

PETITIONER:
GOKAK PATEL VOLKART LIMITED

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BELGAUM

DATE OF JUDGMENT 17/02/1987

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
PATHAK, R.S. (CJ)

CITATION:
1987 AIR 1161 1987 SCR (2) 309
1987 SCC (2) 93 JT 1987 (1) 469
1987 SCALE (1) 361
CITATOR INFO :
R 1988 SC1236 (5)

ACT:

Central Excises and Salt Act, 1944 section 11A and Explanation thereto, scope of--Limitation of six months' period--No order of the court staying the service of notice--Whether a show cause notice issued beyond the limitation, period specified under section 11A is valid.

HEADNOTE:

A show cause notice dated 29.1.1976 issued by the respondent to the appellant calling upon him to explain as to why excise duty treating his product as "fabric" and not as "yarn" may not be levied, was challenged in the High Court of Karnataka in Writ Petition No. 2632/ 1976. Pending final disposal of the writ petition, an interim order staying the collection of excise duty as a "fabric" for the period 1.4.1975 to 18.8.75 alone was passed with a specific direction that the appellant should continue to pay excise duty as "yarn". Finally the writ petition was dismissed on 16.2.1981.

On 20th May, 1982, another notice No. 913 to show cause was issued to the appellant simultaneously seeking to raise a demand for the period from 20.6.1976 to 28.2.1981 apart from for the period between 1.4.1975 to 18.8.1975 challenged in the earlier writ petition. The Karnataka High Court having rejected the plea of bar of limitation under section 11A of the Central Excises and Salt Act, 1944 raised in the writ petition challenging the said second show cause notice and demand, the appellant has come in appeal by way of special leave.

Allowing the appeal, the Court,

HELD: 1.1 Section 3 of the Act which contains the charging provision clearly shows that levy and collection are two distinct and separate steps. [312H]

1.2 The provision of section 11A(1) and (2) of the Central Excises and Salt Act, 1944 make it clear that the statutory scheme is that in the situations covered by the sub-section(1), a notice of show cause has to be issued and sub-section(2) requires that the cause shown by way of representation has to be considered by the prescribed au-

thority and then

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only the amount has to be determined. The scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made, before making the order thereof. Notice is thus a condition precedent to a demand under sub-section(2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision. [313E-G]

2. Explanation to section 11A of the Central Excises and Salt Act, 1944, which incorporates a well known principle of law, in clear terms refers to 'stay of service of notice'. The High Court order did not at all refer to service of notice. The High Court having directed stay of collection of duty as 'fabric' has not issued any interim direction in the matter of issue of notice of levy of the duty. Therefore, the benefit of Explanation to section 11A of the Act is not available to the Respondent. [313C-D]

Sirajul Haq Khan & Ors. v. The Sunni Central Board of Waqf, U.P. & Ors., [1959] SCR 1287; and N.B. Sanjane Assistant Collector of Central Excise, Bombay & Ors. v. Elphinstone Spinning & Weaving Mills Co. Ltd., [1971] 3 SCR 506, 514 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 161 of 1986.

From the Judgment and Order dated 17.9.85 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. ED(SB) (T) 463/84-D.

Soli J. Sorabjee, Ravinder Narain, Harish Salve, S. Ganesh and P.K. Ram for the Appellant.

B. Datta, Additional Solicitor General, Mrs. Indra Sawhney and Ms. S. Relan for the Respondent.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The fate of this appeal under section 35(L) of the Central Excises and Salt Act, 1944, depends upon the meaning and scope of the Explanation appearing in section 11A of the Act.

The High Court of Karnataka by its order dated 4.6.1976 in Writ Petition No. 2632 of 1976 gave the following direction:

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"Pending disposal of the aforesaid writ Petition, it is ordered by this Court that collection of excise duty as a fabric be and the same is hereby stayed. It is further ordered that the petitioner shall however continue to pay exercise duty as yarn and shall further maintain an account in square metres for future clearance."

The said Writ Petition was ultimately dismissed by the High Court on 16.2. 1981. The operative part of the Court's final order ran thus:

"For the reasons aforesaid, we make the following order:-

(i) Rule discharged;

(ii) We decline to interfere at this stage leaving open to the petitioner to urge all the contentions in reply to the show cause notices."

On 20th May, 1982, a notice to show cause was issued to the appellant by the Assistant Collector, being Notice No. 913, and with this the Collector sought to raise a demand for the period from 20th June, 1976 to 28th February, 1981 apart from for the period between 1.4. 1975 to 18.8.1975 in respect of which an earlier show cause notice dated 29.1. 1976 had already been issued.

It is not disputed by the Revenue that the appropriate period of limitation to apply to the facts of the case is six months as provided in section 11A of the Act and that the Notice issued on 20th of May, 1982 was beyond that period. Reliance was placed on the Explanation for obtaining extension of that period. The Explanation reads thus:

"Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be."

The provision in the Explanation incorporates a well-known principle of law. Section 15 of the Limitation Act of 1908 (also of Section 15 of the Limitation Act of 1963) incorporates the same principle. This Court in *Sirajul Haq Khan & others v. The Sunni Central Board of Waqf, U.P. & others*, [1959] SCR 1287 dealt with the effect of an order of injunction in the matter of computation of limitation. At page 1302 of the Reports, Gajendragadkar, J. as he then was, spoke for the Court thus.

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"It is plain that, for excluding the time under this section, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling under Section 15, the party instituting the suit would by such institution be in contempt of court. But in our opinion, there would be no justification for extending the application of s. 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation "

In the instant case, the order of stay passed by the Karnataka High Court had only stayed the collection of the excise duty, which is a stage following levy under the scheme of the Act. Obviously there was no interim direction of the High Court in the matter of issue of notice for the purpose of levy of duty. The relevant portion of Section 11A provided.

"(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

(2) The Assistant Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the

amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined. ' '

Reference to Section 3 of the Act which contains the charging provision clearly shows that levy and collection are two distinct and separate

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steps. This Court in *N.B. Sanjana, Assistant Collector of Central Excise, Bombay & Ors. v. Elphinstone Spinning & Weaving Mills Co. Ltd.*, [1971] 3 SCR 506, at page 514 stated:

" The charging provision section 3(i) specifically says "there shall be levied and collected in such a manner as may be prescribed the duty of excise "It is to be noted that sub-section (i) uses both the expressions "levied and collected" and that clearly shows that the expression "levy" has not been used in the Act or the Rules as meaning actual collection."

The High Court having directed stay of collection had, therefore, not given any interim direction in the matter of issue of notice or levy of the duty. The Explanation in clear terms refers to stay of service of notice. The order of the High Court did not at all refer to service of notice. Therefore, there is force in the submission of the appellant that the benefit of the Explanation is not available in the facts of the case.

No notice seems to have been issued in this case in regard to the period in question. Instead thereof an outright demand had been served. The provisions of Section 11A (1) and (2) make it clear that the statutory scheme is that in the situations covered by the sub-section (1), a notice of show cause has to be issued and sub-section (2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. The scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made, before making the order thereof. Notice is thus a condition precedent to demand under sub-section (2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision. Certain other authorities have been cited at the hearing by counsel for both sides. Reference to them, we consider, is not necessary.

The appeal has to be allowed and the demand raised for the period 19.8.1975 to 23.2.1981 has to be set aside. There shall be no order for costs. The tax paid, if any, shall be refunded to the appellant.

S.R.
allowed.

Appeal al-

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