

A CHANDPAKLAL RAMANLAL SHAH AND ANR.

v.

RELIANCE INDUSTRIES LTD.

(Criminal Appeal No.1045 of 2017)

B SEPTEMBER 12, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

C *Central Excise Rules, 1944 – rr. 56A, 52A, 173G, 9(2) and 173 (Q) – Central Excises and Salt Act, 1944 – ss.9,11-A – Complaint filed by the appellant alleging the commission of offence u/s.9 of the Act r/w. rr. 52A, 56A, 173G and 173(Q) r/w. s.11-A of the Act – Later, r.56A was omitted by a notification – On that basis, respondent filed an application for discharge, but the same was rejected and charge was framed by the trial Court – Respondent moved the High Court by way of a revision petition – High Court held that since*
D *r.56A was omitted without prescribing any saving clause, proceedings could not continue and quashed the charge framed by the trial Court – On appeal, held: The charge against the respondent is of evasion of duty – The ingredient of the offence is the evasion – The omission of a procedural rule for availing the credit cannot in*
E *any manner affect the said charge – The prosecution cannot be deprived of opportunity to prove evasion which by itself is an offence – In this view of the matter, there was no justification for the High Court to quash the charge merely on the ground of r.56A having been omitted – Order of trial Court restored – General Clauses Act, 1897 – s.6 – Finance Act, 2001 – Explanation to s.132.*

F **Allowing the appeal, the Court**

HELD: 1. The charge against the respondent is of evasion of duty. The ingredient of the offence is the evasion. The omission of a procedural rule for availing the credit cannot in any manner affect the said charge. The prosecution cannot be deprived of opportunity to prove evasion which by itself is an offence. In this view of the matter, there was no justification for the High Court to quash the charge merely on the ground of Rule 56A of the Central Excise Rules, 1944 having been omitted. [Para 6] [557-E-F]

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Rayala Corporation (P) Ltd. v. Director of Enforcement, New Delhi (1969) 2 SCC 412 : [1970] 1 SCR 639; Kohlapur Cane Sugar Works Ltd. v. Union of India (2000) 2 SCC 536 : [2000] 1 SCR 518; Fibre Boards Pvt. Ltd. Bangalore v. Commissioner of Income Tax, Bangalore (2015) 10 SCC 333 : [2015] 8 SCR 906; Shree Bhagwati Steel Rolling Mills versus Commissioner of Central Excise (2016) 3 SCC 643 : [2015] 12 SCR 332; Simholi Sugar Mills Ltd. v. Union of India 2006 (205) ELT 141; Reliance Industries Ltd. v. CCE 1995 (75) ELT 77 – referred to.

Case Law Reference

[1970] 1 SCR 639	referred to	Para 3
[2000] 1 SCR 518	referred to	Para 3
[2015] 8 SCR 906	referred to	Para 4
[2015] 12 SCR 332	referred to	Para 4
2006 (205) ELT 141	referred to	Para 4
1995 (75) ELT 77	referred to	Para 4

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1045 of 2017.

From the Judgment and Order dated 17.10.2015 of the High Court of Gujarat at Ahmedabad in Criminal Revision No. 192 of 2014.

Ranjit Kumar, SG, Ms. Vibha Datta Makhija, Sr. Adv., Rupesh Kumar, Ritesh Kumar, Ms. Disha Vaish and B. Krishna Prasad, Advs., for the Appellants.

Shyam Divan, Sr. Adv., Jaydeep Patel, K. R. Sasiprabhu, Ashwin Dave, Ms. Shilpa Balani, Vishnu Sharma, Udayaditya Banerjee, Somiran Sharma and Biju Raman, Advs., for the Respondent.

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. This appeal has been preferred against the Order dated 17th October, 2015 of the High Court of Gujarat at Ahmedabad in Criminal Revision Application No. 192 of 2014. Thereby, the High Court set aside the order of the trial court dated 22nd March, 2013 and discharged the respondent in Criminal Case

A No.441 of 1987 under Section 9 of the Central Excises and Salt Act, 1944 (the Act) read with Rules 52A, 56A, 173G, 9(2) and 173(Q) of the Central Excise Rules, 1944 (the Rules) read with Section 11-A of the Act.

B 2. Complaint dated 4th August, 1987 was filed by the appellant in his capacity as Superintendent, Central Excise, Group –II, Central Excise Collectorate, Hqrs. Jivabha Mension, Ahmedabad alleging commission of offence mentioned in the complaint. The trial Magistrate summoned the accused. On 20th May, 1994, Rule 56A was omitted by a notification. On that basis, the respondent filed an application for discharge. The application was rejected and charge was framed by the trial Magistrate vide order dated 22nd March, 2013 as follows :

C “A charge is framed against the accused for the offence punishable under Section 9 of Central Excises & Salt Act, 1944 read with violation of Rule 52(A), 56(A), 173(G), 9(2) of Central Excise Rules and Rule 173(Q) read with Section 11(A) of the Central Excises & Salt Act, 1944.”

D 3. The respondent moved the High Court by way of a revision petition. The High Court has allowed the revision petition. It was held that since Rule 56A was omitted without prescribing any saving clause, proceedings could not continue. Referring to Section 38A added to the Act by the Finance Act, 2001, it was observed that Explanation to Section 132 of the Finance Act, 2001, laid down that an act or omission, which would not have been punishable but for the said section, will not be punishable. It was also observed that omission of the provision was not at par with repeal and Section 6 of the General Clauses Act, 1897 did not apply to repeal of a rule. Reliance was placed on *Rayala Corporation (P) Ltd. versus Director of Enforcement, New Delhi*¹ and *Kohlapur Cane Sugar Works Ltd. versus Union of India*². Hence this appeal.

E 4. Learned Solicitor General appearing for the appellant submitted that the view taken by the High Court is erroneous. The charge against the respondent was of evasion of excise duty under Section 9(1)(b) which remains unamended. The evasion was on account of the respondent having taken credit without following the procedure under Rule 56A. By omission of the said Rule, the charge did not suffer from any legal

H ¹ (1969) 2 SCC 412

² (2000) 2 SCC 536

infirmity. Alternatively, it was submitted that Section 6 of the General Clauses Act applied to omission which was also repeal. It also applies to a Rule. In this regard, reliance has been placed on *Fibre Boards Pvt. Ltd. Bangalore versus Commissioner of Income Tax, Bangalore*³, *Shree Bhagwati Steel Rolling Mills versus Commissioner of Central Excise*⁴. It was also submitted that retrospective amendment has been made to the Act by the Finance Act, 2001 making it clear that actions taken under a rule will not lapse even if the rule is omitted. The Explanation applied only to future action and not to continuing action. Reliance has been placed on a full Bench Judgment of the Allahabad High Court in *Simholi Sugar Mills Ltd. versus Union of India*⁵ It was also submitted that penalty for wrongly taking credit was upheld by the Tribunal in *Reliance Industries Ltd. versus CCE*⁶, which has attained finality.

5. Opposing the above submissions, learned senior counsel for the respondent submitted that Section 6 of the General Clauses Act did not apply omission and applied only to repeal. It did not apply to a rule and applied only to an Act or Regulation as held in *Kohlapur Cane Sugar Works Ltd. (supra)*. He further submitted that in view of Explanation to Section 132 of the Finance Act, 2001, prosecution could not continue as there was no retrospective validation of the prosecution.

6. It is not necessary to go into all the rival contentions. In our view, the matter can be decided on a short point. The charge against the respondent is of evasion of duty. The ingredient of the offence is the evasion. The omission of a procedural rule for availing the credit cannot in any manner affect the said charge. The prosecution cannot be deprived of opportunity to prove evasion which by itself is an offence. In this view of the matter, there was no justification for the High Court to quash the charge merely on the ground of Rule 56A having been omitted.

7. Accordingly, we allow this appeal, set aside the order of the High Court and restore the order of the trial court.

³ (2015) 10 SCC 333

⁴ (2016) 3 SCC 643

⁵ 2006 (205) ELT 141

⁶ 1995 (75) ELT 77