

The Punjab
National Bank,
Ltd., Amritsar
v.
M/s. Raj Mal-
Pahar Chand
and others
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that rules 5 and 7 of this Order would also be applicable to joint Hindu family firms. And if that is so, then Order XXI rule 50(2) can properly be pressed into service by decree-holders while executing their decrees against the partners or members of the joint Hindu family firms.

For the reasons stated above, this appeal must be allowed and the order of the learned Subordinate Judge, 1st Class, dated the 10th of August, 1953 set aside. There will, however, be no order as to costs in this Court.

The parties are directed to appear before the executing Court on the 3rd of November, 1958 when the Court would give them another date for further proceedings in the matter.

Falshaw, J.—I agree.

B. R. T,

CIVIL WRIT

Before Bishan Narain, J.

MESSRS VRAJLAL MANILAL & CO.,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Case No. 98-D of 1955.

1958
Oct., 15th

Central Excise and Salt Act (I of 1944)—Section 3—Tobacco for manufacturing bidis; cigarettes; cigar; etc.—Point of time when duty leviable—Process of curing—When to be considered to be complete—Constitution of India (1950)—Articles 14 and 19—ex gratia reduction of duty—Whether violative of the provisions of these Articles.

Held, that the duty on tobacco becomes leviable as soon as it is cured and the weight thereof for this purpose necessarily is as it exists as soon as the process of curing has been completed. The weight of the unmanufactured

tobacco as obtainable when it leaves the warehouse for the factory does not affect the amount of duty payable on these goods.

Held, that curing has to be completed by a licensed curer whatever be the process of curing and, however, inclusive be its definition in the Act, it must be completed only by a licensed curer and no other person can carry out any process of curing.

Held, that plea of discrimination or denial of the equality before the law or equal protection of law or the plea of freedom to acquire, hold possess and dispose of property or to practise in business cannot be affected where an excise officer reduces *ex-gratia* the duty payable by persons, who are called upon to pay duty on unmanufactured tobacco.

Petition Under Article 226 of the Constitution of India praying that the proceedings for the levy, assessment and collection of a duty of Rs. 383/4/- mentioned in para No. 9 herein above be brought upto this Hon'ble Court by a Writ of certiorari and the Order of the Respondent No. 3, dated 8th/9th September, 1953; of Respondent No. 2, dated 22nd June, 1954 and of Respondent No. 1, dated 11th January, 1955 be quashed as being illegal unconstitutional and without or in excess of jurisdiction.

(b) *That a writ of prohibition be issued directing the Respondents not to levy, assess and collect the excise duty on such losses in weight which occur on account of natural causes which are beyond the control of the Petitioners and further declare that only the net weight of the goods removed from the bonded wherehouse for the purposes of manufacturing Bidis is liable to duty.*

(c) *In the alternative your Lordships be pleased to issue a writ of mandamus against the Respondents setting aside their orders dated 8th/9th September, 1953, 22nd June, 1954, and 11th January, 1955 and directing them to refund the amounts illegally collected and further restraining them from levying, assessing and collecting any further excise duty on such losses in weight which occur on account of natural causes which are beyond the control of the Petitioners.*

(d) Any further order, writ or direction appropriate in the circumstances of the case be also awarded.

M. K. NAMBYAR, S. N. ANDLEY AND RAMESHWAR DYAL,
for Petitioner.

C. K. DAPHTARY, BISHAMBAR DAYAL AND KESAV DAYAL,
for Respondents.

ORDER

Bishan Narain,
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BISHAN NARAIN, J.—Messrs Vrajlal-Manilal and Co. carry on the business of manufacture of bidis at Saugor (Madhya Pradesh). The firm in the course of its business stores tobacco, which is an excisable commodity under Central Excise and Salt Act of 1944 (Act No. I of 1944). On a particular consignment the authorities under the Act have assessed excise duty and have called upon the firm to pay this amount. The firm has filed this petition under Article 226 of the Constitution challenging the validity of this demand.

The facts relating to this case are these. This company imports large quantities of tobacco from the State of Bombay, keeps the same in its bonded warehouse and after processing the same takes it to the factory for manufacture of bidis. The consignment in question entered the firm's bonded warehouse on 28th April, 1953, and it then weighed 92,483.09 lb. After processing when it was taken out of the warehouse, it showed a reduction in weight by 1362.99 lbs. This loss in weight comes to 1.47 per cent. The excise authorities charged duty on the actual weight of the goods (91120.1 lbs) as obtainable at the time of the tobacco leaving the warehouse, at annas fourteen per pound. There is no dispute about this charge. As regards the loss in weight, the excise authorities exempted 1 per cent of it from duty, but by order dated 8th/9th

September, 1953, levied excise duty on .47 per cent of it. This duty comes to Rs. 383-4-0. The company challenged its liability to pay this duty by appeal and then revision under the Act, but without any success. Hence this writ petition.

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In substance, petitioners' case is that the duty under the said Act is leviable when after processing the tobacco is taken out of the warehouse to the factory for manufacture of bidis and, therefore, its weight at that stage is the only one which should be taken into consideration for the purposes of computing excise duty. On the other hand, respondent's case is that the duty is leviable as soon as the tobacco has been cured and as that was done in the present case before the consignment reached company's bonded warehouse, the duty is payable on the weight found at the time of its entering in the warehouse. Further the respondent's case is that the exemption of duty granted regarding 1 per cent of loss in weight by the time the tobacco was taken out from the warehouse is *ex gratia* and could not be claimed by the company as a matter of right under the Act. The only question, therefore, that requires determination in this case is as to the point of time when the duty is leviable under the Act and the rules framed thereunder. For this purpose, it is necessary to consider various provisions of the Act and the rules.

Section 3 of the Act is the charging section and, according to it, duty is leviable on excisable commodities, which are produced or manufactured in this Country at the rates set forth in the first schedule. Item No. 9 of this Schedule deals with tobacco. This item defines tobacco as meaning any form of tobacco whether cured or uncured and whether manufactured or not and in this

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definition are also included the leaf, stalks and stems of the tobacco plant excepting any part of its plant which remains attached to the earth. The excisable tobacco in this schedule is divided in two categories (1) manufactured and (2) unmanufactured. In this case we are not concerned with the manufactured tobacco. Excise on un-manufactured tobacco is to be levied according to its weight per pound. This category of tobacco is then sub-divided into two categories (1) flue cured and (2) other than flue cured. The duty on the former is payable at Re: 1 per pound, but if it is blended with imported tobacco then the duty increases according to the proportion of the imported tobacco blended with the Indian tobacco. We are not concerned in this case with the flue cured tobacco: The second category is again sub-divided into three categories according to the use and purpose to which tobacco is put. No duty is leviable on tobacco in whatever condition if it is used for agricultural purposes. Duty on stalks is to be paid at one anna per pound. If other than flue cured tobacco is used for manufacture of cigarettes or smoking mixture for pipes and cigarettes then a duty of nine annas per pound is payable thereon. If, however, ordinarily such tobacco is not used for the manufacture of cigarettes or smoking mixtures for pipes and cigarettes, but is capable of being used for the manufacture of bidis then duty at annas fourteen per pound is payable: In otherwise unspecified cases a duty of annas six per pound is payable. In the present case the tobacco involved falls within the category on which duty of annas fourteen per pound is payable, i.e., it is other than flue cured tobacco capable of being used for the manufacture of bidis.

It follows from these provisions that besides stalks or when it is used for agricultural purposes,

tobacco has to be cured by whatever method before it becomes liable to pay excise duty. Therefore, after it has been cured although still in unmanufactured state, it becomes liable to pay duty. It may be stated here that after the tobacco is manufactured into cigars, cigarettes or machine made bidis whether blended or not with imported tobacco, the duty is charged on the numbers of the articles manufactured or on the value thereof (vide item No. 9 (ii) of this Schedule). In the present case, we are concerned with unmanufactured tobacco after it has been cured. It follows from these provisions that the duty on tobacco becomes leviable as soon as it is cured and the weight thereof for this purpose necessarily is as it exists as soon as the process of curing has been completed. Thus for the legal position appears to be simple.

The next question that arises in this case is as to at what stage curing of tobacco must be considered to be complete under the Act. The learned counsel for the petitioner contends that the word 'curing' in the Act has been used in a special sense and that in a case where tobacco is to be utilised for manufacturing purposes, it is not complete till it is ready for manufacture so that its rate of duty may be readily determined. Respondent's case, on the other hand, is that curing is done by a licensed cured and it is complete when the tobacco leaves him. It may be stated here that it is common ground that tobacco generally loses weight when subjected to any process or is transported or is deposited in a warehouse or when it is repacked though occasionally it may gain weight during monsoon weather. The learned counsel for both the sides have invited my attention to various provisions of the Act and the Rules in support of their respective contentions. Before dealing with these contentions, it would be convenient

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to give a general outline of the rules made for determining the amount which is recoverable under the Act for unmanufactured tobacco other than flue cured.

Every person, who produces, cures or manufactures or stores any excisable goods in a warehouse is liable to pay the duty (Rule 7). Such goods cannot be removed from the place of its production curing or manufacture without payment of duty although such goods may be deposited without payment of duty in a place of storage approved by the Collector under rule 27 or 47 and 140 (Rule 9). Chapter IV deals with unmanufactured excisable goods. Under Rule 15, a grower must declare to the proper officer the area and the locality of the land which he proposes to utilise for growing excisable goods. Every curer must obtain a licence for curing, sorting, grading or storing of goods specifying the places or buildings which are to be used for this purpose (Rule 16), and what Rule 17 lays down is that curing shall not be done at any place other than licensed under Rule 16. Rule 19 lays down that a curer shall remain liable to pay the duty as soon as the products had been cured and are in fit state for sale or manufacture. It is laid down in Rule 22 that growers and curers shall keep registers and therein they shall enter inter alia weight of the commodity at the time of its receipt and also when it leaves their premises. Rule 24 is important. It lays down that immediately the commodity is cured, it shall be cleared on payment of duty or deposited in public warehouse or in curer's own bonded store room or to be transferred to the wholesale dealer who possesses a private and licensed warehouse for storing such goods. If the curer decides to clear the cured goods he shall pay

the duty (Rule 25). If the goods are to be deposited in public or private warehouse then they are to be away under transport certificate (Rule 26). If the curer deposits them in his own bonded store-room then at that time also the goods shall be weighed (Rule 27). When the curer sells the goods then his liability to pay the duty does not cease until the transfer has been approved by the Excise Officer concerned (Rule 29). Every grower and curer is under an obligation under Rules 36 and 37 to declare to the Excise Officer inter alia the annual weight grown and cured. The curer under Rule 38 has also, if so required, to provide premises which can be securely locked when the commodity is undergoing process of permutation or after the goods have been cured or packed. Wholesale purchaser can store the goods only in premises (Rule 39) declared to be used for storing, keeping, sorting, grading manufacturing or for selling manufactured goods and under Rule 40 he cannot receive the goods except under permit showing payment of duties unless proviso to Rule 32(1)(a) or Rule 171 applies to the case, i.e., where the goods can be carried without transport permit or the wholesale dealer takes the goods to his licensed warehouse. Chapter VII deals with warehouses. The Collector is authorised to grant licences for public and private warehouses for the storage of excisable goods on which duty has not been paid (Rule 140). The licence granted to private warehouse is described as L. 5. If any goods at the time of repacking under the Collector's order result in refuse or damage the duty on that quantity may be remitted (Rule 143). If any goods are lost destroyed by unavoidable accident during the time it is in warehouse then the duty may be remitted thereon (Rule 147). If any goods in the warehouse are destroyed with the approval of the

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officer then also the duty may be remitted (Rule 149). Rule 157 is important and it lays down that any owner of warehouse may clear the goods for house consumption by paying the duty thereon assessed prior to entry or reassessed under Rule 159. Rule 159 deals with re-assessment of the duty. This is to be done (1) when there is a change in the rate of duty, (2) if the goods are as processed in the warehouse as to become liable to a rate of duty then levied thereon at the time of the entry, (3) if the goods after removal from the warehouse are put to a use, which is different from the use contemplated at the time of the levy of the duty.

It is clear from these rather complicated rules that stringent measures requiring constant supervision of the Excise Officers over the excisable commodities have been laid down to stop leakage of duty at any stage. The tobacco plants are grown on previously declared land. When the leaves are cut from the plant then the cut leaves become excisable tobacco. It must be then taken to the premises licensed for curing. This curing, however, can be done only by a person holding a curer's licence (Form L.I.) and at a place licensed for the purpose. Tobacco is weighed when it goes from grower's field to curer's premises and then when it reaches the curer and then again when it leaves the curer. The goods are then again weighed when they reach the wholesale dealer's licensed warehouse and also when the goods are removed from there for manufacturing or other purposes. The grower, the curer or the licensed warehouseman are also under an obligation to maintain registers wherein entries relating to weights at all stages dealt by them respectively must be

made. Immediately the curer has completed the process of curing, he must clear the goods and pay the duty thereon or deposit it in a public warehouse or in his own bonded store or transfer it to licensed warehouse dealer. The licence of wholesale dealer is known as L. 2 licence. Such a dealer's warehouse is under licence known as L. 5 licence. If the curer clear the goods then he pays the duty at this stage. If, however, he deposits the same in a private licensed warehouse on transfer then the duty need not be paid at that stage. The goods are then taken out of this warehouse for manufacturing purpose or otherwise and the duty if not paid earlier must be paid at this stage.

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Now the ground is clear for considering the contention raised on behalf of the petitioner company. The learned counsel has relied in support of this contention on the definition of 'curing' given in section 2(c) of the Act and also on Rule 19. Section 2(c) reads:—

“Curing” includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture”.

Rule 19 reads:—

“Duty shall become chargeable as soon as the products have been cured and are in a fit state “for sale or, where manufacture precedes sale, for manufacture and the curer shall be liable for the payment thereof and shall remain so liable until the liability is to the knowledge and satisfaction of the proper officer, transferred as provided in rule 29 to another person duly licensed to carry on business in such products.”

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On the basis of the definition of 'curing' given in section 2(c), it is argued that the process of curing continues till the tobacco is fit for sale as an unmanufactured product or is fit for manufacture and that it is fit for manufacture at the time when it leaves the warehouse for the factory where the manufacturing process is to take place. Support for this conclusion is sought from rule 19, which lays down that duty becomes chargeable as soon as the goods are cured and are fit for sale or for manufacture when the sale takes place after manufacture. It is also urged that it is reasonable to consider that the duty would be leviable at the last stage so as to avoid repeated reassessment because at the earlier stage the duty on unmanufactured tobacco other than flue cured must be calculated at the minimum rate of annas six per pound, i.e., at the stage when it leaves the curer's possession and it must necessarily be reassessed at a later stage. On facts the learned counsel urged that his clients carried on process in their licensed warehouse (L. 5), which made tobacco fit for manufacture and, therefore, that process of curing was within section 2(c) of the Act. He urged that it follows that the weight at the stage of taking out of the unmanufactured tobacco from the petitioners' warehouse should be the basis for charging duty.

These contentions, in my opinion, have no force at all. Curing has to be completed by a licensed curer. The petitioner company admittedly does not possess any such licence. Whatever be the process of curing and however, inclusive be its definition in the Act, it must be completed only by a licensed curer and no other person can carry out any process of curing. If the petitioners carried out any such process in its licensed godown then it must be ignored. It is, however,

significant that in this petition no such specific allegation of curing in its premises has been made by the petitioner company. Therefore, curing was completed by a curer and the duty at that stage was payable on unmanufactured tobacco other than flue cured. Admittedly at this stage tobacco could not be ordinarily used for the manufacture of cigarettes or smoking mixture for pipes and cigarettes, but was capable of being used for the manufacture of bidis. If by any process carried out in the petitioners' warehouse or by the process adopted by the curer for curing tobacco the goods are ultimately manufactured as given in item 9 II of the Schedule then the duty must be reassessed under Rule 159. Rule 157 is quite clear that the warehouse goods are liable to duty as assessed prior to entry, i.e., according to its weight before the goods reached the licensed warehouse. Rule 9 can be of no assistance to the petitioners. The rule lays down that the duty will be chargeable as soon as the products have been cured and are in a state of sale or for manufacture in case when the sale is after manufacture. It also lays down that a curer shall be liable for the payment of this duty and shall remain so liable until transfer is recognised by the proper officer as laid down in Rule 9. This rule is not to be construed so, as to fasten the liability on the curer to pay duty on the tobacco cured by him as it finally emerges as the manufactured goods. Surely this rule cannot be read so as to compel a curer to pay a duty on the manufactured article when he himself is not responsible for its manufacture. In this connection it is noticeable that the question of weight for the purposes of levy of duty remains relevant only till it enters the warehouse or is cleared by the curer. After it leaves the warehouse for manufacture then duty is leviable on manufactured goods and

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that duty is not levied on weight but on the number of articles produced or the value thereof.

Therefore, if the tobacco is weighed at the stage when it leaves the licensed warehouse for manufacturing purposes then it is done as a measure of check and not with a view of determining the amount of duty payable. There are various provisions in the rules which allow the Excise Officer to remit their duty in cases of damage or destruction, but these provisions do not affect the question under consideration.

For these reasons, I hold that the weight of the unmanufactured tobacco for the purposes of duty is to be determined as soon as the tobacco has been cured. The loss of weight, if any, from the time that the tobacco was cured till it reached the petitioners' warehouse may be ignored in the present case as the Excise authorities have imposed duty on the weight as it existed when it reached the petitioners' warehouse. Therefore, the petitioner has not been made to pay duty on the weight lost during this period. It is not the petitioners' case that during this time the weight had increased on account of weather conditions. I am also of the opinion that the weight of the unmanufactured tobacco as obtainable when it leaves the warehouse for the factory does not affect the amount of duty payable on these goods.

It follows from the above decision that the allowance of 1 per cent on weight given by the Excise authorities for loss of weight during the time that it was in the whole-sale dealer's warehouse, must be held to have been done *ex gratia* and not as a matter of right. That being so, the question of applicability of Articles 14 and 19 does not, to my mind, arise and indeed the learned counsel merely mentioned these Articles in the

course of his arguments, because they had been mentioned in the petition, but did not proceed to show how those articles (No. 14 and 19) apply to a case where an excise officer reduces the duty ex gratia whether under administrative instructions or otherwise. Plea of discrimination or denial of the equality before law or equal protection of law or the plea of freedom to acquire, hold, possess and dispose of property or to practise in business cannot be affected where an excise officer reduces ex-gratia the duty payable by persons, who are called upon to pay duty on unmanufactured tobacco.

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No other point was argued before me.

For these reasons, I dismiss the petition with costs. Counsel's fee Rs. 100.

B. R. T.

REVISIONAL CIVIL

Before R. P. Khosla, J.

SHRI LABHU RAM AND OTHERS;—*Petitioners*

versus

SHRI RAM PARKASH,—*Respondent*

Civil Revision No. 354 of 1957.

*East Punjab Urban Rent Restriction Act (III of 1949)—
Section 13(3)(a)(iii)—“Require”—Meaning of—Requirement
for reconstruction—Who is to determine—Act III of 1949—
Object of—Expected disruption of joint Hindu family—
Whether sufficient ground for bona fide personal use.*

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Held, that the judge of whether the landlord requires the premises for reconstruction is the Rent Controller, for otherwise the landlord will have an absolute licence. He is merely to aver that he requires the building for reconstruction and he will get rid of the tenant. In considering