
(2002) 03 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1607, 1923 and 2433 of 1998

Satya Narayan Mishrilal Bediya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Cess and Other Taxes on Minerals (Validation) Act, 1992 — Section 2, 2(1)

Citation : (2002) 3 MPHT 151 : (2002) 2 MPLJ 613

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : M.L. Jaiswal, for the Appellant; R.S. Patel, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Common question arises in these three writ petitions; hence they are being decided by the common order. The question involved is whether the respondents can make recovery of the amount of cess in question after 4-4-1991 for the period earlier to it.

Royalty was imposed by M.P. Upkar Adhiniyam, 1981 as amended by M.P. Upkar (Sanshodhan) Adhiniyam, 1987. The imposition and collection of cess on royalty was declared ultra vires by this Court in Hiralal Rameshwar Prasad and Ors. v. State of M.P. and Ors. 1986 MPLJ 514. A Division Bench of this Court also declared in M.P. Lime Manufacturers' Association, Katni and Others Vs. State of Madhya Pradesh and Another, , the provision of Amendment Act of 1987 as ultra vires. SLP was preferred against the decision of this Court which was dismissed by the Apex Court in limine on 5-2-1990. Ultimately the Supreme Court in M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, , declared the law framed by various State Legislatures as ultra vires. Refund was directed to be made of the cess collected after 23-3-1996 with interest at the rate of 12% per annum. Considering the financial crisis the State of M.P. faced, the Parliament

enacted Cess and other Taxes on Mineral (Validation) Act, 1992 (Act No. 16 of 1992). The validation of the said Act was challenged in this Court which was upheld. The matter against travelled to the Apex Court; the Supreme Court upheld validity in P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], . It was held by the Apex Court that the State Government had the jurisdiction to collect cess on royalty till 4-4-1991.

The Apex Court empowered the State Government to retain the amount already collected and also allowed the State collect the tax from such persons who had not paid the tax being protected by the order of stay passed by the Supreme Court. Thereafter the demand notices were issued to the petitioner which are assailed in these writ petitions.

The Supreme Court has reconsidered the decision in P. Kannadasan v. State of Tamil Nadu and Ors. (supra) in District Mining officer and Ors. v. Tata Iron & Steel Co. and Anr., JT 2001 (6) SC 183 : AIR 2001 SC3134, and the Apex Court has directed the M.P. High Court to decide the pending cases in the light of judgment of Patna High Court which is quoted by Apex Court in para 7 of the District Mining Officer and Ors. v. Tata Iron & Steel Co. and Anr. (supra). Para 7 is quoted below:--

"7. The Patna High Court disposed of the batch of writ petitions on 17th January, 1996 before the judgment of the Court in Kannadasan's case (supra). In the impugned judgment the High Court has held :-- (a) The Parliament has not enacted the entire Cess Act of 1880 but has merely re-enacted the provisions contained therein which relate to cess and other taxes on minerals.

(b) The laws which have been enacted by the State Legislature are deemed to have been enacted by the Parliament.

(c) It became necessary for the Parliament to intervene and to enact a law with a view to protect a State from the consequences that followed declaration made by the Supreme Court in India Cement and Orissa Cement.

(d) The Parliament took precaution to itself re-legislate on the subject-matter in exercise of its legislative power and it chose to legislate by incorporation, a method of legislation well recognised by law.

(e) The laws enacted were deemed to have remained in force upto 4th April, 1991.

(f) The Statute in question can be described as promulgated a temporary legislation.

(g) The submission that Parliament did not have the competence to legislate on the subject-matter fell within the exclusive jurisdiction of the State Legislature, proceeds on the erroneous assumption that the subject matter with which the Parliament dealt with in the Validation Act was a State subject contained in List II of 7th Schedule.

(h) The competence of Parliament to make enactment is beyond challenge.

(i) The Validation Act cannot be impugned on the ground that it sought to re-validate the said Act which was declared unconstitutional by the Supreme Court. The power of the Parliament to legislate retrospectively cannot be disputed. Consequently the Parliament had power to legislate on the topic it could make an Act on the topic by any drafting means including by referential legislation.

(j) There is nothing in the impugned Act with regard to the assignment of the taxes collected or its distribution between the States. It cannot therefore be urged that any provision in the impugned Act runs contrary to the constitutional scheme with regard to the assignment to the States of the taxes realised, or their distribution between the States.

(k) Considering the background, facts and having regard to the purpose for which the law was passed and the objective sought to be achieved it cannot be said that the Validation Act was discriminatory merely because different rates of cess on royalty were prescribed for different States. The dominant objective of the Act was to validate the levies already made, and not to legislate on the subject by naming a law imposing cess on royalty. It was because of this objective which the law sought to achieve, that the law was given a limited life i.e., till 4th April, 1991. The legislative history and the march of events, earlier justified by a Supreme Court judgment, could not be ignored by the Parliament and, therefore, taking into account the reality of the situation, the Parliament was left with no option but to validate the levy of cess on royalty till 4th April, 1991, the date of the Supreme Court judgment in Orissa Cement ? The law ceases to have any effect after the date which makes it clear that the legislation was not with a view to levy cess on royalty, but only to validate what had happened in the past,

(l) Sub-section (1) of Section 2 of the Act makes it clear that the impugned Act does not enact by validation a perpetual law but a temporary Act.

(m) In the impugned Act admittedly there is no provision similar to Section 6 of General Clauses Act nor is there any saving clause which may justify the application of principles contained in Section 6 of General Clauses Act.

(n) The Act was promulgated for a limited purpose. The Parliament intervened and granted sanctity to laws declared void by the Supreme Court only with a view to absolve the States of their liability of refund the taxes illegally collected as that would have cast heavy financial burden on the State. It also provided for the same cut off date instead of different cut off dates. The Parliament did not intend to keep alive after 4-4-1991, the obligations or liabilities accrued or incurred under the temporary laws and, therefore, did not provide for the enforcement of such obligations or liabilities in future. As a result the taxes collected before 4-4-91 are not required to be refunded, but the Act does sanction the recovery of any tax after 4-4-1991."

The decision taken is that taxes collected by the State before 4-4-1991 are not required to be refunded but the Act does not sanction the recovery of any tax after 4-4-1991. The Supreme Court has held in *District Mining Officer and Ors. v. Tata Iron & Steel Co. and Anr.* (supra), that Section 2(1) of the Validation Act having used the expression "upto 4-4-91"; it unequivocally indicates that what is validated is the process of levy and collection made upto that date and no further. The Validation Act never conferred a right to levy or collection after 4-4-1991. It was held in *Tata Iron & Steel* (supra) that *Kannadasan's* case (supra) was wrongly decided as that runs contrary to the observation made in *Mafatlal Industries case*, JT 1996 (11) SC 283. The contrary view taken by the Andhra Pradesh High Court and Karnataka High Court following the decision of *Kannadasan's* case (supra) was held to be incorrect.

In the facts and circumstances, there is no escape in the conclusion that the State cannot collect the tax after 4-4-1991.

Writ petitions are allowed. It is directed that no tax for the period prior to 4-4-1991 can be levied or collected by the State after 4-4-1991. Cost on parties.