Asstt. Collector of Central Excise, Guntur

Vs

Ramdev Tobacco Company

C.A. No.2341 of 1978

(M. N. Venkatachliah, A. M. Ahmadi JJ)

25.01.1991

JUDGEMENT

AHMADI, J.:-

1.This appeal, on certificate, is directed against the decision of the High Court of Andhra Pradesh which has quashed the imposition of duty and levy of penalty on the ground that the show cause notice was issued after the expiry of the period of six months from the accrual of the cause of action. The facts leading to this appeal are as follows:

> The respondent M/s. Ramdev Tobacco Company, a sole proprietary concern, was at all material times a dealer in tobacco having a licenced warehouse at Guntur. The dealer was liable to pay duty on the tobacco received at his warehouse and transported to another dealer. On August 30, 1972 the appellant issued a notice calling upon the respondent to show cause why duty should not be demanded under Rule 160 of Central Excise Rules, 1944 ('the Rules' hereafter) on 64,444 kgs. of VFC Farmash Tobacco removed from his warehouse and not accounted for in the warehouse register maintained under the Rules. The respondent was also asked to show cause why penalty should not be imposed for infraction of Rules 151 and 32(1) of the Rules for illicit removal of the aforementioned quantity of tobacco. This show cause notice was founded on allegation that in 1970 the respondent obtained six transport permits (T.P. 2) dated January 13, 1970, February 10, 1970, March 26, 1970, May 16, 1970, July 24, 1970 and August 5, 1970 and transported under each permit more than the quantity of tobacco allowed thereunder in contravention of the aforementioned rules. The respondent sent a detailed reply to the said show cause notice on November 4, 1972. After giving a personal hearing to the respondent on September 18, 1973, the appellant came to the conclusion that the respondent had evaded payment of duty on 1272 bags weighing 48,304 Kgs. of VFC Farmash tobacco and issued a demand under Rule 160 in the sum of Rs. 1,66,165.76 under adjudication order No. 173/74 dated April 9, 1974. In addition thereto the appellant imposed a penalty of Rs. 100/- for contravention of Rules 151 and 32 (1) of the Rules. Thereupon the respondent filed a writ petition No. 2600 of 1974 under Article 226 of the Constitution challenging the aforesaid order of the appellant. This writ petition was heard and disposed of by a learned single Judge of the High Court who took the view that the appellant's action was time barred inasmuch as it was initiated after the expiry of the period of six months from the accrual of the cause of action. According to the learned Judge under Section 40(2) of the Central Excises and Salts Act, 1944 ('the Act' hereinafter) no suit, prosecution or other legal proceeding could

be instituted for anything done or ordered to be done under the law after the expiration of six months from the accrual of the cause of action. Since a period of more than six months had indisputably expired from the dates on which the excess tobacco was transported under the six transport permits in question, the action was clearly time barred. In this view of the matter the writ petition was allowed and the demand made under the impugned adjudication order both in respect of duty and penalty was quashed. The present appellant questioned the correctness of this view in appeal, Writ Appeal No. 358 of 1976, but in vain. The Division Bench found the view taken by the learned single Judge in accord with its view in Writ Petition No. 2516 of 1974 decided on April 1, 1976. It, therefore, dismissed the appeal but since it had granted a certificate to appeal in the case relied on, it also granted a similar certificate which has given rise to this appeal.

2-3. Sub-section (2) of Section 40 of the Act as it stood at the relevant point of time before its amendment by Amendment Act 22 of 1973 read as under:

> "No suit, prosecution or other legal proceeding shall be instituted for anything done or ordered to be done under the 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."

Before we proceed to analyse this sub-section it would be advantageous to bear in mind that sub-section (1) of this section bars the institution of any suit, prosecution or other legal proceeding against the Central Government or its officer in respect of any order passed in good faith or any act in good faith done or ordered to be done under the Act. The second sub-section prescribes a period of limitation for suits, prosecutions and other legal proceedings instituted, lodged or taken for anything done or ordered to be done under the Act. That is why in Public Prosecutor, Madras v. R. Raju, (AIR 1972 SC 2504): (1973) SCR 812 it was urged on a conjoint reading of the two sub-sections that sub-section (2) applied only to Government and could not come to the rescue of a tax payer. Rejecting this contention this Court held:

> "The two sub-sections operate in different fields. The first sub-section contemplates bar of suits against the Central Government or against the officers by protecting them in respect of orders passed in good faith or acts done in good faith. It is manifest that the second sub-section does not have any words of restriction or limitation of class of persons unlike sub-section (1). Sub-section (2) does not have any words of qualification as to persons. Therefore, sub-section (2) is applicable to any individual or person."

Thus the appellant's contention that sub-section (2) was confined only to the Government officers was found to be unwarranted on the plain words of the provision and was also repelled by reference to other comparable statutes which went to show that whenever the legislature intended to limit the application against the Government officers, the Legislature had chosen appropriate words of limitation to restrict the operation of the provision. It follows, therefore, that the application of the sub-section extended to any person, not being a Government Officer, against whom any suit, prosecution or other legal proceeding was commenced for anything done or ordered to be done under the Act.

4. The next contention canvassed in that case by the learned counsel for the appellant was that the words "anything done or ordered to be done" employed in the sub-section would not include anything done in violation of the Act. This Court after referring to the definition of the word 'act' in the General Clauses Act, 1897, which extended to illegal omissions also, and the case law on the subject observed at page 820 as under:

> "These decisions in the light of the definition of the word 'act' in the General Clauses Act establish that non-compliance with the provisions of the statute by omitting to do what the act enjoins will be anything done or ordered to be done under the Act. The complaint against the respondents was that they wanted to evade payment of duty. Evasion was by using and affixing cut and torn banderols. Books of account were not correctly maintained. There was shortage of banderols in stock. Unbanderolled matches were found. These are all infraction of the provisions in respect of things done or ordered to be done under the Act."

It is, therefore, clear from the above observation that any omission or infraction of the statutory provision would also fall within the ambit of the provision. Non-payment of duty or dues which a dealer is under an obligation to pay under the statute was, therefore, held to fall within the scope of the provision. In that case the complaint against the respondents was that to evade the payment of duty they had used and affixed cut and torn banderols and had failed to maintain the accounts correctly resulting in shortage in stocks. The respondents were prosecuted for contravention of the Rules punishable under Sections 9 (b) and 9 (d) of the Act as also under Section 420 read with Sections 51 1 and 109, I.P.C. The respondents pleaded the bar of Section 40 of the Act as it then stood. The High Court upheld the contention that the prosecution was barred by the rule of limitation incorporated in Section 40 as the same was instituted after the expiry of six months from the date of the commission of the alleged offences. This Court on the aforesaid line of reasoning affirmed the High Court's decision

5. But the question is whether the issuance of a show cause notice and the initiation of the consquential adjudication proceedings can be described as 'other legal proceedings' within the meaning of sub-section (2) of section 40 of the Act? If the said departmental action falls within the expression 'other legal proceeding' there can be no doubt that the action would be barred as the same indisputably was initiated six months after the accrual of the cause of action. So the crucial question is whether the issuance of the show cause notice dated August 30, 1972 and the passing of the impugned order in adjudication proceedings emanating therefrom constitutes 'other legal procceding' within the meaning of Section 40 (2) of the Act to fall within the mischief of that sub-section which bars such proceedings if commenced after a period of six months from the accrual of the cause of action. The learned Additional Solicitor General submitted that the expression 'other legal proceeding' must be read ejusdem generis with the preceding expressions 'suit' and 'prosecution' and if so read it becomes crystal clear that- the department's action cannot come within the purview of 'other legal proceeding'. How valid is this contention is the question which we are called upon to answer in the present appeal.

6. The rule of ejusdem generis is generally invoked where the scope and ambit of the general words which follow certain specific words (which have some common characteristic and constitute a genus) is required to be determined. By the application of this rule the scope and ambit of the general words which follow certain specific words constituting a genus is restricted to things ejusdem generis with those preceding them, unless the context otherwise requires. General words must ordinarily bear their natural and larger meaning and need not be confined ejusdem generis to

things previously enumerated unless the language of the statute spells out an intention to that effect. Courts have also limited the scope of the general words in cases where a larger meaning is likely to lead to absurd and unforeseen results. To put it differently, the general expression has to be read to comprehend things of the same kind as those referred to by the preceding specific things constituting a genus, unless of course from the language of the statute it can be inferred that the general words were not intended to be so limited and no absurdity or unintended and unforeseen complication is likely to result if they are allowed to take their natural meaning. The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives a different indication or such meaning is likely to lead to absurd results in which case their meaning can be restricted by the application of this rule and they may be required to fall in line which the specific things designated by the preceding words. But unless there is a genus which can be comprehended from the preceding words, there can be no question of invoking this rule. Nor can this rule have any application where the general words precede specific words.

7. There can be little doubt that the words other legal proceeding' are wide enough to include adjudication and penalty proceedings under the Act. Even the learned Additional Solicitor General did not contend to the contrary but what he said was that since this wide expression is preceded by particular words of a certain genus, namely, words indicating reference to proceedings taken in Courts only, the wide words must be limited to things ejusdem generis and must take colour from the preceding words and should, therefore, receive a limited meaning to exclude proceedings of the type in question. There can be no doubt that 'suit 'or' prosecution' are those judicial or legal proceedings which are lodged in a Court of law and not before any executive authority, even if a statutory one. The use of the expression 'instituted' in Section 40 (2) strengthens this belief. Since this sub-section has been construed by this Court in Raju's case (supra) not to be confined in its application to only Government servants but to extend to others including the assessees and since the words 'for anything done or ordered to be done under this Act' are found to be comprehensive enough to include acts of non-compliance or omissions to do what the Act and the Rule enjoin, the limitation prescribed by Section 40 (2) would undoubtedly hit the adjudication and penalty proceedings unless the expression 'other legal proceeding' is read ejusdem generis to limit its ambit to legal proceedings initiated in a Court of law.

8. The scope of Section 40 (2) as it stood before its amendment pursuant to Rajus case came up for consideration before a Division Bench of the Madhya Pradesh High Court in Universal Cables Ltd. v. Union of India, (1977 Tax LR 1825): 1977 ELT (J92) wherein the question raised for determination was whether penalty proceedings taken under Rule 173Q for the infraction of Rule 173C with a view to evading payment of duty fell within the expression' other legal proceeding' used in the said sub-section. The High Court conceded that the expression when read in isolation is. wide enough to include any proceeding taken in accordance with law, whether so taken in a Court of law or before any authority or tribunal but when read with the preceding words 'suit' or 'prosecution' it must be given a restricted meaning. This is how the High Court expressed itself at page J 106 (at page 1838 of Tax. L. R.):

> "Now the language of Section 40 (2) is: 'no suit, prosecution or other legal proceeding shall be instituted'. 'Suit' and 'prosecution' which precede the expression 'other legal proceeding' can be taken only in a Court of Law".

After stating the expanse of the ejusdem generis rule, as explained in Amar Chandra v. Excise Collector, Tripura, AIR 1972 SC 1863 at 1868 (Sutherland Volume 2 pages 399-400) the High Court observed that there was no indication in the said sub-section or elsewhere in the Act that the

said general words were intended to receive their wide meaning and were not to be construed in a limited sense with the aid of the ejusdem generis rule. A departmental proceeding like penalty proceedings were, therefore, placed outside the scope of the said sub-section. This view was quoted with approval by a learned single Judge of the Bombay High Court in C. C. Industries v. H. N. Ray, 1980 ELT 442 at 453. These two cases, therefore, clearly support the view canvassed before us by the learned Additional Solicitor General.

9. We have given our careful consideration to the submission made on behalf of the appellant reinforced by the view expressed in the aforesaid two decisions. In considering the scope of the expression 'other legal proceeding' we have confined ourselves to the language of sub-section (2) of Section 40 of the Act before its amendment by Act 22 of 1973 and should not be understood to express any view on the amended provision. On careful consideration we are in respectful agreement with the view expressed in the aforesaid decisions that the wide expression 'other legal proceeding' must be read ejusdem generis with the preceding words 'suit' and ,prosecution as they constitute a genus. In this view of the matter we must uphold the contention of the learned Additional Solicitor General that the penalty and adjudication proceedings in question did not fall within the expression' other legal proceeding' employed in Section 40 (2) of the Act as it stood prior to its amendment by Act 22 of 1973 and, therefore, the said proceedings were not subject to the limitation prescribed by the said sub-section.

10. Mr. Nambiar, the learned counsel for the respondents strongly argued that we should not entertain the submission based on the ejusdem generis rule since it was not raised before the High Court. That indeed is true but being a pure question of law we have thought it fit to entertain the same. We, therefore, do not entertain this objection.

11. In the result we allow this appeal and set aside the order passed by the learned single Judge as well as the Division Bench which. affirmed it and dismiss the respondent's writ petition itself. We also set aside the order by which the appellant was directed to pay costs. We restore the adjudication order dated April 4, 1974 and all consequential orders, if any, passed thereunder. Interim stay granted on August 16, 1979 is vacated and the appellant will be entitled to recover the dues from the security furnished pursuant to that order. The appeal is allowed accordingly with no order as to costs.

Appeal allowed.

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