

(1960) 12 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 197 of 1958

D.D. Italia

APPELLANT

Vs

Superintendent, Central Excise, Khamam Circle,
Khammameth and Others

RESPONDENT

Date of Decision : 19-12-1960

Acts Referred:

Oil Seeds Committee Rules, 1947 — Rule 33
Oil Seeds Committees Act, 1946 — Section 10(1), 11, 17

Citation : AIR 1961 AP 341

Hon'ble Judges : P. Chandra Reddy, C.J.; Ramachandra Rao, J

Bench : Division Bench

Advocate : M.B. Rama Sarma, for S.P. Srivastava, for the Appellant;
Government Pleader, B.C. Jain and K.A. Ananthakrishnarao, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Rao, J.—The petitioner is the sole proprietor of Bhikajee Dadbhai Rice and Oil Mills situated in Khammam. During the period from 1-4-1951 to 30-9-1952 the said mill was being run by the petitioner. From 1-10-1952 to 30-9-1954 the said mill was being run in partnership with respondent No. 2, who was the managing partner and was actually in charge of the running of the mill and the maintenance of the accounts. From 1-10-1954 to 30-8-1955 the mill was leased out on contract to respondent No. 3.

On 8-10-1956 respondent 1, the Superintendent of the Central Excise, Khammam Circle, Khammameth issued a notice of summary demand on the petitioner calling upon him to pay a sum of Rs. 8,633-10-0 as the oil seeds cess under the Indian Oil Seeds Committee Act (Act IX of 1946) (hereinafter referred to as Act) for the period beginning from 1-4-1950 to 30-9-1955. The petitioner sent letters to the 1st respondent denying his liability to pay the amount of demand.

The petitioner thereafter filed an application C. M. P. No. 46/2/56 u/s 12 (1) of

the Act for cancellation of the assessment. The learned District Judge rejected the contentions of the petitioner. He however directed the Central Excise Department to modify the demand so as to exclude the assessment referable to a period prior to the application of the Act to the erstwhile Hyderabad State. It is to quash the demand notice issued by the respondent No. 1 and the order of the District Judge in C.M.P. No. 46/2/56 that the present writ for certiorari is filed.

2. The contentions raised by Sri M. B. Rama Sarma, the learned counsel for the petitioner, were that tho petitioner lived about 200 miles away from the "Mill, that he had nothing to do with the actual running thereof and the crushing of oil seeds and that he should not have been called upon to submit a return. We have no hesitation in rejecting this contention so far as the period during which the petitioner himself ran the Mill and the period during which he ran it in partnership with another.

The petitioner contends however that during tho period 1-10-1954 to 30-9-1955 he had leased out the Mill to respondent No. 3 and that he had no part whatever in the actual working of the Mill during that period. In order to appreciate the contention of the learned counsel it is neces-sary to notice the relevant provisions of the Act. Section 3 is the charging section and in so far as is relevant to this contention it is as follows :

"Section 3 (1) : There shall be levied and collected on and after the date of the commencement of this Act as cesses for the purposes of this Act.-

(a) on all oils extracted from oil-seeds crushed in any Mill in the territories to which this Act extends whether the oil-seeds are produced in or imported from outside the said territories a duty of excise at the rate of one anna per maund and"

Section 10 so far as is relevant is as follows :

"Section 10 (1) : The owner of every mill shall furnish to the Collector, on or before the 7th day of each month, a return stating the total amount of oil extracted in the mill during the preceding month, together with such further information in regard thereto as may be prescribed."

It is to he noticed that u/s 3 the cess is collected on all oils extracted from oil seeds crushed in any mill and u/s 10 (1) it is the owner of the mill that should furnish the return to the Collector of the total amount of the oil extracted. The word "owner" in Section 10 (1) cannot certainly take in a lessee of the mill though a lessee is under law entitled to the possession of the mill and the we thereof.

The policy of the Act seems to be to make the owner of the mill primarily responsible for the cess and not the lessees who might change from time to time, thus leaving it to the owners to collect the cess from the lessees by any arrangement as between themselves. By no stretch of imagination could a lessee be said to be an owner within the meaning of Section 10 (1) of the Act. In our

opinion this contention is without substance.

3. The next contention raised by the learned counsel is that the Collector has no right to make an assessment except in respect of the period of one month in respect of which a return is to be made by the owner u/s 10 (1). In this connection the relevant section of the Act is Section 11, which may be extracted :

"Section 11 (1) : On receiving any return made u/s 10, the Collector shall assess the amount of the duty of excise- payable u/s 3 in respect of the period to which the return relates, and if the amount has not already been paid, shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

(2) If the owner of any mill fails to furnish in due time the return referred to in Sub-section (1) of Section 10 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount if any, payable by him in such manner as may be prescribed, and the provisions of Sub-section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the owner :

Provided that, in the case of a return which. he has reason to believe is incorrect or defective, the Collector shall not assess the duty of excise at an amount higher than that at which it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return". The learned Counsel contends that reading Sections 10 and 11 together there is no power to make an assessment for a period exceeding one month. In our opinion the Act prescribes no period of limitation for an assessment to be made by the Collector. A similar contention was raised before the Madras High Court in a case reported in M.S. Gopalaswami Chettiar Vs. The Secretary of State for India in Council, --decided by a Division Bench consisting of Curgen-ven and Sundaram Chetty JJ.

The question there arose whether duty on cotton could be levied under the Cotton Duties Act, II of 1896 or collected in the absence of a return made by the proprietor and secondly, whether in the absence of any provision for the collection of arrears, the same could be made. It was therein held that a person who has become liable to pay duty and who fails to submit the return required by Section 8 of the Act cannot plead lapse of time between the production of his goods and the initiation of steps to assess them, as a defence to claim for arrears of such duty accruing over a period of three years; It was therein observed by Justice Curgenven at page 749 as follows.

"It is true that the Cotton Duties Act does not expressly provide for the consequences of failure to submit a return. But that is not to say that no power remains to collect the duty. Section 9 gives the Collector power to assess the duty payable, and the mere fact that it is described as "payable in respect of the period to which the return relates" cannot be read as meaning that if no return be made there can be no period in respect of which it is payable. The section is

so worded because it has in contemplation the normal case, when the mill-holder complied with the terms of the Act. But the power of the Collector to make the assessment, so given, cannot be limited either by any defect in the return or even by the absence of any return". The principle of this decision was applied by the Madras High Court to the levy of contribution under the Madras Hindu Religious Endowments Act (II of 1927) in a case reported in *The Hindu Religious Endowments Board Vs. Peddinti Sitarama Charyulu*, . It was observed by Kuppuswami Ayyar J., at page 735 of Mad LJ : (at p, 194 of AIR) as follows :

"There is nothing in the scheme of the Hindu Religious Endowments Act to suggest that it was the intention of the Legislature that the levy should be either in the year for which it is levied or in the next year. I am not able to see any hardship to the institution by the delaying of such levies; for it is their default in sending the returns that resulted in the contribution not being levied".

The same view has been taken by Justice Somayya in a case reported in *Hindu Religious Endowments Board, Madras v. V. Jaganathacharyulu*, 1944-2 Mad LJ 260. The learned Judge observed that there is no time limit provided by the Legislature for the recovery by the Board of the contribution u/s 69 (1) or Section 69 (2) of the Madras Hindu Religious Endowments Act and as such the Board may levy all the arrears due. These decisions have been followed by a Bench of this Court in *Murthy H. R. S. v. Collector of Chittoor* W. P Nos. 534 and 535 of 1958 where the question arose whether the collector could levy cesses under the Madras District Boards Act (XIV of 1920) with retrospective effect.

It was argued that the assessment should be made in each of the years for which the cesses were demanded and this argument was repelled on the ground that there was no period of limitation for the recovery of cesses. It is observed by the learned Judges that where there is a liability and no express provision is made limiting its realisation, it has to be inferred that it could be realised at any time after the liability arose. Respectfully following the principle laid down by the Division Bench of this Court we have no hesitation in rejecting the contention that the levy of assessment should be limited only to a period of one month.

4. The learned counsel lastly contended that Rule 33 conferred unregulated power on the Collector to make an assessment in that it did not prescribe any rules for the guidance of the Collector in making the assessment. We think that this argument also lacks substance. The order of the Collector is subject to revision by the District Judge. He is empowered to cancel, or modify the assessment and order refund either in whole or in part and there is a specific provision made for the correction of errors, if any, made by the assessing authority. It cannot be said that the power to make an assessment is an uncanalised power and therefore liable to be struck off. For the aforesaid reasons we hold that there are no grounds for the issue of a Writ of Certiorari. The writ petition is accordingly dismissed with costs. Advocate's fee Rs. 100/-.