Before K. S. Tiwana and M. M. Punchhi, JJ.

ARUN SPINNING MILLS,—*Petitioner.*

versus

THE COLLECTOR and others,—*Respondents*

Civil Writ Petition No. 3555 *of* 1980.

May 19, 1981.

Central Excise and Salt Act (1 *of* 1944)—*Section* 40(2)—*Central Excise Rules* 1944—*Rules* 173(Q) *and* 225—*Words 'legal proceedings' occurring in section* 40(2)—*Whether include departmental (penalty) proceedings—Bar of limitation prescribed in section* 40(2)—*Whether applicable to departmental proceedings—Vicarious liability for criminal acts of the servants—Whether could be foisted on the masters.*

Held, that specific words like 'suit' and 'prosecution' precede the generic words 'legal proceedings' in section 40(2) of the Central Excises and Salt Act, 1944. There can be no two opinions that 'suit' as also 'prosecution' mean and imply proceedings instituted in a court of law and they cannot and would not include departmental proceedings, which can be initiated by the proper officer before him. Thus, it appears that the principle of ejusdem generis applies to the provisions of section 40(2) though words 'legal proceedings' are only meant to cover those proceedings which have to be instituted before a court of law like a 'suit' or a 'prosecution'. Internal departmental proceedings initiated by a departmental officer and to be decided by departmental authority would not be a "legal proceeding' which is covered by section 40(2) of the Act. In common parlance, it would be a 'legal proceeding' but not of the kind envisaged by section 40(2) of the Act. Departmental proceedings, therefore, like penalty proceedings are not covered by section 40(2) of the Act and the bar of limitation therein is not attracted to such proceedings. (Paras 10 and 11).

Hyderabad Allwyn Metal Works Ltd. v. *The Collector of Central Excise Hyderabad,* 1978 Tax L.R. 1959.

DISSENTED FROM.

Held, that according to rule 225 of the Central Excise Rules 1944 the act of removal of excisable goods from the place of their

production or manufacture or warehousing in contravention of any condition prescribed in the rules, makes the producer or manufacturer or the warehouse keeper responsible for such removal. Not only that, he is to be made liable to be dealt with according to the provisions of the Act or the rules as if he had removed the goods himself. In other words, a producer or a manufacturer can, for the breach of the rules committed by them, be held liable for offences and penalties under section 9 of the Act as also to civil adjudication of confiscation and penalties under chapter VI and the relevant rules. It cannot, therefore, be said that a company could not be proceeded against for the wrongs committed by their clerk on the principle that vicarious liability for criminal acts of the servants could not be foisted on the masters. Rule 225 of the Rules clearly puts the master principly liable for the breach of the rules though actually committed by another. (Para 13).

Petition under Articles 226 and 227 of the Constitution of India praying that the records of the case be summoned and the petitioner be granted the following reliefs :—

(a) *Quash the notice annexure "P-2" dated the 11th/19th June, 1973, order dated 20th February, 1975 annexure "P-4" passed by respondent No. 1, order of respondent No. 2 dated the 24th April, 1979 annexure "P. 6" and order annexure "P. 8" passed by respondent No. 3 on 21st March, 1980.*

(b) *Respondents be restrained from recovering the amount of Rs. 50,000.*

and/or

(c) *Any other relief to which the petitioner be entitled in the facts and circumstances of the case.*

It is further prayed that pending the decision of this petition the recovery of Rs. 50,000 be stayed and the productiin of certified copies of the annexures and service of notice of the petition on the respondents be dispensed with.

Bhagirath Dass, Advocate, *for the petitioner.*

Gopi Chand, Advocate, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) Messrs Arun Spinning Mills, a registered partnership concern, has moved this Court under Articles 226/227 of the Constitution of India. A sum of Rs. 50,000 has been imposed as penalty on

the petitioner under Rule 173(Q) of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) issued under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). The petitioner has challenged the imposition of such penalty.

2. The facts giving rise to this petition are that the petitioner-firm was engaged in the manufacture of woollen and shoddy yarn. These being excisable articles, the petitioner had obtained a licence in form L-4 as prescribed under Rules 174 and 178 of the Rules. The petitioner came to be governed under the provisions of Chapter VII-A of the Rules, which provided for self-removal procedure. The firm which had its existence since the year 1960, came to be reconstituted on April 1, 1969,—*vide* a partnership deed, copy of which is Annexure P-1 to the petition. Thereunder, five persons, namely, S/Shri Hira Lal Mehra, Hem Raj Kapur, Krishan Kumar Khanna, Arun Kumar Kapur and Smt. Nirmala Kapur, became partners. Shri Hira Lal Mehra became the managing partner of the partnership business. He had full powers to employ, dismiss or suspend any staff of the firm, and the general control, management and administration of the partnership business also vested in him.

3. In the month of September, 1970, the Accountant-General, Central Revenue, Delhi, inspected the record of the firm and observed that the petitioner had been committing forgery and defrauding the Government from central revenue by mutilating the figures of deposits in the copies of the treasury challans meant for their own office record and for the Range Office, which was sent along with the monthly personal ledger account statement. It came to the conclusion that during the period from March 1, 1969 to August 31, 1970, an amount of Rs. 46,695 was less deposited and for the period of September, 1970, an amount of Rs. 3,695 was also less deposited, while cleaning a given quantity of shoddy yarn and woollen yarn during the first afore-mentioned period and without paying adequate balance to the personal ledger account during the second afore-mentioned period. On those two counts, the petitioner was issued a show cause notice dated 11/19th June, 1973, copy of which is Annexure P-2 to the petitioner. The petitioner in response to the notice took up the specific plea that under section 40(2) of the Act, no action could be taken by the department after

the lapse of six months from the date of the cause of action. The petitioner asserted that the cause of action accrued to the department on or near about September 24, 1970, when the accounts of the firm were audited and the discrepancies were detected as mentioned in the show cause notice Annexure P-2. On merits, the petitioner-firm contended that the partners had no knowledge about the mischief committed by Shri Jawahar Lal Khanna, their clerk, and thus the firm was no where concerned with the fraud or vicariously liable. The reply was sent on December 28, 1974, copy of which is appended as Annexure P-3 to the petition.

4. During this while, the Assistant Collector, Central Excise, Government of India, Amritsar, filed a criminal complaint on July 24, 1973, against the then co-partners, namely, S/Shri Hem Raj Kapur, Krishan Kumar Khanna, Arun Kumar Kapur and Smt. Nirmala Kapur. Shri Jawahar Lal Khanna, Clerk, was also arraigned as an accused. The complaint was under sections 120-B, 468, 471, 468/471 read with section 120-B and sections 34 and 109 of the Indian Penal Code. Prior to the filing of the complaint, Shri Hira Lal Mehra, the managing partner, had died. During the pendency of the complaint, Shri Jawahar Lal Khanna, clerk, also died. The Judicial Magistrate 1st Class, Amritsar,—*vide* his order dated April 3, 1974, discharged the accused putting the bar of limitation under section 40(2) of the Act, against the complainant. It was also held that there was lack of evidence as also *mens rea* in commiting the alleged offences. The judgment of the criminal Court was also taken aid of in reply to the show cause notice, pleading that the matter had become final between the parties and that penalty proceedings could not continue against the petitioner.

5. The Collector of Customs and Central Excise, Delhi-respondent No. 1 was not satisfied either with the explanation submitted by the petitioner or its arguments and,—*vide* his order dated 19/20th February, 1975, copy of which is Annexure P-4 to the petition, imposed a penalty of Rs. 50,000 on the petitioner concern, under Rule 173(Q) of the Act. The Central Board of Excise and Customs, New Delhi—respondent No. 2 dismissed the appeal of the petitioner on 23/24th April, 1979, copy of which is Annexure P-6 to the petition. The revision petition of the petitioner too was dismissed on March 21, 1980 (copy Annexure P-8) by the Union of India. The petitioner now claims that the show cause notice (Annexure P-2) and

orders Annexures P-4, P-6 and P-8 are illegal, unsustainable in law and *ultra vires* of the Act, on the ground that the period of limitation as envisaged under section 40(2) of the Act had expired and that the term 'legal proceedings' in the aforesaid section was wide enough to cover departmental proceedings. Another ground taken is that it was Shri Jawahar Lal Khanna, clerk of the firm, who had cheated the firm as well as the Government and since the loss had been made good by the petitioner-firm, it should be taken that it had no criminal intention on its part to defraud the Government. In a nutshell, it was claimed that the penalty proceedings which were quasi criminal in nature could not be started against the petitioner on the presumptive vicarious liability for criminal acts of the servant of the firm.

6. While controverting the pleas taken up in the writ petition, the respondents have taken the stand that the term 'legal proceedings' occurring in section 40(2) of the Act, did not envelope within its scope departmental proceedings under the Act. On this stance, it was asserted by the respondents that the question of limitation in the instant case, did not arise. The faults attributed to Shri Jawahar Lal Khanna, the employee of the firm, were said to be of no significance in view of the specific provisions contained in Rule 225 of the Rules, which fixes the liability to pay penalty on the producer or manufacture as if he himself removed the goods in violation of the Act and the Rules. The effect of the judgment of the Criminal Court was suggested not to be binding on the respondents to initiate proceedings and pass orders of penalty, which orders were claimed to be valid.

7. Mr. Bhagirath Dass, learned counsel for the petitioner, first of all pressed into service the provisions of section 40(2) of the Act, to oust the jurisdiction of the respondents in issuing the show cause notice and passing the impugned orders. Section 40(2) of the Act, as it stood prior to the amendment made in it on May 21, 1973,—*vide* Central Act 22 of 1973 was as under :—

> "No suit, prosecution or other legal proceedings shall be instituted for anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the Act or order complained of."

Undisputably, the unamended section would, if, at all, be attracted to the present controversy.

8. Pressing his point, the learned counsel for the petitioner contended that the term 'legal proceedings' would include departmental proceedings under section 40(2) of the Act, putting the bar of six months' limitation. Reliance was placed by him on *Public Prosecutor, Madras* v. *R. Raju and another,* (1), to contend that section 40(2) was not restricted to Government servants alone, but was available for all individuals contravening the provisions of the Act and the Rules made thereunder, for anything done or ordered to be done under the Act. He also put to use a Full Bench decision of the Lahore High Court in *Smt. Shukantla* v. *Peoples' Bank of Northern India Ltd. and another,* (2), to convey that the expression 'legal proceedings' being coupled with 'suit' in that case meant proceedings ejusdem generis. In that case, the Full Bench of the Lahore High Court was required to interpret section 171 of the Companies Act, where the expression "no suit or other legal proceedings" occurring in section 171 of the Companies Act, 1913, was spelled out to mean proceedings ejusdem generis, that is to say, original proceedings in a Court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint. However, the Federal Court in *Governor General in Council* v. *Shiromani Sugar Mills Limited,* (3), did not approve the view of the Full Bench in *Smt. Shukantla's case* (supra) as they held that no narrow construction should be placed upon the words "or other legal proceedings" in section 171. The scheme of the Companies Act seems to have impelled them to take that view. Similar was the view taken by the Supreme Court in *S. V. Kondaskar* v. *V. M. Deshpande, Income Tax Officer, Companies Circle* 1(8) *Bombay and another,* (4), while interpreting section 446 of the Companies Act, 1956, where aid was sought from the principles laid down in *Shiromani Sugar Mills Limited's case* (supra) by the Federal Court. On the strength of the decisions afore-mentioned, the learned counsel stressed that the principle of 'ejusdem generis' would not be applicable to the language employed in section 40(2)

(1) A.I.R. 1972 S.C. 2504.
(2) A.I.R. 1941 Lahore 392.
(3) A.I.R. 1946 Federal Court 16.
(4) A.I.R. 1972 S.C. 878.

of the Act, and as such 'legal proceedings' would not confine to proceedings analogous to suits or prosecutions but would include departmental proceedings also.

9. We have given our careful thought to this aspect of the matter. It appears to us that the aforesaid two tecisions rendered by the Federal Court and the Supreme Court respectively, under the Companies Act, can have no significance to the case we are concerned with. We have to examine the provisions of section 40(2) of the Act and construe it in the context in which it has come to be worded. As has been noted down in Maxwell on Interpretation of Statutes p. 326-7 (11th Edition).

> "But, the general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words. In other words, it is to be read as comprehending only things of the same kind or those designated by them, unless, of course, there by something to show that a wider sense was intended, as, for instance, a proviso specifically excepting certain classes clearly not within a suggested genus ..... Unless there is a genus or category there is no room for application of the ejusdem generis doctrine .....".

10. It is plain that specific words like 'suit' and 'prosecution' proceeds the generic words 'legal proceedings'. There can be no two opinions that 'suit' as also 'prosecution' mean and imply proceedings instituted in a Court of law and they cannot and would not include departmental proceedings, which can be initiated by the proper officer before him. Thus, it appears to us that the principle of ejusdem generis applies to the provisions we are concerned with, though words 'legal proceedings' are only meant to cover those proceedings which have to be instituted before a Court of law like a 'suit' or a 'prosecution'. Internal departmental proceedings initiated by the departmental officer and to be decided by a departmental authority would not, in our view, be a 'legal proceeding' which is covered by section 40(2) of the Act. In common parlance, it would be a 'legal proceeding' but not of the kind envisaged by section 40(2) of the Act.

11. Reliance was placed by the learned counsel for the petitioner on two decisions of the Andhra Pradesh High Court in *M/s Hyderabad Allwyn Metal Works Ltd.* v. *The Collector of Central Excise, Hyderabad,* (5) and *B. Satya Naraina* v. *Union of India and others,* (6), wherein such departmental proceedings were held to be time barred in view of section 40(2) of the Act. The former was a Single Bench case and reliance was placed therein on the later case, which was decided by a Division Bench. These were based on the decisions of the Supreme Court in *R. Raju's case* (supra). On the other hand, the learned counsel for the respondents, drew our attention to a decision of the Madhya Pradesh High Court in *Universal Cables Ltd. Satna* v. *Union of India and others,* (7), wherein it has been held that the rule of ejusdem generis applies to section 40(2) of the Act and the general words "other legal proceeding" are restricted to the same categories of legal proceedings, of which 'suit' and 'prosecution' are examples. It has been held in so many words that the departmental proceedings like penalty proceedings are not covered by section 40(2) of the Act, and the bar of limitation was not attracted. The Allahabad High Court in *Geep Flashlight Industries Ltd. Allahabad* v. *Union of India and others,* (8) took the view that the expression 'other legal proceedings' occurring in section 40(2) of the Act, must be held to exclude the proceedings initiated by the Central Excise authorities under the Act. That was a case for quantification and realisation of duty and not of penalty proceedings. Support was also sought from a decision of the Madras High Court in *The Secretary to the Government of India and others* v. *A. Loganathan,* (9). In that case the view taken was that an assessment proceeding started with a show cause notice, was not within the purview of section 40(2) of the Act, but not for the purpose of prosecution. Similarly, reliance was placed on *Assistant Collector of Customs & others* v. *Shiva Glass Works Ltd.,* (10), wherein a Division Bench of the Calcutta High Court took the view that the words "departmental proceedings' must be circumscribed to proceedings like 'suit'

(5) 1978 Tax L. R. 1959.
(6) C.W.P. 2516 of 1974.
(7) 1977 Tax L.R. 1825.
(8) 1979 E. L. T. (J. 674).
(9) (1976) II M.L.J. 295.
(10) 80 C.W.N. 1057.

and 'prosecution', and the departmental proceedings were outside the scope.

12. There appears to us a preponderance for the view that departmental proceedings are outside the ambit of section 40(2) of the Act. The only distinction, which was faintly urged was that penalty proceedings initiated by the department itself were on a different footing as they partake the character of a prosecution. We find that the Single Bench decision of the Andhra Pradesh High Court in *M/s. Hyderabad Allwyn Metal Works Limited's case* (supra) is of no avail to us bereft of any reasoning given, as it is solely based on a Division Bench judgment. We have not had the advantage of perusing that judgment, which was mentioned before us. Be that apart, the Division Bench judgment of the Calcutta High Court in *Shiva Glass Works Limited's case* (supra) and that of Madhya Pradesh High Court in *Universal Cables Ltd.'s case* (supra) have interpreted section 40(2) of the Act with sound analysis and reasoning with which we are in respectful agreement as this is our own view. Thus, we have no hesitation in repelling the contention of the petitioner that the show cause notice issued to it was barred by time in view of section 40(2) of the Act or the resultant orders of the respondents suffer from that infirmity.

13. So far as the next contention is concerned, Rule 225 of the Rules may advantageously be noted :—

> "225. Producer or manufacturer liable for removal of goods by (any person)—If any excisable goods are in contravention of any condition prescribed in these Rules, removed by (any person) from the Place where they are produced, manufactured or warehoused, the producer or manufacturer or the licensee or keeper of the warehouse shall be held responsible for such removal, and shall be liable to be dealt with according to the provisions of the Act or the Rules as if he had removed the goods himself."

This Rule like all other Rules draws substance from section 38 of the Act. Section 38 of the Act provides the laying of the Rules before the Parliament. It is not disputed that the Rule met the approval of the Parliament. In *Express Newspaper Ltd.* v. *The Union of India and others* (11), their Lordships of the Supreme

(11) A.I.R. 1958 S.C. 578.

Court pointed out at page 635 that if the statute requires that the rules made under it, be placed before the legislature, the rule becomes a part of the Act itself. Treating Rule 225 to be part of the statute, it is noteworthy that the Act of removal of excisable goods from the place of their production or manufacture or warehousing in contravention of any condition prescribed in the Rules, makes the producer or manufacturer or the warehouse keeper responsible for such removal. Not only that, he is to be made liable to be dealt with according to the provisions of the Act or the Rules as if he had removed the goods himself. In other words, a producer or a manufacturer can, for the breach of the rules committed by them, be held liable for offences and penalties under section 9 of the act as also to civil adjudication of confiscation and penalties under chapter VI and the relevant Rules (in the instant case rule 173 (Q). We find no substance in the argument of the learned counsel that the company could not be proceeded against for the wrongs committed by their clerk Shri Jawahar Lal Khanna, on the principle that vicarious liability for criminal acts of the servants could not be foisted on the masters. Rule 225 of the Rules clearly puts the master principly liable for the breach of rules though actually committed by another.

14. Lastly, it was contended that the judgment of the Criminal Court had clearly spelled out that the prosecution against the partners of the petitioner-firm was time barred, lacked evidence and there was absence of *mens rea*.. The judgment of the Criminal Court on the point of limitation cannot operate as constructive *resjudicata* to penalty proceedings, concluded by the departmental officers, as we have spelled out that both these are separate proceedings, having separate dimensions. On the question of *mens rea* the judgment of the Criminal Court cannot operate as *resjudicata* with the departmental officers in view of the mandate of Rule 225 of the Rules. For lack of evidence in the criminal case, which warranted the discharge of the partners, the departmental officers are not debarred from taking penalty proceedings. It is noteworthy that a firm is not an entity or 'person' in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, the firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. It is true that the criminal prosecution was directed against the co-partners and the

penalty proceedings have been directed against the firm that could not make the slightest difference, as we have understood the concept of the firm (see in this connection *Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur,* (12). It is equally noteworthy that penalty proceedings are quasi criminal in nature and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances (see in this connection *Hindustan Steel Ltd.* v. *State of Orissa* (13), *Commissioner of Income-tax, West Bengal-I and another,* v. *Anwar Ali.* (14). The aforementioned principles have come to be enunciated in the jurisprudential realm of the income-tax law. No sustenance can be drawn by the petitioner for the view canvassed by them that there was lack of *mens rea* on their part and somebody else committed the breach of the rules without their knowledge. Fictionally, as Rule 225 of the Rules provides the firm and, for that matter, the partners had committed the breach of the rules, attracting penalty.

15. For the foregoing reasons, we find no merit in the petition, which is hereby dismissed, with no order as to costs.

S.C.K.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and B. S. Dhillon, JJ.

ATMA RAM,—*Appellant.*

versus

KALA WATI,—*Respondent.*

Letters Patent Appeal No. 135 *of* 1979.

September 11, 1981.

Hindu Marriage Act (*XXV of* 1955)—*Sections* 13(1-*A*) (*i*) *and* 23—*Decree for restitution of conjugal rights remaining unsatisfied for more than the statutory period—Husband making no effort to*

(12) (1956) 29 I.T.R. 535.

(13) (1972) 83 I.T.R. 26.

(14) (1970) 76 I.T.R. 696.