

(1980) 02 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction case No. 228 of 1978

Rameshwar Jute Mills Ltd.

APPELLANT

Vs

Inspector of Customs and Central Excise and Others

RESPONDENT

Date of Decision : 02-02-1980

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 3(1)
Industries (Development and Regulation) Act, 1951 — Section 3, 30, 9(1)
Jute Manufactures Cess Rules, 1976 — Rule 5, 5(1)

Citation : (1981) 8 ELT 30 : (1980) PLJR 403

Hon'ble Judges : H.P. Varma, J;B.P. Jha, J

Bench : Division Bench

Advocate : S.B. Sanyal and S.K. Mishra, for the Appellant; A.K. Sinha, Senior Standing Counsel, Central Govt., for the Respondent

Judgement

B.P. Jha J.

1. In this writ petition, the petitioner challenges the validity of annexures 7 and 8. By these annexures, the authorities under the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as "the Act") issued demand notices for levy of cess for the period between March, 1976 and September, 1977 and for the period between October, 1977 and December, 1977.

2. The short point for consideration in this application is : What is the stage at which the cess is required to be levied on the petitioner ?

3. The answer is given in the explanation to Section 9(1) of the Act. It is relevant to quote Section 9(1) of the Act which runs as follows :

"9. Imposition of cess on scheduled industries in certain cases-(1) There may be levied and collected as a cess for the purposes of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by notified order a duty of excise at such rate as may be specified in the notified order, and different rates may be

specified for different classes of goods :

Provided that no such rate shall in any case exceed 13 paise per cent of the value of the goods.

Explanation.-In this sub-section, the expression "value in relation to any goods shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of their removal there-from, without any abatement or deduction whatever except trade discount and the amount of duty then payable."

4. The proviso to Section 9(1) explains what is missing in the former part of Section 9(1). The proviso explains that the cess will be levied at a rate not exceeding 13 paise percent of the value of the goods. The expression "value" has been explained in the explanation. On a perusal of explanation, it is clear that the cess shall be levied at the time of delivery of goods at the place of manufacture and at the time of the removal therefrom. In my opinion, the word "therefrom" means from the factory. The word "factory" has been defined in Section 3(c) of the Act which runs as follows :-

"factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on-

(i) with the aid of power, provided that fifty or more workers are working or were working thereon on any day of the preceding twelve months; or

(ii) without the aid of power, provided that one hundred or more workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power."

5. On a perusal of the definition of the word "factory", it is clear that the factory includes the precincts thereof or any other part, where a manufacturing process is being carried on. Therefore, in my opinion, the cess shall be levied when the manufactured goods are delivered at the place of manufacture and at the time of the removal from the factory. If these two elements, namely, the delivery of goods at the place of manufacture and at the time of the removal therefrom exists, then only cess shall be levied and not before that stage. It is also clear from the explanation that cess shall be levied in respect of the goods sold or capable of being sold. The words "capable of being sold" envisage notional sale. Therefore, in my opinion, if the goods are delivered at the place of manufacture and removed from the factory, although the goods are not actually sold to the transferee, such removal will also come within the purview of the levy of cess.

6. Learned Counsel for the respondents contends that the explanation is not part of Section 9(1) of the Act. According to his submission, cess is leviable on the goods manufactured or produced in a certain factory. I am unable to accept this contention. In my opinion, the explanation is an integral part of the section. In

this connection a reference has been made to a decision of the supreme court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, where it has been held at page 733 as follows :-

"An explanation appended to a section or clause gets incorporated into it, and becomes an integral part of it, and has no independent existence apart from it. There is in the eye of law, only one enactment, of which both the section and the explanation are two inseparable parts. "They move in a body if they move at all". "

Relying on this decision of the Supreme Court, I hold that the explanation is an integral part of Section 9(1) of the Act. If it is so, the incidence of levy of cess postulates the delivery of goods at the place of manufacture and their removal from the factory. If these two conditions are satisfied, then the authority shall levy cess on any manufactured goods. In this connection, reference may also be made to *Craze on Statute Law*, Seventh Edition, at page 395, which runs as follows : -

"Where a statute is passed for the purpose of supplying an obvious omission in a former statute, or, as Parks J. (afterwards Baron Parke) said in *R.V. Dureley* "to explain a former statute", the subsequent statute has relation back to the time when the prior Act was passed. Thus, in *Att. Gen. v. Pougett*, it appeared that by a Customs Act of 1873 (53 Geo. 3, C. 33) a duty was imposed upon hides of 9s. 4 d., but the Act omitted to state that it was to be 9s. 4d. per cwt. and to remedy this omission another Customs Act (53 Geo. 3, c. 106) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt. but Thomson C.B. in giving judgment for the Attorney General said : "The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act."

It is, therefore, clear that the legislature intended to explain the provision in Section 9(1) by incorporating the explanation thereto.

7. Learned Counsel for the respondents contends on the basis of the counter-affidavit that the cess shall be levied as soon as the manufacturer manufactures the goods. In this connection, he relies on Section 3 of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Excise Act") which runs as follows :-

"3. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in or imported by land into, any part of India as, and at the rates, set forth in the First Schedule.

* * *

According to his submission Section 3(1) of the Excise Act is identical to Section 9(1) of the Act. I am unable to accept this contention. u/s 3(1) of the Excise Act, excise tax is leviable on the goods manufactured. This Excise Act falls within item No. 84 of List I of the Seventh Schedule of the Constitution. Item No. 84 mentions-""Duties of excise on tobacco and other goods manufactured or produced in India". It is, therefore, clear that the excise duty shall be leviable on the goods manufactured.

8. Learned counsel for the respondents relies on a decision in the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, (A.I.R. 1939 Fed C 1). While making distinction between taxes on the sale of goods and taxes on the goods themselves, their Lordships held :

"The essence of a tax on goods manufactured or produced is that the right to levy it accrues by virtue of their manufacture or production."

I humbly accept the observation of their Lordships of the Federal Court. In my opinion, Section 3 of the Excise Act is not in pari materia with Section 9(1) of the Act. In the latter case, the incidence of taxation takes place when the goods are delivered at the manufacturer's place and their removal from the factory. On the other hand, under the Excise Act, the incidence of taxation takes place as soon as the goods are manufactured or produced by the manufacturer. Learned Counsel for the petitioner has also drawn my attention to a decision in the Delhi Cloth and General Mills Company Ltd. and Anr. v. The Joint Secretary, Govt. of India Ministry of Finance and Anr. (1978 TLR 2094).

9. In the present case the admitted position is that the petitioner manufactures twine and yarn. Thereafter, twine and yarn are put into another plant in the process of producing sacking goods, etc. within the precincts of the same factory. The argument of the learned counsel for the respondents is that as soon as twine and yarn are manufactured, the cess can be levied on them. I am unable to accept this contention for the simple reason that twine and yarn are not delivered at the place of manufacture and they are not removed from the precincts of the factory and, as such, cess cannot be levied on them. The case of the petitioner is that cess cannot be levied on these goods, as twine and yarn are not prepared for selling or capable of being sold in the market. The sole object of the manufacturer is to prepare sacking goods out of twine and yarn. It is conceded by the learned counsel of the petitioner that if they intend to sell twine and yarn, and for that purpose these goods are delivered at the factory and removed from the factory, then in that case he pays cess on these goods. Learned counsel for the petitioner contends that if these goods are put into the process of manufacturing sacking goods in their plant, within the precincts of the same factory, then in that case such goods are not leviable for cess as such case does not come within the purview of the explanation to Section 9(1) of the Act. I accept the contention of the learned Counsel of the petitioner for the reasons

mentioned above.

10. Learned counsel for the respondents further contends that as soon as the manufacture of twines and yarn is completed and if they are removed from one place to another within the same factory, it amounts to removal of manufactured goods. I am unable to accept this contention for the reasons mentioned above. 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.

11. Learned counsel for the respondents contends that if the explanation goes beyond the ambit of the main provision, then in that case the effect of the explanation should not be given to. I am unable to accept the contention in view of the decisions of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . In my opinion the explanation is an integral part of the section. Learned counsel for the respondents, in this connection, relies on a decision of the Supreme Court in *Bihar Cooperative Development and Cane Marketing Union Ltd: v. Bank of Bihar-A.I.R. 1967 Supreme Court 389*. In that case their Lordships were interpreting the explanation to Section 48 (1) of the Bihar and Orissa Co-operative Society Act, 1935, and their Lordships were of opinion that the explanation was within the four corners of Section 48(1) of the said Act. This decision has been interpreted by the Supreme Court in *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, . While interpreting that decision of the Supreme Court, their Lordships held as follows in paragraph No. 24 of the decision :.

"On the basis of the language of the explanation this court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an explanation it appears that it has widened the scope of the main section, effect must be given to legislative intent notwithstanding the fact that the legislature named that provision as an explanation. In all these matters the Courts have to find out the true intention of the legislature."

Relying on the decision of the Supreme Court in *M/s. Hira Lal Ratan Lal (supra)*, I hold that even if it appears that an explanation has widened the scope of the main section effect must be given to legislative intent. I am, therefore, of the opinion that the decision in *Bihar Cooperative Development & Cane Marketing Union Ltd. v. Bank of Bihar (A.I.R. 1967 Supreme Court 389)* does not help the respondents in view of the interpretation given by the Supreme Court in *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, .

12. My view is further supported by rules framed u/s 30 of the Act. Section 30 of the Act authorises the Central Government to make rules for carrying out the purposes of the Act. Such rules have been framed by the Ministry of Industry and Civil Supplies on 18th February, 1976 known as the Jute Manufactures Cess Rules, 1976 (hereinafter referred to as the rules"). Under Rule 5, every

manufacturer is required to submit a return to the collector on or before 10th of every month in a prescribed form in respect of stocks of jute manufactured and removed from his factory during the previous month. It is relevant to quote Rule 5 of the Rules which runs as follows :

"5. Submission of Returns-(1) Every manufacturer shall submit to the collector and commissioner on or before the 10th of every month a return in the form specified in the annexure to these rules of all stocks of jute manufactures manufactured in. and recovered from, his factory during the previous month."

The cess is being levied on the basis of return filed by the registered manufacturer in respect of scheduled industry. In the return, under Rule 5(1), the manufacturer is required to mention about the stocks of jute manufactured by it and removed from his factory. It is, therefore, clear, that it is the removal of the goods which envisages levy or assessment of the cess upon the manufacturer.

13. In this circumstance, I am of the opinion that the authorities under the Act and the Rules are not entitled to levy cess on twines and yarn" since these goods were not delivered at the place of manufacture, nor they were removed from the precincts of the factory. Since these goods were not removed out of the factory, as such cess cannot be levied on those goods.

14. In the result, the petition is allowed ; and, I issue a writ of certiorari and quash annexure 7 and 8. The parties shall bear their own costs.

M.P. Verma, J.

15. I have heard the judgment delivered by my learned Brother and I do not find anything profitable to add to it. The principle laid down by my Brother while explaining Section 9(1) of the Industries (Development and Regulation) Act, 1951 is quite sufficient and needs no elaboration.

16. Learned counsel for the respondents has strenuously argued that as far as the order of Government of India in respect of levy of cess is concerned, it is levied and collected on all the jute products, that is, twines and yarns manufactured in a factory. There is no exemption for the jute twines and yarn manufactured and consumed within the factory. In the process of manufacturing, the moment the raw material takes the shape of yarns and twines, the manufacture is complete and cess is leviable on such products. According to his contention, the cess is levied on the goods manufactured and not on sale. Learned counsel went on to argue that it is not the concern of the Government while levying cess on the manufactured goods to ascertain whether such products have got marketability value and exchangeability. It is not the concern of the Government whether such products or of the like kind and quality are capable of being sold for delivery from the place of manufacture or incapable of sale, cess has to be paid, no matter even if the products have no commercial value and whether the owner of the factory after manufacturing the product either consumes the same in his own factory or even throws it off in the Ganges.

The argument did not appeal to me when I look to the case of this petitioner. Nobody disputes the proposition that twines and yarns manufactured are also subject to imposition of cess, provided such products are finished goods capable of being sold and at the time of their removal from the place of manufacture for marketability. But the case of the petitioner is otherwise, twines and yarns produced in the factory of the petitioner have no commercial value. The petitioner, no doubt, happens to be a limited company known as Rameshwar Jute Ltd. and carries on the business of manufacturing jute products at its Mills premises situate at Muktapur in the district of Samastipur. Jute products like sacks and hessians are manufactured therein. This is a specified-industry as per schedule attached to the Act. It is stated that jute twines and yarns are not complete manufactured and finished products till they are wrapped on spools and converted into corpus. This factory is engaged in the manufacture of hessians and sacks and twines and yarns. Twines and yarns by-products are not marketed. In case of manufacture of jute products like sacks and hessians, the yarns and twines directly go to the weaving section for weaving and hammering the hessians and sacks. Such yarn and twines in the process of manufacture of sacks and hessians cannot be treated as manufactured goods or products so far as the present industry is concerned. These are all intermediary products and, in my opinion, cess can be imposed only on such goods which are exchangeable and have got marketability as well and at a point of time of their removal from the place of manufacture for such value. In the instant case, transferring a product from one plant to another amounts to consumption for the purpose of production and such sub-standard goods or products cannot be deemed to be marketable goods for commercial value nor they are so. To make it more clear, I am again repeating that it is not consumed in the ordinary sense of the term. The consumption here means intermediary use for the purpose of manufacture of sacks and hessians which are produced in the factory on which cess may be levied.

17. Learned counsel for the respondents has further argued that Section 9(1) of the Act is charging section and the court should be precluded from looking to the appendix, that is, the explanation appended to the section itself. Here again, I am unable to accept the contention. To my mind, the explanation appended to the section is obviously to explain the omission in the charging part of the section and the omission in the present case is with regard to the manner of charging cess and at what point it should be charged. In order to remedy it, the explanation has been added thereto. Thus, this forms the integral part of the section and it must be read along with it. Taking this into consideration, it makes all the more clear that the cess is to be levied on such manufactured goods and finished products at the time of removal from the factory premises which have got exchangeable and marketable value. I, therefore, respectfully agree with the judgment delivered by my learned Brother. There shall be no order as to costs.