
(1973) 05 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No"s. 6502 and 6545 of 1970

Lekshmanan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-05-1973

Acts Referred:

Produce Cess Act, 1966 — Section 3, 3(2)

Citation : (1999) 110 ELT 494

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Advocate : K.S. Rajamony and J. Easwarn Iyer, for the Appellant; K. Prabhakaran, for the Respondent

Final Decision : Dismissed

Judgement

M.U. Isaac, J.—The Petitioners in both these cases are millers who buy copra crush the same in their mills and sell the oil produced therefrom. The Central Excise issued notices to them under the Produce Cess Act, 1966 calling upon them to file returns for assessing them to excise duty in respect of the copra crushed in their mills. Thereupon these writ petitions were filed to quash the action taken by the Central Excise, and to prohibit it from levying or collecting any duty of excise from the petitioners.

2. The duty of excise that was proposed to be levied against the petitioners is the one imposed u/s 3 of the Produce Cases Act. Several grounds have been raised by the petitioners against the constitutional validity of the above imposition. But in the light of the settled legal position, those grounds have not been pressed by Counsel. The only point urged by them is that the impugned levy would not fall within the ambit of the charging section read with the relevant item in the Second Schedule of the Act.

3. It is necessary to read Sub-section (2) of Section 3 and the relevant item in Schedule II for appreciating the above argument. Section 3(2) reads :-

"There shall be levied and collected as a cess, for the purposes of the Act, on every produce specified in column 2 of the Second Schedule, a duty of excise at such rate, not exceeding the rate specified in the corresponding entry in column 3 thereof, as the Central Government may, by notification in the Official Gazette specify:

Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate specified in the corresponding entry in column 4 of the said Schedule."

Sl. No. 2 in the Second Schedule is the relevant item; and the produce mentioned therein is described as follows :-

"Copra consumed in any mill in India with a view to producing or manufacturing any goods therefrom."

Counsel for the petitioners contend that the above description shows that the duty is not levied on all copra consumed in any mill in India irrespective of the purpose for which it is so done : but the duty is confined to such copra as is consumed in a mill in India "with a view to producing or manufacturing any goods therefrom".

It is argued that the copra is not consumed in the petitioners' mills with a view to produce or manufacture any goods therefrom, but only to produce oil which would not fall within the above description. In support of this argument, it is pointed out that the duty is attracted only to mill owners like the Tata Oil Mills Co. Ltd., where copra is crushed not with a view to produce oil as such, but to produce or manufacture goods like soaps, cocogem, etc. I am unable to accept this argument, the only foundation for which is the clumsy language employed in describing the produce. If the words "with a view to producing or manufacturing any goods therefrom" were omitted from the description of the produce, there would have been no scope for the above argument. The above words are obviously superfluous as the only view or purpose of copra being consumed in a mill is to "produce or manufacture" some goods. It may be that millers like the petitioners produce oil only, while millers like Tata Oil Mills Company may produce some other goods like soap, cocogem, etc. The legislative history of the above provision also makes it clear that the intention of Parliament was to levy a cess by way of excise duty on all copra consumed in a mill. Copra was subject to cess or excise duty under the Coconut Committee Act, 1942. The above item was included in the Produce Cess Act, as a substitute for the cess levied under the Coconut Committee Act. The contention of the petitioners' Counsel cannot be accepted also on a literal interpretation of the description of the relevant item, since consumption of copra in the mills of the petitioners is with a view to produce oil, which admittedly is goods as the term is used in the said description. In other words, the description is comprehensive enough to include oil also. The argument that oil is not something different from copra, or that it would not come within the term "any goods", which term can only comprise goods

manufactured from oil, has no substance.

4. For the reasons stated above, the petitioners cannot succeed in these cases. These original petitions are accordingly dismissed. There will be no order as to costs.