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**(1984) 18 ELT 751**

**Madhya Pradesh High Court**

**Case No:** Criminal Appeal No. 1091 of 1978

Union of India (UOI)

APPELLANT

Vs

Ishwar Bhai

RESPONDENT

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**Date of Decision:** Jan. 24, 1983

**Acts Referred:**

- Central Excise Rules, 1944 - Rule 151
- Central Excises and Salt Act, 1944 - Section 9(1)

**Citation:** (1984) 18 ELT 751

**Hon'ble Judges:** M.D. Bhatt, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

M.D. Bhatt, J.

This is the appeal preferred by the Union of India for enhancement of the sentence of the respondent accused, who, on his conviction under Rule 151 of the Central Excise Rules 1944 (hereinafter referred to as the Excise Rules), has been sentenced to pay the fine of Rs. 500/- and in default of fine, to undergo three months" S.I.

2. The Assistant Collector, Central Excise of Raipur Division had prosecuted the present respondent accused Ishwar Bhai and one more person Kanti Bhai for commission of various offences punishable under certain sections of the Central Excises and Salt Act, 1944 and/read with certain Rules of the Central Excise Rules, 1944. Kanti Bhai was acquitted by the trial Court of all the offences in question. The respondent-accused too was acquitted by the trial Court of all offences except the one committed under Rule 151 (c) and (d) of the Central Excise Rules, 1944. As regards the offences of which the respondent-accused has been acquitted, another appeal is already pending against the order of such acquittal and hence, for the present, this Court is not concerned with the same. As regards his conviction under Rule 151(c) and (d) of the Excise Rules, the proved facts on the basis of which the respondent accused has been convicted and

sentenced for breach of the aforesaid Rules, are that the respondent-accused had illegally removed and sold thirty-five bags of tobacco from the premises of his licenced Warehouse without payment of the Central Excise duty and that he had also clandestinely stored 26 bags of non-duty paid tobacco in the said Warehouse (see para 14 of the trial Court's judgment). Since the respondent-accused was a first offender and since the trial against him had continued for over two years, resulting to sufficient vexation to him, the trial Court has sentenced him only to pay the fine of Rs. 500/- and in default of fine, to three months" S.I. under Rule 151 of the Excise Rules, apart from ordering the confiscation of 208 bags (182 bags plus 20 bags) of tobacco (para 15 and last para of the judgment). Hence, now, the present appeal for enhancement of the sentence.

3. The learned counsel for the appellant has urged that the trial Court has been unduly lenient in the matter of sentence, awarded under Rule 151 of the Excise Rules and has over-looked the basic fact that economic offences of the present nature needed severe punishment. Appellant's learned counsel has subsequently urged that the maximum penalty of Rs. 2,000/-, as provided in Rule 151 of the Excise Rules, should be levied against the respondent-accused. The appellant's learned counsel has pressed no other arguments except the above. Respondent-accused is found to have remained absent despite issue of S.P.C

4. I have considered the arguments of the appellant's learned counsel in the matter of enhancement of the penalty. [Balkrishna Chhaganlal Soni Vs. State of West Bengal](#), cited by the appellant's learned counsel in the matter of the nature of sentence to be awarded for economic offences, does not fully apply to the present case. The ruling cited deals with a much more serious offence i.e. the smuggling of gold and it is in the light of the circumstances of smuggling of such precious material that their Lordships of the Supreme Court had taken a very serious view on the question of sentence. The present case apparently cannot be said to be as serious as that of gold smuggling, so as to call for any deterrent jail sentence, in so far as the offence, which, I am dealing here, is concerned. It is no doubt true that social and economic offences stand on a graver footing in respect of punishment as compared to normal day to day crimes. The penal treatment, however, has to be tailored according to the circumstances of each case and the nature of the offence, and the nature of the commodity in relation to which the crime has been committed.

5. The respondent-accused is a businessman dealing in tobacco. The present offence, as proved to be committed by him, relates to removal of certain bags of tobacco from the licenced Warehouse without payment of Central Excise Duty and also to clandestine storage of certain bags of nonduty paid tobacco in his particular Warehouse. No doubt, the fine amount of Rs. 500/- for this offence under Rule 151(c) and (d) of the Excise Rules is sufficiently lenient which would have no impact on the morals and conduct of the respondent accused, but I feel that the ends of justice would be met if the maximum fine amount of Rs. 2,000/-, as enjoined by the provisions of Rule 151 ibid, is awarded against

him. It does not, however, appear to be proper to sentence him to any term of jail sentence, considering the nature of breach, as committed by him and also considering the material circumstances that confiscation of 208 bags of tobacco has already been ordered by the trial Court-the same being valued at Rs. 10,665.10 being the proceeds of the public auction consequent to confiscation.

6. In the result, thus, allowing the appeal for enhancement of sentence, it is ordered in modification of the trial Court's order that the respondent-accused, on his conviction under Rule 151(c) and (d) of the Central Excise Rules, 1944 read with Section 9(1)(ii) of the Central Excises and Salt Act, 1944, be and is now sentenced to pay the fine of Rs. 2,000/- (Rupees two thousand) and/in default of fine, to undergo nine months" simple imprisonment. All fine amount be paid within two months" from now, failing which, the respondent-accused be remanded to the judicial custody to undergo the sentence of imprisonment in default of payment of fine.