M/s. Banshi Dhar Lachhman Prasad and Another

Vs

Union of India and Others

Civil Appeal No. 1623 of 1966

(C. A. Vaidialingam, J. M. Shelat JJ)

11.03.1970

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, on certificate, is directed against the judgment, dated April 8, 1964 of the Punjab High Court in Civil Writ Application No. 30/D of 1960, filed by the appellants under Articles 226 and 227 of the Constitution.

2. The appellants challenged in their writ petition, as many as eight orders passed on different dates by the various respondents herein, under the Central Excises and Salt Act, 1944, (hereinafter called the Act). As pointed out by the High Court, the writ petition was very prolix and had been drafted in a very confusing manner and objections raised by the respondents followed the same pattern. But, when one reads through the various orders passed by the authorities, as well as the averments made in the writ petition and in the counter-affidavit of the respondents, the following facts emerge.

3. The appellant No. 1 is a firm carrying on business in tobacco and is a licensee of private bonded warehouses and duty paid godown at Haldwani, District Nainital. Appellant No. 2 is the proprietor of the firm. On September 28, 1956, Shri J. P. Bhatia, Deputy Superintendent of Central Excise, Rampur Circle, visited the duty-paying and non-duty paying tobacco premises of the appellant in connection with the inspection of the premises regarding their suitability or otherwise in respect of a proposal that had been made by the firm for an addition to their non-duty paid premises. According to the appellants, nobody was present on their behalf at the time of the visit of the Deputy Superintendent. The keys of godown were given by one Khuda Bux, who also was an independent tobacco licensee. According to the respondents one Sham Lal who is a lawyer by profession, was associated with the appellant's business and was present when Shri Bhatia visited the godown but declined to cooperate with the department. On inspection of both types of premises, the Deputy Superintendent found various substitutions and shortage of tobacco.

4. On October 2, 1956, the Superintendent of Central Excise, Rampur, issued a notice to the appellants under Rule 160 of the Central Excise Rules, 1944, (hereinafter referred to as the rules), demanding the payment of a sum of Rs. 8,713-8-0. The notice, Exhibit A, gave particulars of the demand to the effect that duty was demanded on 226 Maunds, 12 Seers and 11 Chataks of substituted tobacco and 16 Maunds, 7 Seers and 8 Chataks of tobacco that was short. This notice also gave full particulars as to how these figures had been arrived at. The notice itself was issued without prejudice to any other action that may be taken under the Act.

5. The appellants made a representation, Exhibit F, to the Collector, alleging that the inspection had

been done by the Deputy Superintendent during their absence and a notice under Rule 160 had been issued without any legal authority. The also filed an appeal, Exhibit G, dated December 20, 1956, to the Collector of Central Excise, Allahabad, against the demand, Exhibit A, challenging the legality of the demand notice. By order dated January 23, 1957, Exhibit H, the Assistant Collector, after holding that the demand made by the Superintendent of Central Excise was justified, advised the appellants to deposit the amount demanded and to lodge an appeal with the Collector of Central Excise, Allahabad. The appellants, under Exhibit R-5, dated February 2, 1957 filed a further appeal before the Collector of Central Excise, who, by his order dated April 14, 1958, Exhibit R, disposed of the appeal by stating that as the demand made by the Superintendent of Central Excise had been revised under the Collector's order dated March 8, 1958, Exhibit Q, it was open to the appellants to move the Government of India by revision if they were aggrieved by the order of March 8, 1958. There is no controversy that the appellants did not go in revision to the Government of India by filing any revision, at any rate, so far as the demand notice, Exhibit A, was concerned.

6. The Deputy Superintendent, on the basis of his inspection on September 28, 1956 submitted a report on October 12, 1956 setting out in detail the circumstances of his visit as well as the quantity of substituted tobacco and the shortage found in the appellant's premises. In the report, the officer had referred to the issued of a demand notice, Exhibit A, and he asked for instructions from his higher authorities regarding the further disposal of the goods.

7. On this, two sets of proceedings, were initiated against the appellants on January 19, 1957, under Exhibit I, the Collector issued a notice to the appellants under Rules 32, 40, 151 (c) and (d), 160 and 226 calling upon them to show cause as to why action should not be taken in the manner indicated in the notice regarding the quantity of substituted tobacco and the shortage referred to in the demand, Ex. A. Exhibit I gives in very great detail full particulars regarding the quantity of tobacco under the two heads, viz., of substitution and deficiency. The appellants sent a reply, Exhibit J, dated February 2, 1957 to the show-cause notice. They had referred therein to the practice followed by them and also made a grievance that the inspection had been done by the Deputy Superintendent without their knowledge and that one Khuda Bux who gave the key to the premises and who was stated to have been present was neither their agent not competent to represent them. The appellants pleaded that they had not committed any offence justifying the taking of any action against them.

8. The Collector, by order dated March 8, 1958, Exhibit Q, disposed of the appeal and came to the conclusion that tobacco of different variety was found in the warehouse than that entered in the registers and there had been substitution and deficiency but he reduced the quantity mentioned in the demand notice, Exhibit A, and, accordingly, revised the duty and penalty. The Collector had also made the appellants pay the incidental charges for cartage, loading, unloading and also rent for the premises hired for storage of the seized goods. This order, Exhibit Q, it must be mentioned, refers in great detail to the various objections raised by the appellants in their reply dated February 2, 1957 as well as the points raised by the counsel for the appellants at the time of the hearing on June 3, 1957 and it was, after a consideration of all these objections and the materials on record that the Collector came to the conclusions referred to above. It will also be noted that the demand, Exhibit A, as well as the order of the Assistant Collector, Exhibit H, were modified to a certain extent.

9. The appellants filed an appeal before the Central Board of Revenue, Exhibit S, against the order of the Collector and the Board, by its order dated March 31, 1959, Exhibit T, confirmed the order of the Collector.

10. A further revision taken before the Central Government, Exhibit U, dated by May 15, 1959, by

the appellants, was rejected on October 17, 1959 under Exhibit V.

11. Another type of proceedings was initiated against the appellants by the Superintendent, Central Excise, issuing a notice dated March 7, 1957, Exhibit K, under Rule 223-A, alleging that the appellants had failed to account for the consignments mentioned therein at the time of the annual stock-taking in 1956. It was also stated that the stock-taking was on October 2, 1956, and November 9, 1956. A further notice, Exhibit L, dated April 22/23, 1957, was issued by the Superintendent of Central Excise regarding the contravention of Rule 223-A, in respect of certain other consignments which the appellants were alleged to have failed to account at the time of annual stock-taking. After considering the explanation submitted by the appellants that the tobacco was wet-dried in storage, the Assistant Collector, by order dated June 10, 1957, Exhibit M, held that the explanation cannot be accepted and that the losses were excessive. However, he condoned the losses to a certain percentage in respect of about five lots and imposed a penalty of Rs. 407/- under Rule 223-A, on the remaining losses not accounted for.

12. The appellants had taken up the matter before the Collector, Central Excise, in Appeal No. 28 of 1958. The Collector, by his order dated February 6, 1958, Exhibit N, set aside the order of the Assistant Collector and, without prejudice to the contentions of the parties, remanded the proceedings to the Assistant Collector with a direction to adjudicate the matter de novo.

13. The revision taken against this order before the Central Government proved of no avail, as will be seen by the Government's order dated March 31, 1959, Exhibit P.

14. We have very exhaustively referred to the various proceedings initiated against the appellants as well as the nature of the orders passed and as they will clearly show, in our opinion that the appellants grievance - which will be presently dealt with - is unfounded. The appellants challenged almost all the orders before the High Court, on various grounds. The High Court, after a fairly exhaustive consideration of the matter, has substantially confirmed the orders which were under attack. But, in respect of certain directions given by the Collector of Central Excise, in his order, Exhibit Q, dated March 8, 1958 the High Court modified those directions. The High Court set aside the order of the Collector regarding the confiscation of 14 Maunds and 33 Seers of mixed stock and leaf tobacco and the demand of Rs. 50/- for its redemption, besides penalty and payment of rent; subject to this modification regarding the directions contained in Exhibit Q, the High Court declined to interfere with the other directions contained in Exhibit Q, as well as the various other orders.

15. Mr. Daniel Latifi, learned counsel appearing for the appellants, found considerable difficulty in satisfying us that any illegality or irregularity had been committed by the various authorities when the orders in question were passed. Mr. Latifi stressed that the orders of the Central Board of Revenue, Exhibit T, and of the Central Government, Exhibit V, are not speaking orders, especially as the Board and the Central Government were dealing with the liabilities of parties in hearing an appeal and revision under the Act and there is no indication that in either of these orders the authorities concerned had really applied their minds to the points arising for decision. We are not impressed with this contention of the learned counsel. It must be remembered that the demand notice - Exhibit A - gives full particulars regarding the substitution and shortage of tobacco. The Collector had issued the notice - Exhibit I - giving full particulars of these matters and the appellants had also sent a fairly exhaustive reply to the same. Finally the order - Exhibit Q - itself is very exhaustive and sets out meticulously, in great detail, the quantity of tobacco under the head of substitution and shortage. The order refers in extenso to the various points raised in the appellant's reply dated February 2, 1957, as well as the further points pressed before the Collector on the date

of hearing, viz., June 3, 1957, by the appellants' counsel, and it is after such a fairly exhaustive consideration of the objections of the appellants, the demand notice, Exhibit A, and the materials on record, that the Collector passed the order, Exhibit Q. In fact, as already mentioned, it is not as if the Collector merely confirmed the demand under Exhibit A in toto. On the other hand, he modified it in favour of the appellant to some extent. It is such an exhaustive order passed by the Collector - Exhibit Q - thus was the subject of consideration in the first instance, by the Central Board of Revenue, in Exhibit T, and later, by the Central Government, in Exhibit V. Under those circumstances, we are not inclined to accept the contention of the learned counsel for the appellant that the orders - Exhibits T and V - require to be interfered with.

16. The further grievance placed before us by the learned counsel on behalf of the appellant is that before the High Court various objections had been raised in the writ petition regarding the manner in which the inspection was done by the Deputy Superintendent and none of these matters had been considered by the High Court. To a direct question put by us, as to whether all the points referred to in Para 33 of the writ petition were really argued before the High Court, the counsel quite-fairly stated that he has no instructions to say that these points were as a matter of fact pressed before the High Court.

17. The counsel further urged that no opportunity had been given to cross-examine the Deputy Superintendent of Central Excise not was a copy of his report made available to the appellants. The inspection was done without the knowledge of the appellants and without notice to them and Khuda Bux was not authorised to represent them at the time the inspection was conducted by the Deputy Superintendent. We are not inclined to accept these contentions of the learned counsel. So far as we could see, the appellant had made no grievance before the Collector of Central Excise that they should be allowed to examine witnesses nor did they urge that a copy of the report of the Deputy Superintendent had not been made available to them. They did not make any request for cross-examining the Deputy Superintendent of Central Excise. In view of all these circumstances, in our opinion the High Court was justified in holding that the appellants had a proper opportunity of contesting the demand made by the department and that there had been no failure of natural justice in the proceedings conducted by the respondents.

18. A further grievances was made by the learned counsel for the appellants that the order - Exhibit N - dated February 6, 1958, passed by the Collector of Central Excise, was illegal and contrary to the proviso to sub-section (1) of Section 35 of the Act. According to the learned counsel, the Assistant Collector, by his order Exhibit M, had condoned the losses by a certain percentage in respect of five lots whereas the order of remand for a de novo adjudication passed by the Collctor under Exhibit N will have the result of depriving the appellants of the favorable directions obtained by them under Exhibit N and their liability would be enhanced. That is, according to the appellants, the order of remand, Exhibit N, passed by the Collector, will have the effect of subjecting them to a greater penalty than has been adjudged under the original order of the Assistant Collector, Exhibit M. We are not inclined to accept this contention of the appellant. Section 35 deals with appeals and sub-section (1) gives a right of appeal a right of appeal to an aggrieved party against any decision or order passed by officers under the Act and the Rules giving power to the appellant authority that 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 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 orders. The fallacy underlying the contention of the learned counsel is the assumption that the consequence of the order of the Collector will be to subject the appellants to a greater penalty for which, in our opinion, there is no

basis, as is seen from Section 35. What the Collector has done in this case is to give the appellants an opportunity of satisfying, if they can, the authority concerned that there was no justification for the issue of the two notices, Exhibits K and L under Rule 223-A. The order does nothing more than this. If the appellants are able to satisfy the authority properly, the result may even be that no action will be taken under Rule 223-A.

19. Lastly, it was feebly urged that there was a conflict between the orders of the Collector, Exhibit Q, dated March 3, 1958, and Exhibit N, dated February 6, 1958. In our opinion, there is no scope for any conflict because the two orders relate to different types of proceedings initiated against the appellants.

20. The result is that the appeal fails and is dismissed with costs.

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