(1985) 01 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21 of 1980

Katihar Jute Mills Ltd. APPELLANT

Vs

The Inspector of Central Excise and Others RESPONDENT

Date of Decision : 05-01-1985

Acts Referred:

Finance Act, 1982 — Section 51
Industries (Development and Regulation) Act, 1951 — Section 9

Citation : (1985) PLJR 716

Hon'ble Judges : S.S. Sandhawalia, C.J;S.N. Jha, J;H.L. Agrawal, J

Bench : Full Bench

Advocate : S.K. Misra, Binod Kumar Bariar and Mithilesh Pandey, for the Appellant; Aftab Alam, S.C. Central Government, N.A. Shamsi and K.G. Sabir, J.C. to S.C. Central Government, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—Whether the cess leviable u/s 9 of the Industries (Development and Regulation) Act, 1951 can be lawfully imposed on jute twine and jute yarn in the process of manufacture, is the significant question necessitating this reference to the Full Bench. Equally at issue is the correctness of the views expressed by the Division Bench in Rameshwar Jute Mills Ltd. Vs. Inspector of Customs and Central Excise and Others, . In view of the recent amendment of rules 9 and 49 of the Central Excise Rules, 1944 (hereinafter to be referred to as the ''Rules''), which have been accorded retrospectivity with effect from 1944 by the express mandate of section 51 of the Finance Act, 1982, it becomes somewhat unnecessary to delve into the facts in any depth. It suffices to mention that the petitioner-Katihar Jute Mills Ltd.-are. manufacturing diverse jute products including sacking, hessian, jute twine and jute yarn in their factory premises, and are duly licenced to do so under the Rules. The jute industry being one specified n the Schedule to the Act, a cess can be levied u/s 9(1) of the said Act read with the Central Excises and Salt Act, 1944 and the Rules framed thereunder. The gravamen of the petitioner''s case is that jute twine and yarn in a continuous process of manufacture in their mill directly go to the weaving section for weaving and hemming and their ultimate conversion into hessian or sacking goods. Therefore, jute twine and yarn are not manufactured or marketable products nor are they removed from the premises of the factory as such, with the significant result that they are not liable to any excise duty or cess thereon. Nevertheless the respondent excise authority had created demands against the petitioner on the basis of quantity of jute twine and yarn consumed within the factory in the manufacture of jute goods with effect from April, 1976. Aggrieved thereby, the petitioner had preferred this writ petition way back on the 4th of January, 1980 to challenge such levy. Basic reliance on their part was on Rameshwar Jute Mills Ltd. Vs. Inspector of Customs and Central Excise and Others, .

2. This writ petition was originally heard by a Division Bench but before the reserved judgment could be rendered, a pointed challenge was laid to the ratio of Rameshwar Jute Mills Ltd. ''case on behalf of the respondents on the basis of E.K. Cotton Spinning & Weaving Mills and another v. Union of India and other (Civil Writ No. 1858 of 1981 decided on 11th January, 1982). Noticing the conflict of precedent and the significance of the issue involved, the matter was referred to a larger Bench for an authoritative decision.

3. The claim of the petitioner, however, has now to be viewed in the context of the radical changes in the law brought about subsequent to the filing of the writ petition. Section 30 of the Act authorises the Central Government to make rules for carrying out the purposes of the Act and in pursuance of that power the Jute Manufacturers Cess Rules, 1976 have been promulgated. Rule 3 of the said Rules in terms provides for the application of the Central Excises and Salt Act as also the Rules framed there under in relation to the levy and collection of the case on jute manufacturers. It is not in dispute that the Finance Act of 1982 introduced a radical amendment in rules 9 and 49 of the Central Excise Rules, 1944. What is even more significant is that by virtue of section 51 of the Finance Act, 1982 retrospectivity has been given to these amendments with effect from 1944. It is thus common ground that the amendment of rules 9 and 49 of the Central Excises Rules, 1944 and the express Retrospectivity given to them have brought about a fundamental change in the relevant provision of the law, whereby the removal of excisable goods is complete even if they are captively consumed in the continuous process of manufacture. Faced with this fair accompli, a feeble attempt has now been made on behalf of the petitioner to challenge the validity of the amendments in rules 9 and 49 aforesaid and equally the retrospectivity accorded to them by the Finance. Act.

4. It seems manifest from the above that the whole case has suffered a metamorphosis because of the subsequent structural changes in the relevant rules and the long retrospectively given to them by the Finance Act. It is well known that ticklish difficulties, were posed in the levy of excise duty on products in a continuous process of manufacture in a mill or a factory. The concept of ''removal'' from the precincts of the factory which in certain cases was the taxing

event attracting the levy of excise duty was equally a matter not free from difficulty. Conflicting views have been taken by the various High Courts with regard to what would amount to removal under the Central Excises and Salt Act and the Central Excise Rules. To overcome these difficulties or, to use a known expression of the law, in order to remedy this evil, the framers introduced a radical change in the provisions of rules 9 and 40 of the Excise Rules. In order to notice the qualitative change wrought therein, it seems apt to juxtapose the relevant parts of the amended false against the existing ones:

Before amendment aforesaid

9. (1) No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for export, consumption or manufacture of any other commodity in or outside such place until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require, and except on presentation of an application in the proper form and on obtaining the permission of the proper officer on the form:

X X X

(2) If any excisable goods are in contravention of sub-rule (1), deposited in or removed from, any place specified therein, the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made within the period specified in rule 10 by the proper officer, whether such demand is delivered personally to him or is left at his dwelling house, and shall also be liable to a penalty which may extend to two thousand rupees and such goods shall be liable to confiscation.

49. (1) Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued of the place or premises specified under rule 9 or are about to be removed from store-room or other place of storage approved by the Collector under rule 47:

X X X

(3) Notwithstanding any contained in sub-rule (1) the Central Government may, under circumstances of exceptional nature, allow, by notification in official Gazette, any excisable goods to be removed from the factory in which they are produced without payment of or only on part payment of duty leviable thereon subject to such conditions and limitations (including payment of interest on the balance amount of duty) as may, from time to time be specified by the Central Government. The manufacturer of such excisable goods shall execute a bond in the proper form with such surety or security as the Collector may approve.

After amendment aforesaid

9. (1) No excisable goods shall be removed from any place where they are

produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf,

whether for consumption, export, or manufacture of any other commodity in or out side such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require and except on presentation of an application in the proper form and an obtaining the permission of the proper officer on the form:

X X X

(2) If any excisable goods are in contravention of sub-rule (1), deposited in or removed from, any place specified therein, the producer or manufacture thereof shall pay the duty leviable on such goods upon written demand made within the period specified in rule 10 by the proper, officer whether such demand is delivered personally to him or is left at his dwelling house, and shall also be liable to a penalty which may extend to two thousand rupees, and such goods shall be liable to confiscation.

Explanation.--For the purposes of this rule, excisable goods produced, cured or manufactured in any place and consumed or utilised, (i) as such or after subjection to any process or processes or (ii) for the manufacture of any other commodity, whether in a continuous process or otherwise, in such place or any premises appurtenant thereto, specified by the Collector, under sub-rule (1), shall be deemed to have been removed from such place or premises immediately before such consumption or utilisation.''

49. (1) Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under rule 9 or are about to be removed from a store room or other place of storage approved by the Collector under rule 47:

X X X

(3) Notwithstanding anything contained in sub-rule (1), the Central Government may, under circumstances of exceptional nature, allow, by notification in official Gazette, any excisable goods to be removed from the factory in which they are produced without payment of or only on part payment of duty leviable thereon subject to such conditions and limitations (including payment of interest on the balance amount of duty) as may, from time to time, be specified by the Central Government. The manufacturer of such excisable goods shall execute a bond in the proper Form with such surety or security as the Collector may approve.

Explanation.--For the purposes of this rule, excisable goods made in a factory and consumed or utilised.

(i) as such or after subjection to any process or processes; or

(ii) for the manufacture of any other commodity, whether in a continuous process or otherwise, in such factory or place or premises specified under Rule 9 or store room or other place of storage approved by the Collector under Rule 47 shall be deemed to have been issued out of, or removed from such factory, place, premises, store room or other place of storage, as the case may be, immediately before such consumption or utilisation.

5. The changes aforesaid are explicit, nevertheless it redounds to the credit of the learned counsel for the petitioner that he eschewed a spacious argument and fairly conceded that in view, of the widely couched amendment of rules 9 and 49 his case would now surely come within the net of the cess and the levy unless the validity of the said rules or at least their retrospectivity is struck down. Learned counsel could pose no challenge to the amendments made in the said rules. In view of this fair stand, the primary and, indeed, a solitary question that would survive is the constitutionality of section 51 of the Finance Act which accords retrospectivity to rules 9 and 49. It seems necessary to read section 51 of the Finance Act as well which is in the terms following;

51 Retrospective effect for certain amendments to Central Excise Rules and validation:-- (1) The amendment made in rules 9 and 49 of the Central Excise Rules, 1944, by the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 74(E) dated the 20th day of February, 1982, shall be deemed to have, and to have always had effect on and from the date on which the Central Excise Rules, 1944, came into force.

(2) Any action or thing taken or done or purporting to have been taken or done before the 20th day of February, 1982, under the Central Excise Act and the Central Excise Rules, 1944, shall be deemed to be, and to have always been, for all purposes as validly and effetely taken or done as if the amendments referred to in sub-section (1) had been in force at all material times, and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority--

(a) all duties of excise levied, assessed or collected before the 20th day of February, 1982, on any excisable goods under the Central Excise Act, shall be deemed to be, and shall be deemed to have always been, as validly levied, assessed or collected as if the amendments referred to in sub-section (1) had been in force at ail material times;

(b) no suit or other proceeding shall be maintained or continued in any court for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendments referred to in sub-section (1) had been in force at all material time;

(c) refund shall be made of all such duties of excise which have been collected but which would not have been so collected if the amendments referred to in sub-section (1) had been in force at all material times;

(d) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded But which would have been collected or, as the case be, would not have been refunded, if the amendment referred to in sub-section (1) had been in force at all material times.

It is plain from the language of the aforesaid section that it has distinctly and with express mandate given retrospectivity to the amended provisions of rules 9 and 49 it is well settled beyond cavil that Parliament has plenary power to legislate both prospectively and retrospectively as well within the parameters laid out by the Constitution. Here in by a categorical legislative mandate it has chosen to confer retrospectivity on the amended provisions of rules 9 and 49 apparently with effect from the date when the Central Excises and salt Act and Rules were originally promulgated in 1944. Learned counsel for the petitioner could pose no challenge to the constitutionality of section 51 and the power of Parliament to enact the same. It must, therefore, be held that section 51 of the Finance Act, 1982 suffers from no legal infirmity.

6. In fairness to learned counsel for the petitioner, one must,, however, notice a tenuous attempt to assail the retrospective effect of rules 9 and 49. It was sought to be argued that section 30 of the Industries (Development and Regulation) Act which confers the power to make rules does not itself envisage any retrospective operation for the same. This argument has only to be noticed and rejected. It is common ground that retrospectivity to these provisions is sought to be given not by virtue of anything contained in section 30 but primarily and wholly because of the provisions of section 51 of the Finance Act. As already noticed, no constitutional or legal infirmity attaches to the said section. Therefore, effect must be given to its plain provisions. Once that is done, it is manifest that rules 9 and 49 as amended must be deemed to have been on the statute book with effect from 1944. That being so, reference to other provisions or peripheral issue becomes irrelevant in the context of the retrospectivity of the rules.

7. Mr. Aftab Alam, the learned counsel for the respondent revenue, had rightly pointed cut that though the case is leviable u/s 9 of the Industries (Development and Regulation) Act, the procedural provisions for its collection are entirely dove-tailed into the Central Excises and Salt Act and the Rules framed thereunder. Our attention was drawn to sub-section (2) of section 9 which provides that a cess is to be levied in the manner prescribed. This would take us to section 3(g) of the Industries (Development and Regulation) Act which brings in the provision of the Central Excises and Salt Act. Equally reference may be made to the Jute Manufacturers Cess Rules, 1976. Reference to rule 2(c) and 2(g) and rule 3 there of would leave no manner of doubt that the procedural provisions applicable are those under the Central Excises and Salt Act and the Rules framed thereunder. Our attention was also drawn to items 18 D and 22A of Schedule I to the Central Excises and Salt Act which make jute yarn of all sorts both manufactured and unmanufactured is leviable to excise duty. As has been noticed earlier, the cess is only an adjunct to the liability of excise duty for the purposes of development of

industry.

8. What appears to be plain on principle and the provisions of the statute is equally well buttressed by the solitary precedent which was brought to our notice subsequent to the amendment of rules 9 and 49 aforesaid. In Civil writ No. 1858 of 1981 decided on 11th January, 1982 (supra) Division Bench of the Delhi High Court has considered and repelled all the contentions sought to be raised on behalf of the writ petitioner here in their supplementary affidavit. Learned counsel for the petitioner was fair enough to concede that in the aforesaid judgment all the points which he had chosen to raise have been considered in depth and conclusively rejected.

9. To conclude the answer to the question posed at the outset is rendered in the affirmative and it is held that the cess leviable u/s 9 of the Industries (Development and Regulation) Act, 1951 can be lawfully imposed on jute twine and jute yarn in the process of manufacture.

10. It remains to advert to the earlier Division Bench judgment in Rameshwar Jute Mills Ltd.''s case (supra). A reference to the leading judgment of Hon''ble Mr. Justice B. P. Jha would indicate that therein the matter turned primarily on the question as to what amounted to removal under the rules. It was held by the learned Judge as follows:

I am of the opinion that if the definition of ''factory'' is read along with the ''explanation'' to Section 9(1) of the Act, it is clear that the cess is not leviable unless the manufactured goods are removed outside the precincts of the factory.

It is now common ground that after the amendment of rules 9 and 49 of the Central Excise Rules the very concept of removal has been radically changed. The legislative amendments have, therefore, in a way taken away the very foundation from under the ratio of Rameshwar Jute Mills Ltd.''s case. It necessarily follows that by virtue of the amendment in rules 9 and 49 and the retrospectivity given to them, Rameshwar Jute Mills Ltd.''s case is no longer attracted to the situation at all.

11. In fairness to Mr. Aftab Alam, it must be noticed that he had assailed to the ratio in Rameshwar Jute Mills Ltd.''s case even on the then existing provisions and it was his submission that had all the relevant statutory provisions been brought to the notice of the Bench, the conclusion would necessarily have been different. However, as has already been held that after the amendment Rameshwar Jute Mills Ltd.''s case is no longer attracted to the situation, it becomes somewhat academic to consider the correctness of view on the basis of the then existing and unamended provisions. It suffices to clarify that in view of the retrospective amendments in rules 9 and 49, the said judgment no longer holds the field.

12. Once the answers to the two meaningful questions posed at the outset have been rendered as above, it is plain that the writ petition must fail and is hereby

dismissed. In view of the intricacies of the issues involved and the subsequent change of the law, we decline to burden the petitioner with costs.

H.L. Agrawal, J.

I fully agree.

S.N. Jha, J.

I entirely agree.