

(1990) 04 KAR CK 0009
In the Karnataka High Court
Case No : W. A. No's. 629 and 630 of 1984

Collector of Central Excise

APPELLANT

Vs

Binny Ltd.

RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A, 6
Cotton Cess Act, 1923 — Section 14
Produce Cess Act, 1966 — Section 15 (2), 2 (a)

Citation : (1990) ILR (Kar) 3051

Hon'ble Judges : K.A. Swami, J; D.R. Vithal Rao, J

Bench : Division Bench

Advocate : Ashok Harnalli, Addl. Central Govt. Standing Counsels, for the Appellant; K.P. Jagadeeshan, for the Respondent

Final Decision : Allowed

Judgement

K.A, Swami, J

1. These appeals are preferred against the order dated 29-9-1983 passed in W.P.No. 1407 and 1653/1977. The appellants herein were respondents 1 and 2 and the respondent herein was the petitioner in the Writ Petitions. In this Judgment, the parties will be referred to with reference to the position they enjoyed in the Writ Petitions.

2. The learned Single Judge has allowed the Writ Petitions and has quashed the demand notice dated 20-12-1976 bearing No. Cess/76/1632 and also the demand notice dated 30-8-1976 bearing No. C.Ex/8/76/1115 and also the order dated 20-12-1976 bearing No. Cess/76/1632 passed by the 2nd respondent produced as Annexure-H.

3. The demand notice dated 20-12-1976 Annexure-H is issued as per Rule 6 of the Produce Cess Rules 1969 (hereinafter referred to as the "Rules") demanding the arrears of cotton cess worked out on the basis of the figures furnished by the

petitioner as per the Annexures enclosed to Annexure-H. The arrears were worked out at the rate of Rs. 7911.25 per year at the rate of 25 paise per bale of 181.4 kgs. of cotton consumed by the petitioner. Therefore, the cotton cess due from the petitioner from 1-4-1963 to 31-3-1966 and from 16-3-1943 to 31-3-1943 was demanded as follows:

1. 1-4-1943 to 31-3-1966 @ Rs. 7911-25 x 23 years

. . .

Rs. 1,81,958-75

II. 16-3-1943 to 31-3-1943 @ Rs. 7911-25

. . .

329-75

Total

. . .

Rs. 1,82,288-50

In the Writ Petition, the notice dated 30-8-1976 issued by the Superintendent of Central Excise, C.A. & I.G. Binny Mills, Bangalore, produced as Annexure-C is also sought to be quashed. Under the said notice, the respondent called upon the petitioner to furnish the particulars of cotton consumed and the remittance of cotton cess for the period from 16-3-1943 to 31-3-1966. It was also further stated in the notice Annexure-C that it was a final notice calling upon the petitioner to furnish the required particulars of cotton consumed and remittances of cotton cess made for the period from 16-3-1923 to 15-3-1943 and 16-3-1943 to 31-3-1966 failing which the petitioner was informed that action will be taken u/s 13 of the Produce Cess Act, 1966 hereinafter referred to as the "1966 Act". The petitioner has also sought for quashing the demand notice issued by the 2nd respondent dated 28-1-1977 (Annexure-J) calling upon him to pay a sum of Rs. 3,40,453-50 being the arrears of cotton cess due for the period 16-3-1923 to 31-3-1966. Thus the demand dated 28-1-1977 (Annexure-J) includes the demand made under the demand notice dated 20-12-1976 (Annexure-H).

4. The petitioner-Mill is situated at Bangalore. Therefore, the learned Single Judge has held that the Indian Cotton Cess Act, 1923 (hereinafter referred to as the "1923 Act") was not in force in the erstwhile State of Mysore until it was adopted by the Part-B State Laws Act 1951 (Central Act 3 of 1951) which came into force from 1-4-1951. Therefore, it is held by the learned Single Judge that the 1923 Act could not have been enforced in the erstwhile State of Mysore until 1-4-1951. We are of the view that the learned Single Judge is right in holding that the 1923 Act could not have been enforced or applied to the petitioner prior to 1-4-1951 because the 1923 Act was not in force in the erstwhile State of Mysore as it came to be adopted and extended to the erstwhile State of Mysore

only with effect from 1-4-1951 by the Part B State Laws Act, 1951.

5. The learned Single Judge has also further held that the 1966 Act is an independent Act enacted by the Parliament and it has not repealed the 1923 Act and it has not provided for the recovery of the liabilities or the continuation of the proceedings initiated under the 1923 Act by the officers appointed under the 1966 Act. Therefore, the proceedings initiated under the 1966 Act and the demands made by the officers empowered under the 1966 Act are bad in law. Accordingly, the learned Single Judge has quashed the impugned demands.

6. It is contended by the learned Central Government Standing Counsel that the learned Single Judge is not right in holding that the 1923 Act was not repealed; that the 1966 Act is an independent enactment. In support of this contention, reliance was placed on a decision of the Supreme Court in *Dhanpat Oil and General Mills Vs. Union of India (UOI) and Others*, . It is also contended that under the 1966 Act not only the Committee constituted under the 1923 Act stood dissolved but also the 1923 Act shall also be deemed to have been repealed. As a result of repeal, the rights and liabilities accrued under the 1923 Act, are to be enforced under the 1966 Act as the 1966 Act is nothing but a continuation of the 1923 Act.

7. On the contrary it is contended by Sri. K.P. Jagadeeshan, learned Counsel for the petitioner that the 1966 Act is not a continuation of the 1923 Act and that the officers authorised under the 1966 Act could not enforce the liability accrued under the 1923 Act; that the 1966 Act is an independent Act. It is also very strenuously contended that even otherwise, the Superintendent of Central Excise (2nd respondent) who has been authorised to exercise the power of the Collector u/s 2(a) of the 1966 Act by the Notification dated 27-2-1970 cannot be held to have been authorised to exercise the power of the Collector under the 1966 Act because on 27-2-1970, the Notification dated 26-3-1969 bearing GSR No. 884 and 885 did not include cotton, audit only included oilseeds, and copra; that even though entry No. 5 relating to State of Mysore in the Notification dated 26-3-1979 came to be substituted by the Notification No. GSR 454 dated 28-9-1973, the Notification No. 2 dated 27-2-1970 was not amended so as to enable the Superintendent to exercise the power of the Collector under the Notification dated 26-3-1969 as amended by the Notification dated 28-9-1973. Hence the demand notice issued by the 2nd respondent without the authority of law.

It is also contended that the arrears of cotton cess demanded under the notice dated 28-1-1977 covers the period from 16-3-1923 upto 31-3-1966; that even otherwise, under the demand dated 20-12-1976, the period covered was from 1-4-1943 to 31-3-1966; that considering the matter either on the basis of the demands dated 20-12-1976 or 28-1-1977, the same are barred by time. The learned Counsel has placed reliance on a Decision of the Supreme Court in *N.B. SANJANA v. THE ELPHINSTONE SPINNING AND WEAVING MILLS CO. LTD* 1978 ELT J.399.:

8. Having regard to the aforesaid contentions, the points that arise for consideration are as follows:

1) Whether the 1923 Act was repealed?

2) Whether the 1966 Act is the continuation of the 1923 Act and if so, whether the liabilities incurred and the rights accrued under the 1923 Act could be enforced under the 1966 Act?

3) Whether the 2nd respondent was competent to determine the arrears and demand the arrears of cotton cess as excise duty?

4) Whether the demands are barred by time?

POINT NO.1:

9. This point need not detain us for long. Section 14 of the 1923 Act reads thus:

"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 the Central Government and this Act shall be deemed to have been repealed."

It is not in dispute that a Notification bearing No. 882 dated 18-3-1966 was issued by the Central Government with effect from 1-4-1966 dissolving the Committee constituted under the 1923 Act. On 1-4-1966 the 1966 Act came into force. The effect of the Notification dated 18-3-1966 as stated in Section 14 of the 1923 Act reproduced above was not only to dissolve the Committee but also to repeal the 1923 Act because Section 14 of the 1923 Act provided that on such a Notification being issued and on dissolving the Committee, all funds and other property vested in the Committee shall vest in the Central Government and the Act shall be deemed to have been repealed. When the Act is repealed, under the provisions of the General Clauses Act, the rights accrued and the liability incurred can be enforced as though the Act has not been repealed. Point No. 1 is answered accordingly.

POINT NO. 2:

10. It is not possible to agree with the contention of Sri K.P. Jagadeeshan, learned Counsel for the petitioner that the 1966 Act is an independent Act and it has nothing to do with the 1923 Act. A perusal of the various provisions contained in the 1923 Act and the 1966 Act and the objects of both the enactments makes it clear that the 1966 Act is nothing but a continuation of the 1923 Act. Most of the provisions are in pari materia and both the Acts are intended to serve the same object and purpose.

11. In addition to this, the subject came up for consideration before the Supreme Court of India in Dhanpat Oil and General Mills v. Union of India and Ors. Their Lordships of the Supreme Court referred to the provisions of 1923 Act as well as

1966 Act and held that the liability to pay the cotton cess under both the enactments came to be incurred no sooner the cotton was consumed by the Mill and the said liability continued even after the repeal of the 1923 Act and it never extinguished and the same could be enforced under the 1966 Act. The relevant portion of the Judgment is as follows:

"11. The absence of a duly appointed Collector under the Act for a certain period is a good defence against a prosecution for non-compliance with Section 8 of the Act during that period. It does not, however, relieve the occupier of a mill from the burden of the levy. The levy is imposed by Sub-section (2) of Section 3 of the Act and comes into existence immediately on the taxable event attracting excise duty. The accrual of the obligation to suffer the duty does not depend on the appointment of a Collector. The appointment of a Collector is only a part of the machinery designed by the Act for the assessment and recovery of the duty. The imposition and accrual of the duty is a thing apart from its assessment and collection. Now Section 8 requires the occupier to furnish a return every month stating the total amount of produce consumed or brought under processing or extracted in the mill during the preceding month. There is an obligation to file a return of the produce. There is a further obligation to file the return every month. Non-compliance, with the latter obligation is sufficient to bring the occupier within the mischief of Sub-section (2) of Section 9 of the Act. It empowers the Collector to proceed at once and make an assessment in the manner prescribed by the Rules. But where such non-compliance is due to the circumstance that no Collector was appointed to whom such returns could be furnished, Sub-section (2) of Section 9 cannot come into play. However, the obligation to file a return remains and it remains in respect of the entire period during which the Collector had not been appointed and once the Collector is appointed, the occupier is obliged to file a return for the entire period from the commencement of the levy including the period during which there was no Collector. That is because the liability to excise duty had already accrued with the earliest excisable event and it subsisted during the entire period including the period during which there was no Collector. The position is that when the Collector is appointed, the occupier must within a reasonable time thereafter, file monthly returns of the produce consumed or brought under processing or extracted in the mill during each preceding month, such monthly returns being in respect of all the months included in the period upto date. Or the occupier may make a composite return specifying the amount of such produce monthwise for the entire period. The Collector will then take the return into consideration and take proceedings u/s 9 of the Act."

Therefore, the learned Single Judge is not correct in holding that the 1966 Act is an independent Act and the liability incurred under the 1923 Act could not have been enforced by the authorities named or authorised under the 1966 Act.

12. The learned Single Judge also was of the view that the exercise of power by the authority under the 1966 Act to enforce the liability incurred under the 1923

Act would amount to retrospective exercise of the power or conferment of the power upon them retrospectively which, according to the learned Single Judge, was not permissible. This reasoning of the learned Single Judge cannot be accepted. It is not a case of either retrospective conferment of power or retrospective exercise of power. It is a case wherein the liability incurred under the 1923 Act has never been extinguished and the 1966 Act is a continuation of the 1923 Act and the authority empowered under the 1923 Act is entitled to enforce the liability and recover the arrears as long as such arrears are not extinguished or barred by time. On the date the assessment was made and the demand notices were issued, the 2nd respondent was empowered under the Act to make assessment and collect the cotton cess. Therefore, the reasoning of the learned Single Judge does not appeal to us. Accordingly Point No. 2 is answered as follows:

"1966 Act is the continuation of the 1923 Act; that 1923 Act was repealed; that under the Notification dated 18-3-1966, with effect from 1-4-1966, the liability incurred by the petitioner and the right accrued to the respondents was liable to be enforced by the authority empowered under the 1966 Act as long as the liability had not stood extinguished by reason of the law of limitation or otherwise."

POINT NO. 3:

13. The contention of Sri K.P. Jagadeeshan, learned Counsel for the petitioner is that the Notification bearing GSR No. 884 dated 26-3-1969 issued under Clause (a) of Section 2 of the 1966 Act empowered the Collector of Central Excise, Mysore to perform the duties of the Collector under the provisions of the 1966 Act and the Rules framed thereunder relating to levy and collection of "cess" referred to in Sub-section (2) of Section 3 of the 1966 Act in respect of oil seeds and copra. Pursuant to the said Notification, the Collector of Central Excise, Bangalore, issued Notification No. 2 dated 27-2-1970 authorising the Superintendent to perform the functions of the Collector under the 1966 Act; that no doubt by the Notification bearing GSR No. 454(E) dated 28-9-1973, the Notification bearing GSR 884 dated 26-3-1969 and entry No. 5 relating to the State of Mysore came to be substituted by the inclusion of the word "cotton" also, but nevertheless no corresponding notification was issued by the Collector of Central Excise, Bangalore, authorising the Superintendent to perform the functions of the Collector under the 1966 Act as per the Notification dated 26-3-1969 as amended by the Notification bearing GSR 454(E) dated 28-9-1973. Therefore, in the absence of such a Notification, it is maintained by the learned Counsel for the petitioner that the Superintendent of Central Excise could not perform the functions of the Collector regarding, assessment, levy and collection of cotton cess in respect of the cotton consumed by the petitioner-Mill.

14. It appears to us that this argument cannot at all be accepted. Under Notification No. 2 dated 27-2-1970, the Collector of Central Excise, Bangalore, in exercise of the powers conferred on the Collector u/s 2(a) of the 1966 Act read

with Government of India Notification No. GSR 884 and 885 dated 26-3-1969, authorised the Central Excise Officers specified in Column No. 2 of- the table annexed to the Notification, to exercise within their respective jurisdictions, the powers of the Collector under the provisions of the 1966 Act enumerated in Column No. 1 and subject to the limitations specified in Column No. 3 of the Table to the said Notification. Therefore, as and when the Notification bearing GSR Nos.884 and 885 dated 26-3-1969 was amended, and the powers of the Collector under the 1966 Act were extended or expanded by such amendment, the Superintendent of Central Excise authorised under the Notification dated 27-2-1970 also became entitled to perform and exercise all such powers of the Collector under the 1966 Act. That being so, it was not at all necessary to issue another Notification or amend the Notification No, 2 dated 27-2-1970 consequent to the Notification dated 28-9-1973 bearing GSR No. 454(E) substituting the contents of Column No. 4 relating to entry No. 5 in the Notification dated 26-3-1969. Therefore, we are of the view that the Superintendent (2nd respondent) was authorised and as such, competent to assess and demand the cotton cess. Point No. 3 is answered accordingly.

POINT NO. 4:

15. In support of the contention that the demands impugned herein are barred by time, the learned Counsel for the petitioner placed reliance on Sub-section (2) of Section 15 of the 1966 Act and Rule 10 of the Central Excise Rules, 1944, whereas the learned Additional Central Government Standing Counsel placed reliance on Rule 10A of the very same Rules, Sub-section (2) of Section 15 of the 1966 Act reads as follows:

"The provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of duties of excise on any produce specified in the second schedule as they apply in relation to the levy and collection of duty payable to the Central Government under that Act."

Rules 10 and 10A of the Central Excise and Salt Rules, 1944 read as follows:

"10. Recovery of duties or charges short levied, or erroneously refunded:

(1) When duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of an officer, or through misstatement as to the quantity, description or value of such goods on the part of the owner or when any such duty or charge, after having been levied, has been owing to any such cause, erroneously refunded, the proper officer may, within three months from the date on which the duty or charge was paid or adjusted in the owner's account-current, if any, or from the date of making the refund, serve a notice on the person from whom such deficiency in duty or charges is or are recoverable requiring him to show cause to the Assistant Collector of Central Excise why he should not pay the amount specified in the notice.

(2) The Assistant Collector of Central Excise, after considering the representation, if any, made by the person on whom notice is served under Sub-rule (1), shall determine the amount of duty or charges due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined within ten days from the date on which he is required to pay such amount or within such extended period as the Assistant Collector of Central Excise may, in any particular case, allow.

10-A. Residuary powers for recovery of sums due to Government:

(1) Where these Rules do not make any specific provision for the collection of any duty, or of any deficiency in duty if the duty has for any reason been short-levied, or of any other sum of any kind payable to the Central Government under the Act or these Rules, the proper officer may serve a notice on the person from whom such duty, deficiency in duty or sum is recoverable requiring him to show cause to the Assistant Collector of Central Excise why he should not pay the amount specified in the notice.

(2) The Assistant Collector of Central Excise, after considering the representation, if any, made by the person on whom notice is served under Sub-rule (1) shall determine the amount of duty, deficiency in duty or sum due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined within ten days from the date on which he is required to pay such amount or within such extended period as the Assistant Collector of Central Excise may, in an; particular case, allow."

16. Sub-section (2) of Section 15 of the 1966 Act makes applicable the provisions of the Central Excise and Salt Act and also the Rules made thereunder including those relating to revision and exemption from duty in so far they apply in relation to levy and collection of duties of excise on any produce specified in the Second Schedule in relation to the levy and collection of the duty payable to the Central Government under the Central Excise and Salt Act. Rule 10 of the Central Excise Rules relates to a case where the duties and charges have been short-levied through inadvertence, error collusion or misconstruction on the part of the officer or through misstatement on the part of the owner.

17. In the instant case, the question of short-levy does not arise because the levy itself has been effected for the first time under the impugned demand notices. It is only in the case of short-levy the period of limitation prescribed therein would apply whereas in the case of recovery of the sum due to the Government, under Rule 10A of the Rules, no such period of limitation is prescribed. In addition to this, the Supreme Court in *Messrs. Dhanpat Oil and General Mills*" case has held that the liability under the Act once incurred, is not extinguished.

In 1978 E.L.T. (399) (N.B. Sanjana's case), the Supreme Court was concerned with a case wherein there was no controversy that in each of A.R.I. forms filed

from July 1953 to 30th July 1960, the excise Inspector in-charge, Leather-cloth Division, made an assessment in the appropriate portion of those forms showing rate of duty and the amount of total duty payable as "nil" and affixed his signature under such "Assessment Memorandum". Thus all the goods removed by the respondents during the said period shown by them as not liable to pay any excise duty and were also assessed, by the Excise Inspector as not liable for excise duty. Thus the assessment was complete. Thereafter, after some correspondence, on 3-11-1961, the Appellant - the Assistant Collector of Central Excise, Bombay, issued two notices. The 1st notice was issued under Rule 10A of the Central Excise Rules requiring the Mills to pay excise duty of Rs. 1,07,146-39 and the second notice was issued under Rule 9 calling upon the Mills to pay Rs. 1502-24. The Supreme Court held that the amount should have been assessed and the said amount should have been really paid; that Rule 10 would also apply to a case where there had been "nil" assessment in which case the entire duty later on assessed must be construed as the duty originally short-levied. That being so, as pointed out earlier, the facts of the present case do not attract Rule 10 of the Rules. Hence it is not possible to apply the ratio of the decision of the Supreme Court in Sanjana's case to the case on hand. Hence we are of the view that on the date the demand notices were issued, the liability incurred was subsisting and the right to recover the amount was not barred by time. Point No. 4 is answered accordingly.

POINT NO. 5:

18. The next question that arises for consideration is as to whether the impugned demand notices issued covering the period from 16-3-1923 to 31-3-1966 as the 1923 Act was applicable only from 1-4-1951, can be sustained in their entirety.

19. As the 1923 Act itself was extended to the erstwhile State of Mysore with effect from 1-4-1951, the petitioner was not liable to pay the cotton cess for the cotton consumed prior to 1-4-1951. Therefore, the respondents are now required to calculate the arrears of cotton cess at the rates mentioned in the impugned demand notices for the period from 1-4-1951 to 31-3-1966 and issue fresh demand notices. Point No. 5 is answered accordingly.

20. For the reasons stated above, these Writ Appeals are allowed, the order dated 29-9-1983 passed in W.P.Nos. 1407 and 1653/1977 is set aside and the Writ Petitions are disposed of in the following terms:

i) The demand notices produced as Annexures-G, H" and J" in so far they cover the period from 16-3-1923 to 31-3-1951 are quashed. The said notices in so far they relate to the period from 1-4-1951 to 31-3-1966 are not disturbed.

ii) Consequently, the 2nd respondent shall now calculate the arrears due for the period from 1-4-1951 to 31-3-1966 at the rates mentioned in the demand notices Annexure-H and J" and issue fresh demand notices.