

(1983) 09 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 1407 and 1653 of 1977

Binny Ltd.

APPELLANT

Vs

Collector of Central Excise and Another

RESPONDENT

Date of Decision : 29-09-1983

Acts Referred:

Companies Act, 1956 — Section 394 (2)
Cotton Cess Act, 1923 — Section 3, 4
General Clauses Act, 1897 — Section 6

Citation : (1984) 16 ELT 52

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : K.P. Jagadeesan, for the Appellant; K. Shivashankar Bhat, Central Government Senior Standing Counsel, for the Respondent

Judgement

1. As the parties and the questions that arise in these cases are common, I propose to dispose of them by a common order.

2. Prior to 15-8-1947 on which day the the Country attained independence, the then princely State of Mysore, popularly called a native State, except for external relations, with which we are not concerned was an independent sovereign State. In the city of Bangalore which was part of the princely State of Mysore, there was a public limited company called as Bangalore Woollen, Cotton and Silk Mills Company limited (hereinafter referred to as the Bangalore Company) incorporated and functioning from 1923 and was inter alia engaged in the business of manufacturing of cotton textiles.

3. In the integration of States, that ensued after independence the native State of Mysore merged and became part of Indian Union and that from 26-1-1950, on which day the Constitution of the Country came into force, that State became a Part-B State of the Indian Union, which position continued till the enlarged Mysore State now called as Karnataka came into being from 1-11-1956 under the States Reorganisation Act, 1956.

4. Under a scheme of amalgamation sanctioned by this Court on 3-10-1969 in Company petition No. 8 of 1969, the Bangalore Company stood amalgamated with another public limited company called "The Binny Limited" (hereinafter referred to as the Binny).

In pursuance of this and the further orders made thereon, the Bangalore Company stood dissolved and vested in Binny inter alia on the following terms and conditions which alone are material for purposes of this case.

"(i) That all liabilities and duties and Bangalore be transferred to the Transferred Company and became the liabilities and duties of the Transferred Company pursuant to Section 394(2) of the Companies Act, 1956;

(ii) That any legal proceedings pending by or against Bangalore be continued by or against the Transferred Company."

5. On 16-3-1923 the Governor General in India, gave assent to the Indian Cotton Cess Act, 1923 (Act No. XIV of 1923) (hereinafter referred to as the 1923 Act) enacted by the then Indian Legislature that was competent to make laws for the then British Indian provinces governed by Government of India Acts 1915-19. The 1923 Act was enacted to provide for the creation of a fund to be expended by a Committee specially constituted in that behalf for the improvement and development of the growing, marketing and manufacture of cotton in India.

6. The Part B state laws of 1951 (Central Act 3 of 1951) (hereinafter referred to as the Part-B State Laws Act) that came into force on 1-4-1951, extended the 1923 Act to all Part-B States except the State of Jammu and Kashmir.

7. Section 3 of the 1923 Act provided for imposition of a Cotton Cess. Section 4 provided for the constitution of a committee called the Indian Central Cotton Committee (hereinafter referred to as the Committee) to administer the Act. The Committee constituted in 1923 was dissolved by the Central Government with effect from 1-4-1966 by its notification No. 882 dated 18-3-1966 on which day another enactment called the Produce Cess Act, 1966 (Central Act No. 15 of 1966) (hereinafter referred to as the 1966 Act) came into force.

8. In exercise of the powers conferred by the 1966 Act on 26-3-1969 the Central Government has appointed the Collector of Customs and the Collector of Central Excise Mysore as the Collector for the State under that Act.

9. After some intermediate correspondence between the petitioner and the officers, the narration of which is not very necessary for our purpose, the superintendent of Central Excise, C.A. & I.G. Unit, Binny Limited, Agraharam Road, Bangalore (hereinafter referred to as the Superintendent) by his memo No. Cess/76/1632 dated 20-12-1976 (Exhibit-H) called upon the petitioner to pay a sum of Rs. 1,82,288-50 as Cotton Cess due by it from 16-3-1953 to 13-3-1966. In modification and continuation of this demand, the Superintendent issued another demand on 28-1-1977 to the petitioner calling upon it to pay a sum of Rs. 3,40,453-00 as Cotton Cess due from 16-3-1923 to 31-3-1966 that

includes the amounts specified in the earlier demand notice. This demand made by the Superintendent which has necessarily to be treated as the consolidated and final demand for the entire period reads thus :

"Sub : Arrears of Cotton Cess for the period prior to 1-4-1966-Reg.

In continuation of this officer letter No. Cess/76/1632 dated 20-12-1976 the period of Cotton Cess due has to be enforced from 16-3-1923 to 31-3-1966. The letter of demand already issued is for period from 16-3-43 to 31-3-1966. Hence, please treat this as additional demand for Rs. 1,58,335/- (Rupees One lakh, fifty eight thousands, two hundred and twenty five only) covering the period from 16-3-1923 to 15-3-1943 (i.e., for 20 years at Rs. 7,911-25 per year).

Total Cotton Cess due from you, from 16-3-1923 to 31-3-1966 is Rs. 3,40,453-50 (Rupees Three lakhs forty thousand four hundred and fifty three and paise fifty only).

Necessary arrangements may please be made to pay this amount at an early date".

In these petitions under Article 226 of the Constitution, the petitioner has challenged the aforesaid demand notice on a large number of grounds. But, the three important grounds on which they are challenged will be noticed by me and dealt in due course.

10. In a common return, the respondents have sought to sustain the demand principally on the ground that the 1923 Act stood repealed from 1-4-1966, that on such repeal, Section 6 of the General Clauses Act applies and therefore, the liability existing or incurred by Bangalore Company taken over by Binny can be recovered from the latter.

11. Sri K.P. Jagadeesan, learned Counsel for the petitioner has contended that it was not open to the Superintendent to collect the Cess, if any, prior to the extension of the 1923 Act to the erstwhile State of Mysore.

12. Sri K. Shivashankar Bhat, learned Central Government Senior Standing Counsel appearing for the respondents has urged that this plea that had not been specifically urged in the petitions should not be examined and decided.

13. In its petitions, the petitioner had not specifically urged this plea. But, this plea urged at the hearing does not involve any investigation of facts and is a plea that falls under the principle of inherent want of jurisdiction and in any event a pure question of law, that calls for examination on merits. I, therefore, propose to examine the same on merits.

14. The 1923 Act enacted by the then Indian Legislature did not and could not operate in the Princely State of Mysore at least till the State merged in the Indian Union after the Country attained independence. Section 1(2) of the 1923 Act extended the Act only to the then British provinces of India and not to the native States that were then in existence. Part-B State Laws Act extended the 1923 Act

to the Part-B State of Mysore from 1-4-1951 only. Before the 1923 Act became operational in the erstwhile State of Mysore, that is for any period prior to 31-3-1951, no cess could be recovered from the petitioner or its predecessor in interest also. In this view, the demand made against the petitioner for the period prior to 31-3-1951 is wholly without jurisdiction and illegal.

15. Sri. Jagadeesan has next contended that the 1923 Act was a temporary enactment that stood repealed on 31-3-1966 without a saving clause and, therefore, it was impermissible for the Superintendent to collect any cess that had not earlier been collected.

16. Sri. Bhat had urged that the 1923 Act was not a temporary but was a permanent measure and on its repeal the repeal and saving provision of Section 6 of the General Clauses Act applied and on such application, the Superintendent was competent to recover the amounts that had not been paid by the Bangalore Company from the petitioner.

17. The Committee constituted u/s 4 of the 1923 Act had come into existence in 1923 and was administering the Act are not in dispute. Section 14 of the 1923 Act that empowered the Central Government to dissolve the Committee and the consequence that flow from the same on which reliance is placed to contend that the Act was a temporary enactment, reads thus :

"14. The Central Government may, by notification in the official gazette declare that, with effect from such date as may be specified in the notification the committee shall be dissolved, and on the making of such declaration all funds and other property vested in the Committee shall vest in Government for the purposes of the Central Government and this Act shall be deemed to have been repealed."

Section 14 of the 1923 Act declares that the Act shall stand repealed from the date the Committee stands abolished. In other words, on the abolition of the Committee, the 1923 Act also stands repealed cannot be disputed. Section 14 provides only for transfer and vesting of the funds standing to the credits of the Committee to the Central Government.

18. The 1923 Act does not specify any limited period for its operation. An Act will be a temporary enactment only if a specified period is mentioned and not otherwise (see page 6, Craies on Statute Law, 6th Edition). Hence, the 1923 Act is a perpetual measure on the repeal of which Section 6 of the General Clauses Act would apply. But, even here only the amounts if any due from 1-4-1951 alone can be recovered. However, on the view, I propose to take on the next question, it is not necessary to examine the liability of the petition from 1-4-1951, also.

19. Sri Jagadeesan has contended that the officers appointed under the 1966 Act from 1969 cannot recover the amounts prior to their appointment, even if they are legally recoverable from the petitioner.

20. Sri Bhat has urged that the officers appointed under the 1966 Act were competent to recover the outstanding amounts from the petitioner.

21. The 1966 Act is an independent enactment enacted by the Union Parliament. The 1966 Act does not repeal the 1923 Act and does not provide for the recovery of the liabilities or the continuance of the proceedings under that Act by the officers appointed under the 1966 Act. Hence, the officers appointed under the 1966 Act cannot recover the amount if any, outstanding under the 1923 Act.

22. Section 2(a) of the 1923 Act empowered the Collector of the District in which the mill was situated or such other officer specially appointed by the Central Government to perform the duties of a Collector under the said Act to recover the amounts unpaid by a mill under the Act. An Officer appointed under the 1966 Act in 1969 cannot by any stretch of imagination, be treated as a Collector within the meaning of Section 2(a) of the 1923 Act that is competent to recover the amounts, if any, due under the 1923 Act. In this view also, the respondents were not competent to initiate recovery proceedings against the petitioner.

23. Even otherwise, an officer appointed to perform statutory duties from a date named in a notification cannot exercise the statutory powers prior to his appointment and there cannot be a retro-operative or retrospective appointment to perform statutory duties are firmly concluded by the rulings of the Supreme Court in *Ajit Singh Vs. State of Punjab and Another*, and *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, From this it follows that the officers appointed in the year 1969 under the 1966 Act were not competent to recover any of the outstanding amounts from the petitioner or its predecessor in interest.

24. On any view of the matter, the impugned demands are liable to be quashed. I, therefore, quash the impugned demand notices issued by the Superintendent.

25. Rule issued is made absolute in both the cases with costs. Advocate's fee Rs. 200/- in one sets.