
(1973) 11 MAD CK 0020
In the Madras High Court

T. Velappan

APPELLANT

Vs

Superintendent of Central Excise and Another

RESPONDENT

Date of Decision : 15-11-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1974) 2 MLJ 6

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The petitioner in this writ petition is a partner of Messrs. Bharat Refineries and Oil Mills carrying on business at Erode in the manufacture and sale of groundnut oil and refined oil and he prays for the issue of a writ of certiorari to quash the notice of demand dated 7th June, 1971 demanding payment of Rs. 26,768-75 from the petitioner for the periods 1967-68 to August, 1970 under the provisions of the Produce Cess Act XV of 1966. 2. The Central Act XV of 1966 was enacted to provide for the imposition of cess on certain produce for the improvement and development of the methods of cultivation and marketing of such produce and for matters connected therewith, Sub-section (1) of Section 3 provides for levy and collection, as a cess a duty of customs at such rate not exceeding the rate specified in the corresponding entry in column 3 of the first schedule on every produce specified in column 2 of that schedule. Sub-section (2) of that section provides for levy and collection, as a cess, 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. Item 3 in the second schedule is, "oils extracted from oil seed crushed in any mill in India". The maximum rate at which duty of excise may be collected is one rupee per quintal of oil and the actual rate provided for in the second schedule is 60 paise per quintal of oil. Section 8 of the Act provides for every occupier of a mill furnishing to the Collector every month a return stating the total amount of produce specified in the second schedule consumed or brought under processing or extracted in the mill during the preceding month. Section 9 deals with

collection of cess leviable on produce specified in the second schedule. Sub-section (1) of this section provides that on receiving any return made u/s 8, the Collector shall assess the duty of excise payable on every produce specified in the second schedule, in respect of the period to which the return relates, and if the amount has not already been paid, shall cause a notice to be served upon the occupier of the mill requiring him to make payment of the amount assessed within ten days of the service of the notice. Sub-section (2) of this section deals with assessments to be made in a case where no return is furnished or the return furnished happens to be defective. That sub-section states:

9 (2). If the occupier of any mill fails to furnish in due time the return referred to in Section 8 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount payable by him in such manner, if any as may be prescribed, and the provisions of Sub-section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the occupier.

Provided that, in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the duty of excise at an amount higher than that at which it is assessable on the basis of the return without giving to the occupier a reasonable opportunity of proving the correctness and completeness of the return.

Section 10 deals with the finality of assessment after providing for appeal. Sub-section (1) of this section states:

10. (1) Any occupier of a mill who is aggrieved by an assessment made u/s 9 may, within three months of service of notice referred to in Sub-section (1) of that section, appeal to such authority as the Central Government may, by notification, in the Official Gazette, appoint in this behalf, for the cancellation or modification of the assessment and, on such appeal, the said authority may cancel or modify the assessment and order the refund to such occupier of the whole or part, as the case may be, of the amount paid thereunder:

Provided that the authority so appointed shall not be inferior in rank to the Collector by whom the assessment was made.

The Produce Cess Rules, 1969, have been made u/s 20 of the Act. Rule 5 of the Rules states:

The notice referred to in Sub-section (1) of Section 9 shall contain separately the total quantity of produce consumed or oils extracted, on the basis of which, the cess is leviable, the amount of cess assessed, the amount paid and the amount due and shall include a statement that in the event of the cess not being paid, action will be taken under the provisions of the Act.

According to Rule 6, "where the occupier of a mill has failed to furnish the return referred to in Sub-section (1) of Section 8 within the time specified in subsection (2) of that section, or has furnished within the specified period a return, which

the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount payable by the occupier on the basis of the monthly average amount of cess levied and collected from the said occupier in the twelve months immediately preceding the month to which the assessment relates."

2. In this case admittedly the petitioner did not submit any return except for five months, namely, April to August, 1970. However, the first respondent herein has demanded from the petitioner a sum of Rs. 26,768-75 by the impugned notice, said to be cess payable for the periods 1967-68, 1968-69 and 1969-70 and from April to August, 1970. On 26th August, 1970, summons was issued by the first respondent herein to the petitioner-mills calling upon the mills to produce (1) all registers and accounts showing the quantity of oil seeds crushed and oil produced in the petitioner's oil mills for the period from April, 1966 to August, 1970; and (2) all records showing payment of cess on oil by the petitioner's oil mills from April, 1966 to August, 1970. The petitioner-mills admittedly produced their accounts before the first respondent on 1st September, 1970 and promised to file returns. As I have pointed out already except for five months, no return for the earlier period were filed. It is under these circumstances by a communication, dated 9th September, 1970, the first respondent called upon the petitioner-mills to pay the amount mentioned above stating that the said amounts were arrived at on the basis of the particulars furnished by the petitioner-mills as per their records. This communication also pointed out that in future the returns and payment particulars should be filed in the first respondent's office every month before 7th of the month. Subsequently not having received any payment, the first respondent sent the impugned notice dated 7th June, 1971, calling upon the petitioner to pay the amount within ten days from the date of the receipt of the demand and warning the petitioner-mills that if they failed to pay the amount as directed, action to recover the amount would be taken against them u/s 12 of the Produce Cess Act, 1966. It is against this order that the present writ petition has been filed under Article 226 of the Constitution of India.

3. Mr. K. Srinivasan, learned Counsel for the petitioner, primarily contends that the mere sending of a demand notice is not enough and that there should have been an assessment as contemplated by the Act because only if there is an order of assessment, the petitioner will be able to file an appeal as provided for u/s 10 of the Act. In my opinion, the writ petition has to be allowed on a very narrow ground. I have already extracted Rule 5 of the Rules providing for the form of notice contemplated by Section 9 (1) of the Act which should be served on a person like the petitioner, after which alone, the petitioner could prefer an appeal. According to that rule, the notice should State separately the total quantity of produce consumed of oils extracted on the basis of which cess is leviable, the amount of cess assessed, the amount paid and the amount due. As I have pointed out already, the second schedule to the Act itself has prescribed the rate of cess and consequently the dispute, if at all, could relate only to the total quantity of produce consumed or oil extracted. Therefore, unless the notice

u/s 9(1) of the Act as prescribed by Rule 5 contains those particulars, the petitioner will not be in a position to challenge the correctness of the same, if he is so advised, by filing an appeal. In the present case, admittedly no notice in the form prescribed by Rule 5 has been issued to the petitioner herein and the only notice which has been sent to the petitioner is one containing the total amount referable to the different periods by way of cess said to be payable by the petitioner-mills. Consequently, the notice actually issued to the petitioner does not satisfy the requirement of Rule 5 and therefore cannot be sustained. On this short ground, the writ petition is allowed and the impugned demand notice issued by the first respondent is quashed. However, the allowing of this Writ Petition will not prevent the first respondent from proceeding afresh in accordance with law. There will be no order as to costs.