out a licence. Even a Divisional

Bench of Madras High Court, in the case of Tamil Nadu (Madras State) Handloom Weavers Co-operative Society Limited v. Asstt. Collector of

Central Excise - 1978 ELT (J 57) has held that once the goods are exempted from excise duty they do not cease to be excisable goods, "and the

character of an article as an "excisable goods" does not depend on the actual levy of duty but depends upon the description of excisable goods in

the First Schedule to the Central Excises and Salt Act. In view of these decisions, the exemption to Maida from excise duty by notification dated

10-8-1971, does not have the effect of deleting or amending the Tariff entry 1F as introduced by the Finance (No. 2) Bill, 1971 and accordingly,

the Finance (No. 2) Bill, 1971 cannot be said to have been passed with an amendment in so far as Maida is concerned. Consequently, it appears

that the Court has erred in applying section 5 of the Provisional Collection of Taxes Act to the present case.