

# KERALA HIGH COURT

Kerala Polythene Industries

Vs

Superintendent of Central Excise Trivandrum

(P.Subramonian Poti,J. )

07.01.1976

## JUDGEMENT

### **P.Subramonian Poti,J.**

( 1. ) THE petitioner before us is a firm engaged in the business of manufacture of Polythene Lay Flat Tubings. By Notification No. 59/64 issued by the Central Government Polythene Lay Flat Tubings were exempted from levy of excise duty with effect from 1st March 1964. THE said exemption was subsequently withdrawn by a Notification No. 101/70, dated 1st May 1970 issued by the Government of India is the Ministry of Finance. Shortly thereafter, the product aforementioned was again exempted from payment of excise duty by another Notification dated 17th July 1970. THE resultant position was that during the intervening period between 1st May 1970 and 17th July 1970 Polythene Lay Flat Tubings were assessable to duty under tariff item i5a ( 2 ). apparently because of ignorance regarding the withdrawal of the exemption as per the Notification dated 1st May 1970 the petitioner-firm which was enjoying the facility of self removal procedure had not credited to the department the excise duty payable in respect of the Polythene Lay Flat Tubings removed from their factory during the period from 1st May 1970 to 16th July 1970. When this fact came to the notice of the Superintendent of Central excise, Trivandrum (first respondent), he issued a notice to the petitioner as per Ext. P-1 dated 26th March 1971 stating that the quantity of polythene sheets to the value of Rs. 38. 044. 75 cleared from the petitioner's factory without payment of duty during the period from 1st May 1970 to 16th July 1970 was liable to be charged Basic Duty at the rate of 25 percent ad valorem and also special Excise Duty at the rate of 20 per cent of the Basic Duty and calling upon the petitioner to show cause why action should not be taken under R. 10a of the Central Excise Rules for the levy and collection of the said duty from the petitioner. In reply to Ext. P-1 the petitioner submitted a detailed representation dated 30th April 1971. Ext. P-2 is a copy of the said representation. After considering the points raised in Ext. P-2 the Assistant collector of Central Excise, Trivandrum (second respondent) passed the order ext. P-3 dated 20th August 1971 ordering that the petitioner should pay the duty of Rs. 11,413 45 in respect of the quantity of Polythene Lay Flat Tubings cleared from the petitioner's factory from 1st May 1970 to 16th July 1970 as mentioned in the

show cause notice.

( 2. ) AGAINST the Order Ext. P-3 an appeal was preferred by the petitioner before the Collector of Customs and Central Excise, Cochin. Ext. P-4 is a copy of that appeal petition. That appeal was disposed of by the appellate Collector of Central Excise, Madras (third respondent) by the order ext P-5 dated 7th August 1972 whereby he confirmed the action taken by the assistant Collector under R. 10a for the levy and collection of the duty legally payable on the Polythene Lay Flat Tubings cleared from the petitioner's factory during the period when the commodity was not exempt from payment of duty. Though the petitioner preferred a revision petition to the Government of India that was dismissed by the Central Government as per order Ext. P-7 dated 31st march 1973 After the rejection of the petitioner's revision petition by the government of India, the first respondent issued to the petitioner the communication Ext. P-8 dated 5th July 1973 demanding payment of the duty in question within 10 days of the receipt of the said order. This writ petition has been brought by the petitioner seeking to quash Exts. P-1, P-3, P-5, P-7 and P-8. The main contention urged before us by the learned advocate for the petitioner is that R. 10a of the Central Excise Rules is ultra vires and void. R. 10a is in the following terms: 10a. Residuary powers for recovery of sums due to government. Where these Rules do not make any specific provisions for the collection of any duty, or of any deficiency in duty if the duty has for any reason been short levied, or of any other sum of any kind payable to the central Government under the Act or these Rules, such duty, deficiency in duty or sum shall, on a written demand made by the proper officer, be paid to such person and at such lime and place, as the proper officer may specify. "It is argued on behalf of the petitioner that there is no provision in the Central Excise and Salt Act (1 of 1944) conferring power on the Central Government to frame such a rule. In support of this contention strong reliance was placed by the petitioner's counsel on two rulings of the madras High Court reported in Agarwal Brothers versus Union of India (1972) II mlj 476 and Citadel Fine Pharmaceuticals Pvt. Ltd versus District Revenue officer (1973) I MLJ. 99. The latter case though reported only later was the one decided earlier. The point which arose for decision in *Citadel Fine pharmaceuticals Pvt Ltd. v. District Revenue Officer*<sup>1</sup> concerned the validity of R. 12 of the Rules framed under the Medicinal and Toilet preparations (Excise Duties) Act (XVI of 1955) which is a provision substantially corresponding to R. 10a of the Central Excise Rules. The learned judges held that since the parent enactment, namely the Medicinal and Toilet preparations (Excise Duties) Act was silent on the question of levy of duty on escaped turnover, R. 12 in so far as it made a provision for assessing the escaped turnover was invalid since the charging power under S. 3 of the Act could not be extended by a rule. Even though R. 12 of the Medicinal and Toilet preparations (Excise Duties) Rules, 956 is a provision in pari materia with r. 10a of the Central Excise Rules there is marked difference in language, scope and content between S. 3 of the Medicinal and Toilet Preparations (Excise duties) Act (Act XVI of 1955) and S. 3 of the Central Excise and Salt Act. To appreciate this it is necessary to read the two sections S. 3 of the Medicinal and Toilet Preparations (Excise Duties) Act is in the following terms: 3. "duties of Excise to be levied and collected on certain goods.- (I) There shall be levied duties of excise, at the rates specified in the

Schedule, on all dutiable goods manufactured in India. (2) The duties aforesaid shall be leviable: (a) Where the dutiable goods are manufactured in bond, in the state in which such goods are released from a bonded-warehouse for home consumption, whether such state is the state of manufacture or not; (b) Where the dutiable goods are not manufactured in bond, in the state in which such goods are manufactured. (3) Subject to the other provisions contained in this act, the duties aforesaid shall be collected in such manner as may be prescribed. Explanation Dutiable goods are said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods. " S. 3 of the Central Excise and Salt Act reads: "3. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rate, set forth in the First Schedule. (1a) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of Government, as they apply in respect of goods which are not produced or manufactured by Government. (2) The Central Government may, by notification in the official Gazette, fix, for the purpose of levying the said duties, tariff values of any article enumerated either specifically or under general headings, in the First Schedule as chargeable with duty advalorem and may alter any tariff values for the time being in force. (3) Different tariff values may be fixed for different classes or descriptions of the same article " A comparative study of the two provisions reveals that there is a fundamental difference in their policy and scheme Under S. 3 of the Medicinal and Toilet Preparations (Excise Duties) Act only the manner of collection of the duties is left to be prescribed by the rules and the levy of duty is to be made at the rates specified in the Schedule to the Act. In enacting S. 3 of the Central Excise and Salt Act the Parliament has empowered the rule-making authority to prescribe by rules the manner of levy of the duties and also the manner of collection of duties of excise on all excisable goods other than salt. Manifestly the rule-making power conferred by this section is very much wider in its ambit than the power conferred on the rule-making authority under S. 3 of the Medicinal and Toilet Preparations (Excise Duties) Act whereunder only the manner of collection of duties can be laid down by rules. Such being the position, the reasons stated by the Madras high Court in Citadel Fine Pharmaceuticals Pvt. Ltd versus District Revenue officer (1973) I M. L. J. 99 for declaring R. 12 of the Medicinal and Toilet preparations (Excise Duties) Rules to be ultra vires on the ground that the framing of such a rule was beyond the scope of the rule-making power conferred on the Central Government by S. 3 (1) of the Medicinal and Toilet Preparations (Excise Duties) Act are not applicable to this case. The scope of the rule-making power conferred by S. 3 (1) of the Central Excise and Salt Act is wide enough to embrace all matters relating to the manner in which both the levy and the collection of duties of excise on all excisable goods other than salt are to be made. The provision contained in R. 10a is fully within the scope of the said power. Hence we are unable to accept the contention advanced on behalf of the petitioner that R. 10a is ultra vires the rule-making power conferred by the Act on the Central Government.

( 3. ) IT is true that in *Agarwal Brothers v. Union of India*<sup>2</sup> one of the questions raised before the Madras High court concerned the validity of R. 10a of the Central Excise Rules. But it is seen from the judgment that the learned judges did not have to consider the said question on the merits in view of the submission made by the Standing council for the Central Government that he did not seek to sustain the demand on the basis of R. 10a in the light of the earlier ruling of the same High Court striking down R. 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules. Inasmuch as the question relating to the validity. of R. 10a was not gone into by the court this decision cannot obviously be regarded as an authority supporting the petitioner's contention that the said Rule is ultravires. As already observed by us the earlier decision of the Madras High Court reported in *Citadel Fine Pharmaceuticals Pvt. Ltd. v. District Revenue Officer*<sup>3</sup> concerning the validity of R. 12 of the Medicinal and Toilet preparations (Excise Duties) Rules is clearly distinguishable. There cannot be any doubt that on the facts and circumstances of the present case respondents 1 and 2 were perfectly justified in invoking the power conferred by R. 10a. Admittedly the petitioner had not credited to the Department the duty payable in respect of fie Polythene Lay flat Tubings cleared from the petitioner's factory during the period between 1st May 1970 and 16th July 1970 even though the said article was not exempt from duty during that time The orders Exts. P-3, P-5, P-7 and P-8 do not, therefore, call for any interference. ;

#### Cases Referred.

1(1973) I MLJ. 99

2(1972) II M. L. J. 476

3(1973) T m. L. J. 99