

(1985) 01 KL CK 0002
High Court Of Kerala
Case No: O.P. No. 4665 of 1982-C

A. Abdul Rehman, A.B. Beedi
Depot

APPELLANT

Vs

Govt. of India and Ors

RESPONDENT

Date of Decision: Jan. 2, 1985

Acts Referred:

- Central Excise Rules, 1944 - Rule 9A
- Central Excises and Salt Act, 1944 - Section 3, 33

Citation: (1985) 5 ECR 851 : (1985) 22 ELT 53

Hon'ble Judges: P.C. Balakrishna Menon, J; K.A. Abdul Gafoor, J

Bench: Division Bench

Advocate: S. Parameswaran and Nonithyaradan, for the Appellant; P. V. Madhavan Nambiar, for the Respondent

Final Decision: Allowed

Judgement

1. The petitioner is a manufacturer of beedies chargeable to excise duty u/s 3 of the Central Excises and Salt Act, 1944 (here in after referred to as "the Act"). His premises were inspected on 26-6-1976 by the Inspector of Central Excise, Trichur, and on verification of stocks found that there was deficiency to the extent of 1106 Kgms, of biri tobacco when compared with the book balance in E.B. 3 register maintained at the premises. Adjudication proceedings u/s 33 of the Act were initiated in respect of deficiency noticed on inspection of the premises and the adjudicating authority, namely, the Assistant Collector of Central Excise, Trichur as per his proceedings dated 28-2-1977 found that 26,88,385 biris had been manufactured and removed from the premises without payment of excise duty thereon. The petitioner was therefore directed to pay a fine of Rs. 50/- and the excise duty of Rs. 2,688.40 due on the excisable goods removed without payment of duty. The decision of the adjudicating authority was confirmed in appeal by the Appellate Collector of Central Excise. A further revision to the Joint Secretary to the

Government of India, Ministry of Finance (Department of Revenue) was later rejected confirming the penalty and the excise duty imposed for the removal of the goods manufactured in the petitioner's premises without payment of duty. A notice (Ext. P 3), dated 14-10-80 was issued to the petitioner by the Superintendent of Central Excise Trichur directing him to pay the penalty of Rs. 50/- and excise duty Rs. 10,041.12 due on the 26,88,385 biris removed without payment of excise duty. Ext. p 3 notice was during the pendency of the statutory revision filed by the petitioner. In answer to Ext. P3 the petitioner made a representation (Ext. P 4) to the Collector of Central Excise, Cochin wherein it is stated that his liability can only be for the amount adjudicated on 28-2-1977 towards which he had already paid a sum of Rs. 2,000/- on 27-11-1980. He had also expressed his willingness to pay the balance Rs. 738/- in due course. It is unnecessary to refer to the further communications between the petitioner and the department. Proceedings were initialed against the petitioner for recovery of a sum of Rs. 8,091.12 being the balance due as per the demand Ext. P 3. Ext. P 10 dated 9-6-1982 is a notice of demand under the Revenue Recovery Act issued by the 5th respondent. This Original Petition is filed to quash the demand under Ext. P 10.

2. The learned Senior Central Government Standing Counsel appearing on behalf of the respondents submits that excise duty is payable at the rate applicable on the date on which the duty is paid and it is for that reason that the demand under Ext. P 3 was made for payment of Rs. 10,041.12. There is no dispute that the removal of goods manufactured was prior to the date of inspection by the Inspector ... of fixed was at the rate applicable on the date of adjudication. The question is whether the petitioner is liable to pay at rates of excise duty subsequently enhanced on the goods removed prior to the enhancement.

3. As per Section 3 of the Act excise duty shall be levied and collected on all excisable goods produced or manufactured in India at the rates mentioned in the First Schedule to the Act. The incidence of taxation as per Section 3 is on the production or manufacture of excisable goods. Section 33 of the Act confers the power of adjudication of the officers mentioned therein. As per Rule 9-A of the Rules made under the Act, the rate of duty and tariff valuation applicable to any excisable goods shall be the rate and valuation in force in the case of goods removed from the premises of a curer on payment of duty on the date on which the duty is assessed. The duty in the present case for the goods removed is assessed as per the order of adjudication dated 28-2-77. The petitioner's liability for the goods found removed without payment of duty is fixed by the order of adjudication which imposes also a fine of Rs. 50/- on him. The subsequent increase in the rates of excise duty cannot have any application to goods already removed, the excise duty in respect of which had been decided and fixed by the process of adjudication u/s 33 of the Act. The demand under Ext. p 10 for recovery of Rs. 8,091.12 cannot therefore be sustained. The petitioner's liability is only to pay the excise duty and penalty adjudged on 28-2-1977 u/s 33 of the Act towards which, it is submitted that, a sum of Rs. 2,000/-

is already paid. It is open to the Department to issue a fresh demand for the balance, if any, due to make up the excise duty and penalty adjudged on 28-2-1977. Subject to the right of the Department to issue a fresh demand for balance the amount as aforesaid, the demand under Ext. P 10 is quashed and the Original Petition is allowed. There will be no order as to costs.

Issue carbon copy of this judgment on usual terms.