

Government Of India vs Citedal Fine Pharmaceuticals Madras ... on 20 July, 1989

Equivalent citations: 1989 AIR 1771, 1989 SCR (3) 465, AIR 1989 SUPREME COURT 1771, 1989 (3) SCC 483, (1989) 2 APLJ 57.1, (1990) 184 ITR 467, (1989) 3 JT 118 (SC), (1989) 42 ELT 515

Author: K.N. Singh

Bench: K.N. Singh, M.H. Kania

PETITIONER:
GOVERNMENT OF INDIA

Vs.

RESPONDENT:
CITEDAL FINE PHARMACEUTICALS MADRAS &ORS.ETC. ETC.

DATE OF JUDGMENT20/07/1989

BENCH:
SINGH, K.N. (J)
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SINGH, K.N. (J)
KANIA, M.H.

CITATION:
1989 AIR 1771 1989 SCR (3) 465
1989 SCC (3) 483 JT 1989 (3) 118
1989 SCALE (2)44

ACT:
Medicinal and Toilet Preparations (Excise Duties) Act
1955: Section--3.19/Medicinal and Toilet Preparations
(Excise Duties) Rules, 1956: Rule 12.
Residuary Powers for recovery of sums due to
Government-Validity of.
Constitution of India, 1950: Article 14 Medicinal and
Toilet Preparations (Excise Duties) Rules 1956--Absence of
period of limitation for recovery of sums due to
Government--Rule 12--Whether unconstitutional.
Limitation--Absence of period of limitation--Action
should be taken within reasonable period--Reasonableness of
period---What is.

HEADNOTE:

The respondents were manufacturing various medicinal preparations and in that process were using tincture containing alcohol. On the enforcement of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 they became liable to pay duty and also to obtain licence but they continued their manufacture without doing so.

The Commercial Tax Officer issued demand notices under Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 requiring payment of the duty which the respondents had failed to pay.

The respondents filed writ petitions in the High Court challenging the aforesaid notices, and the proceedings for recovery of duty. Allowing the writ petitions the Division Bench quashed the notices as well as the proceedings for recovery on the ground that the Act was silent on the question of levy of duty on escaped turnover, and hence Rule 12 which provides for recovery of escaped duty was outside the purview and scope of the Act and, therefore, ultra vires.

In these appeals it was contended that Rule 12 was invalid and

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unreasonable and violative of Article 14 of the Constitution because it does not provide for any period of limitation for the recovery of duty.

Allowing the appeals and setting aside the judgment of the High Court, this Court,

HELD: 1. The liability to pay tax is created by the charging section 3 and Rule 12 confers, power on the authorised officer to recover duty if the same has not been paid on account of any short-levy or deficiency or any other reason. Rule 12 is referable to section 19(2)(i) of the Act and carries out the purposes of the Act as it seeks to provide for recovery of duty as contemplated by section 3(3) of the Act. It is designed to confer residuary power for recovery of duty if unpaid on account of short-levy or deficiency or for any reason it remains unpaid. If recovery of duty or any amount of sum payable to the Government under the Act is not covered by any specific Rule, additional supplementing provision is made for its recovery by this Rule. This Rule does not create any additional charge or liability on the manufacturer for the payment of the duty. The High Court Committed error in holding that the Rule is ultra vires the Act. [470C-D, 470A-B]

2. Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised,

it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case. [470F, G, H, 471A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1403 to 1406 of 1974.

From the Judgment and Order dated 23.12. 1971 of the Madras High Court in W.P. Nos. 1053-54, 4679 & 4715 of 1968. Anil Dev Singh, Ms. Indu Malhotra and C.V. Subba Rao for the Appellant.

R.P. Bhat, G.L. Sanghi, M.N. Krishnamani, Vineet Kumar, R. Mohan, K.C. Dua and R.A. Perumal for the Respondents. The Judgment of the Court was delivered by SINGH, J. These appeals are directed against the judgment and order of a Division Bench of the High Court of Madras dated 2.8. 1974, quashing the notices issued by the Deputy Commercial Tax Officer, Madras.

The respondents manufacture various medicinal preparations and in that process they use tincture containing alcohol. On the enforcement of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (hereinafter referred to as 'the Act') the respondents became liable to pay duty in accordance with Section 3 of the Act read with Schedule to the Act. They further became liable to obtain licence, but they neither paid duty nor obtained licence. The Commercial Tax Officer issued notices to the respondents in exercise of his powers under Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules 1956 directing them to pay duty on all medicinal preparations manufactured by them after 1.6.1961. The notices were in the shape of notice of demand requiring the respondents to pay the duty which they had failed to pay in accordance with the Act and the Rules on the use of tincture in manufacturing medicinal preparations. The respondents filed writ petitions under Article 226 of the Constitution of India before the High Court of Madras challenging the notices and the proceedings initiated in pursuance thereof for the recovery of duty from them. A Division Bench of the High Court allowed the writ petitions on the sole ground that Rule 12 under which the impugned notices were issued was ultra vires the Act, consequently, proceedings initiated in pursuance thereof, were without jurisdiction. On these findings the writ petitions were allowed and the notices as well as the proceedings were quashed.

The sole question which arises for consideration in these appeals relates to the validity of Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules 1956. The High Court has declared the Rule ultra vires on the ground that the Act was silent on the question of levy of duty on escaped turn-over and hence Rule 12 which provides for the recovery of escaped duty was outside the purview and scope of the Act.

The Act was enacted to provide for the levy and collection of duty of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drugs as the preamble states. Section 3 provides for levy and collection of duties. It reads as under:

"3(1). 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 manufac-

tured 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."

Excise duty is imposed by Section 3 on the manufacture of dutiable goods at the rates specified in the Schedule. Sub-section (2) indicates the stage at which the duty is to be levied. Section 3(3) provides for collection of duty, lays down that it shall be collected in such manner as may be prescribed by Rules made under the Act. Section 3, therefore, imposes duty on the manufacture of medicinal preparations and it lays down the rates and it also indicates the stage at which the duty is to be levied. So far as collection of duty is concerned the Act leaves the same to the rule making authority. Section 19 confers power on the Central Government to make rules to carry out the purposes of the Act. The relevant provision of Section 19 is as under:

"19(1). The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. (2) In particulars, and without prejudice to the generality of the foregoing power, such rules may

(i) provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of duty not paid."

ties by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of duty not paid."

Section 19(1) read with Section 3(3) confer wide powers on the Central Government to make rules which may be necessary for carrying out the purpose of the Act. Such rules may provide for the assessment and collection of duties, and, the manner in which the duty is to be paid as well as for the recovery of duty not paid at all. The Central Government in exercise of its power under Section 19 of the Act has framed the Medicinal and Toilet Preparations (Excise Duties) Rules 1956 which were enforced on 9th March 1957. Chapter III of the Rules provide for levy and refund of, and, exemption from duty. Rules 6 to 17 relate to recovery, exemption and refund of duty. Rule 6

requires every person who manufactures any dutiable goods, or who stores such goods in a warehouse to pay the duty on such goods, at such time and place as may be designated. Rule 9 prescribes time and manner of payment of duty. According to this Rule no dutiable goods shall be removed from any place where they are manufactured either for consumption or for export, outside such place until the excise duty leviable thereon is paid at such place and in such manner as prescribed in the Rules or as the Excise Commissioner may require. Rule 11 provides for recovery of duty or charges which may have been shortlevied through inadvertence, error, collusion, or mis-construction on the part of an Excise Officer and through mis-statement on the part of the owner and it also provides for recovery of any refund erroneously made to the manufacturer, owner of the goods on written demand made within six months from the date of payment of duty. Rule 12 confers residuary power for the recovery of sums due to the Government. Rule 12 reads as under:

"12. Residuary powers for recovery of sums due to Government--

Where these rules do not make any specific provision for the duty has for any reason been short-levied, or of any other sum of any kind payable to the collecting Government under the Act or these rules, such duty, deficiency in duty or sum shall, on written demand made by the proper officer, be paid to such person and at such time and place, as the proper officer may specify."

As already noted Rules contained in Chapter III of the Rules particularly Rules 6, 9, 10 and 11 provide for payment and recovery of duty and also the time and manner of its payment. Rule 12 is designed to confer residuary power for recovery of duty if unpaid on account of short-levy or deficiency or for any reason it remains unpaid. If recovery of duty or any amount of sum payable to the Government under the Act is not covered by any specific Rule, additional supplementing provision is made for its recovery by Rule 12. Rule 12 provides for recovery of duty, as well as any other sum payable to the collecting Government under the Act if the same is not paid on account of short-levy or deficiency or for any reason. In substance Rule 12 contains additional safeguard for recovery of duty, it does not create any additional charge or liability on the manufacturer for the payment of the duty. The liability to pay tax is created by the charging Section 3 and Rule 12 confers, on the authorised officer to recover duty if the same has not been paid on account of any short-levy or deficiency or any other reason. Rule 12 is referable to section 19(2)(i) of the Act. The Rule carries out the purposes of the Act as it seeks to provide for recovery of duty as contemplated by Section 3(3) of the Act. The High Court committed error in holding that the Rule provides for recovery of escaped duty although the Act is silent on the question of escaped assessment and therefore Rule 12 is ultra vires the Act.

Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. we find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any

period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.

In view of the above discussion, we allow the appeals and set aside the judgment and order of the High Court of Madras dated 2.8. 1974. There will be no order as to costs.

T.N.A.

Appeals allowed.