

(1994) 07 MAD CK 0012
In the Madras High Court
Case No : Writ Appeal No. 845 of 1994

Seshasayee Paper and Boards Limited APPELLANT

Vs

The Appellate Committee constituted under S. 13 of the Water (Prevention and Control of Pollution) Cess Act 36177 RESPONDENT
read with rule 9 of the Water Prevention and Control of Pollution Cess Rules 1978, No. 32, Santhome High Road, Madras-4 and The Member Secretary, Tamil Nadu Pollution Control Board, No. 32, Santhome High Road, Madras-4 (Assessing Authority under the Act 36/77)

Date of Decision : 21-07-1994

Acts Referred:

Constitution of India, 1950 — Article 252
Water (Prevention and Control of Pollution) Act, 1974 — Section 1
Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 6

Citation : (1994) 07 MAD CK 0012

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : A.L. Somayaji, for M/s. Aiyar and Dolia, for the Appellant; K.M. Srirangan, Government Advocate, for the Respondent

Judgement

K.A. Swami, C.J.—This appeal is preferred against the common order dated 4.3.1994 passed by the learned single Judge in W.P. Nos.

615 and 616 of 1986. However, the present appeal is confined to the subject matter of W.P. No. 616 of 1986. Learned single judge has allowed

the writ petitions in part in the following terms:

For the reason that I have taken the view that while deciding whether the petitioner is entitled to a rebate or not. the respondents shall be obliged to

determine the extent of the treatment provided by the plant installed by it and since no such determination is available, it is a fit case, in my opinion,

to remit the whole matter to the second respondent for a fresh decision in accordance with law without misdirecting himself with respect to grant of rebate to the petitioner. Impugned orders, for the said reasons, are quashed. The case is remitted or a re-hearing and disposal in accordance with law by the second respondent in the light of the observations made above. The writ petitions are, accordingly, allowed. There shall be no order as to costs.

At the stage of admission, learned Government Pleader was directed to take notice. Accordingly, learned Government Advocate has entered appearance. As the appeal lies in a narrow compass, it is admitted and heard for final disposal.

2. The only contention urged before us is that when the State Government by G.O.Ms. No. 1396 Health and Family Welfare Department dated

6.7.1982 issued a notification under Ss.(4) of S. 6 of the Water (Prevention and Control of Pollution) Cess Act, 1977 specifying the Tamil Nadu

Prevention and Control of Water Pollution Board to collect the cess from the person and Local Authority liable to pay the same, as such it is not at

all open to the Pollution Board to demand cess under the aforesaid Act for the period prior to 6.7.1982, the date on which the Pollution Board

came to be authorised to collect the cess. Learned single judge has held that the fact that the Pollution Board has been specified to collect the cess

on a particular date, does not take away the right of that Authority to collect the cess from the date it became due, which may be even anterior to

the date of authorising the Pollution Board to collect the cess. In this regard, it is relevant to notice that the Water (Prevention and Control of

Pollution) Cess can be collected only if the Water (Prevention and Control of Pollution) Act, 1974, is applicable, which Act did not initially cover

the State of Tamil Nadu, because as per Ss. (2) of S. 1 of the Act, it was applied in the first instance to the whole of the States of Himachal

Pradesh and Tripura and the Union Territories; and it was further provided that it shall apply to such other State which adopts this Act by

resolution passed in that behalf under clause (1) of Art. 252 of the Constitution read with clause (1) of Art. 252 of the Constitution read with

clause (2) thereof. Accordingly, the Tamil Nadu State Legislature passed a resolution on 31.8.1981, adopting the Water (Prevention and Control

of Pollution) Cess Act, 1977, with effect from 1.9.1981. It is the established position of law that when once the liability is created under the statute, it becomes enforceable from the date it is created. Merely because the machinery for enforcement of the liability is created or specified or authorised subsequent to the date, the liability is created, the enforceability of such liability is not postponed to the date on which the Authority is specified to collect the cess. The delay in specifying or authorising the machinery to levy and collect the cess would only postpone the collection of the cess and would not wipe out the liability to pay the water cess, unless otherwise provided in the Act. Therefore, we are of the view that the demand notice issued to the appellant for payment of water cess for the period from 1.9.1981 to 26.2.1982 cannot be held to be without the authority of law. However, this shall not be construed as holding that the amount demanded is correct, as the matter has been remitted by the learned single judge. For this purpose this aspect has to be decided afresh. Our decision covers only the point that the liability to pay water cess for the period from 1.9.1981 to 26.2.1982 exists but the quantification has to be adjudicated. With these observations, the Writ Appeal is dismissed. There will be no order as to costs.