Supreme Court of India
Hiralal Agarwala vs State Of Orissa And Ors. on 4 December, 1996
Equivalent citations: 1998 (101) ELT 570 SC, (1997) 11 SCC 325
Bench: S Bharucha, S Sen
ORDER

1. The judgment and order under appeal was delivered by a Division Bench of the High Court of Orissa. The High Court's judgment deals only with the aspect of short levy of duty, which was challenged having regard to the provisions of Rule 11 of the Medicinal and Toilet Preparation (Excise Duties) Rules, 1956.

2. The appellants manufacture medicinal and toilet preparations and for that purpose utilise rectified spirit and pay duty thereon. They were served with a notice by the Superintendent of Excise, Sambalpur, to pay duty on rectified spirit consumed during the period 2nd December, 1974 to 5th March, 1975. Since the notice was dated 16th January, 1978, it was the contention of the appellants that the notice fell outside the period of six months provided by the said Rule 11 for recovery of duties or charges that were short-levied.

3. The duty that is levied on rectified spirit is not under the provisions of the Medicinal and Toilet Preparations (Excise Duty) Act, 1955. Rectified spirit is exigible to duty under the Bihar and Orissa Excise Act, 1950. The provisions of the said Rule have, therefore, no application and do not bar the issuance of the notice.

4. Another point that was raised before us relates to the terms of a circular letter issued on 12th August, 1974, by the Excise Commissioner, Orissa, on the subject of the levy of duty on medicinal and toilet preparations under the Medicinal and Toilet Preparations (Excise Duty) Act. It appears that the procedure set out therein was sought to be enforced retrospectively. The present appellants filed a writ petition and challenged the circular and a demand that had been made upon them pursuant thereto. The High Court of Orissa considered the challenge and passed an order on 19th November, 1976. It recorded that the Advocate General appearing for the State of Orissa had agreed not to enforce the circular retrospectively. Thereupon counsel for the present appellants stated that the present appellants did not dispute the prospective application of the circular and were prepared to abide by the arrangements contemplated in it. The High Court said :

In view of the aforesaid position, the prayer of the petitioner to quash the circular under Annexure 1 has to be dismissed and the demand under Annexure 2 to the extent it represents liability on account of retrospective application of Annexure 1 must be held not collectable. In case, the entire demand under Annexure 2 arose out of retrospective application of Annexure 1, the entire demand must not be enforced and if it includes any demand subsequent to the date of the circular, a revised demand may be issued.

5. It is the case of the respondents, which is set out in paragraph six of the counter filed in this Court, that the notice dated 16th January, 1978, was such revised demand and, in the circumstances, the appellants were estopped from challenging it. To the counter a rejoinder has been filed in which

this is not disputed. It seems to us this is the reason why this point was not specifically urged before the High Court and dealt with in the judgment under appeal. The point, raised here, must be rejected.

6. The appeal is accordingly dismissed. No order as to costs.