
(1995) 07 MAD CK 0065

In the Madras High Court

Case No : Writ Petition No. 2443 of 1981

Tata Oil Mills Co. Ltd.

APPELLANT

Vs

Superintendent of Central Excise

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Constitution of India, 1950 — Article 248
Produce Cess Act, 1966 — Section 13, 20, 3, 6, 7

Citation : (1996) 53 ECC 41 : (1995) 80 ELT 737

Hon'ble Judges : Srinivasan, J;A.R. Lakshmanan, J

Bench : Division Bench

Judgement

Lakshmanan, J.—The main prayer in the writ petition is for a declaration that the Copra Cess Act, 1979 (Central Act 4 of 1979)

(hereinafter referred to as the Act) is unconstitutional, illegal and inoperative and for other consequential relief.

2. The petitioner company manufactures soaps, vegetable products, etc., at Bombay and has branches in the States of Kerala, Maharashtra,

Madras, Uttar Pradesh, etc. The petitioner is a registered dealer both under the Central Sales Tax Act, 1956, as well as under the Tamil Nadu

General Sales Tax Act, 1959. Copra is purchased from the various growers and manufacturers in the open market, crushed into oil which oil is

consumed in the manufacture of its products. The copra purchased by the petitioner is subjected to purchase tax while the oil and oil cakes are

subjected to sale tax as and when they are sold. In addition to the above payment of sales tax, the petitioner was also paying a cess at the rate of

60 Paise per quintal for the copra crushed in the mill. The cess was levied under the Produce Cess Act, 1966 (Central Act 15 of 1966). Section

3(2) thereof provided for the levy and collection as cess a duty of excise as prescribed in the Scheme on copra consumed in any mill in India with a

view to producing or manufacturing any goods therefrom.

3. The Act was enacted for the imposition of a cess on copra for the development of the coconut industry and for matters connected therewith. It

came into force from 1-4-1979. Section 3 of the Act, which relates to the imposition of cess, runs as follows:

3. Imposition of cess. - (1) There shall be levied and collected as a cess, for the purposes of this Act, on copra consumed in any mill in India with

a view to producing or manufacturing any goods therefrom, a duty of excise at such rate, not exceeding five rupees per quintal of copra, 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 of sixty paise per

quintal of copra.

2. The duty of excise leviable under sub-section (1) shall be payable by the occupier of the mill in which the copra is consumed.

4. Section 6 of the Act provides for every occupier of a mill to furnish a return stating the total amount of copra consumed in the mill during the

preceding month. u/s 7 of the Act, the Collector before whom the return is made, shall assess the duty of excise in respect of the period to which

the return relates. Section 13 of the Act provides for the application of the Central Excises and Salt Act, 1944, and the Rules made thereunder

including those relating to refund and exemptions from duty in relation to the levy and collection of duty payable to the Central Government under

the provisions of the Act. Section 20 of the Act omitted the word "copra" from the Produce Cess Act, 1966, so that the excise duty on copra was

leviable only under the Act with effect from 1-4-1979 from which date the said Act was brought into force under Notification No. GST 269/E

dated 27-3-1979 issued by the Central Government. Another Notification viz., Notification No. GST 270/E also dated 27-3-1979 as

contemplated in Section 3(1) of the Act was issued fixing the rate of excise duty at Rs. 5/- per quintal. For the purpose of easy reference, the said

Notifications are extracted below:

Ministry of Agriculture and Irrigation

Department of Agriculture

New Delhi, the 27th March, 1979.

NOTIFICATION

G.S.R. 269/E: In exercise of the powers conferred by sub-section (3) of the section 1 of the Copra Cess Act, 1979 (4 of 1979) the Central

Government hereby appoints the first day of April, 1979 as the date on which the said Act shall come into force.

G.S.R. 270(E): In exercise of the powers conferred by sub-section (1) of section 3 of the Copra Cess Act, 1979 (4 of 1979) the Central

Government hereby specifies rupees five per quintal as the duty of excise to be levied and collected as a cess on copra consumed in any mill in

India with a view to producing or manufacturing any goods therefrom.

The Notification shall come into force on the first day of April, 1979.

5. Consequently, the petitioner was obliged to pay with effect from 1-4-1979, an excise duty under the Act a sum of Rs. 5/- per quintal, which

was being paid by it under the Produce Cess Act, 1966. According to the petitioner, the Act is illegal, ultra vires and beyond the competence of

Parliament and also unconstitutional and therefore liable to be struck down.

6. Mr. S. V. Subramaniam, learned counsel for the petitioner, alleged that the Act under which the petitioner is required to pay duty of excise on

the copra consumed in their mill, is ultra vires and beyond the legislative competence. Such a cess according to the learned counsel, is a tax on

consumption and not a duty falling under Entry 84 of List I of the 7th Schedule of the Constitution. He further contends that Section 3(1) of the Act

provides for levy and collection as cess on copra consumed in any mill in India with a view to producing or manufacturing any goods therefrom, a

duty of excise at the rate prescribed, and that though the levy is stated to be a cess, it is in effect, a duty of excise. According to the learned

Counsel for the petitioner, the petitioner does not manufacture copra but only purchases copra and consumes the same and as such, levy of excise

duty u/s 3 of the Act on the copra consumed by the petitioner in its mills, is without any legislative competence because excise duty is a levy on

manufacture or production.

7. Mr. S. V. Subramaniam then contended that Entry 84 of List I of the 7th

Schedule to the Constitution provides for the levy of a duty of excise and that the same has been enacted by virtue of the power under the above entry. According to the learned counsel, the object of this levy is for the purpose of benefiting the Coconut Development Board Act, 1979 (Central Act 5 of 1979) and therefore, the levy under the Act insofar as it does not benefit the Government as in the case of other levies, does not fall within the scope of Entry 84 of List I of the 7th Schedule and hence without any legislative competence. He further submitted that Entry 52 of List II of the Seventh Schedule to the Constitution provides for levy of tax on entry of goods into a local area for consumption, use or sale therein. According to the learned counsel, tax on consumption can be levied only by the State Government under the above entry and inasmuch as the levy u/s 3(1) of the Act is on the consumption of copra and not on its manufacture, it is only the State Legislature, if at all, that can validly enact any such enactment which provides for the levy of a tax, on consumption and hence the Parliament has no power to enact the impugned Act. Consequently, the Act itself is beyond the legislative competence of the Parliament.

8. Learned counsel for the petitioner invited our attention to the various entries in List I of the Seventh Schedule such as entries 82, 86, 87, 88 etc., and entries 14, 46, 47, 48 etc. in List II of the Seventh Schedule. By inviting our attention to those entries, the learned counsel contended that the above entries clearly show and indicate that the Constitution has reserved the power to legislate in respect of all matters connected with agriculture such as agricultural land, agricultural produce, agricultural income etc., to the State Legislature and the Parliament does not have the necessary power to legislate in respect of matters connected with agriculture. In such circumstances, as Copra is admittedly an agricultural produce, Mr. S.

V. Subramaniam, would submit that the Parliament does not have the necessary competence to legislate in respect of the same and that it is only the State Legislature that has the power to legislate in respect of copra. Though several contentions as above were taken in different form by the learned counsel for the petitioner, in essence, they pertain only to the legislative competence of the Parliament.

9. Contesting respondents 1 and 2 filed a counter affidavit signed by the Deputy

Collector (Legal) in the Office of the Collector of Central Excise, Madras. It is submitted on their behalf that the Act is constitutionally valid and that none of the grounds put forward in the writ petition against the validity of the Act is sustainable in law. Learned counsel for the respondents has answered the contentions raised by the learned counsel for the petitioner which we will deal with later.

10. According to the learned counsel for the respondents, Entry 84 of List I of the Seventh Schedule, do not restrict the competency of the

Parliament to impose duty only on the goods produced or manufactured in India. According to him, this Entry 84 in List I of the Seventh Schedule

cannot be narrowly construed and that a legislative entry in a Constitution should be read in a broad sense unless there is any other entry in the

Union or State List to limit. The tax in question, the Cess levied on the consumption of copra under the Act is only a tax and collected as duty of

excise and that the words used in Section 3 of the Act clearly show that only a cess is being levied and collected as duty of excise. Our attention

was also drawn to the Division Bench decision of the Kerala High Court reported in Chirukandan v. Superintendent, Central Excise 1983 KLT

792 DB, which dismissed a batch of writ petitions upholding the constitutional validity of the Act.

11. The Chairman of the Coconut Development Board filed a separate counter affidavit opposing the case of the petitioner and supporting the contentions of respondents 1 and 2.

12. We have already extracted Section 3 of the Act. The said section imposes a cess, which is described as a duty of excise. The point at issue is,

whether the cess is imposed u/s 3 of the Act on Copra or whether it is on the manufacture of any commodity therefrom. As early as in 1944, the

Government of India considered that the supply of coconut and coconut products from indigenous sources was insufficient to meet India's growing

requirements and that a large balance has to be imported. Since the problem was aggravated, the Government considered that both war time and

long term aspects of the problem can be best served by the establishment of an All India organisation. Accordingly, the Indian Central Coconut

Committee was established by the India Coconut Committee Act, 1944. Section 3 of that Act imposed a cess in the following words:

(1) There shall be levied and collected, as a cess for the purposes of this Act, on all copra consumed in any mill in India whether produced in or

imported from outside (India) a duty of excise at such rate, not exceeding four annas per cut, as the Central Government may, after consulting the

Committee by Notification in the Official Gazette, fix in this behalf.

(2) On the last day of each month, or as soon thereafter as may be convenient, the proceeds of the duty recovered during that month shall after

deduction of the expenses, if any, of collection and recovery, be paid to the Committee, and the Committee shall credit the

said Proceeds and any other monies, received by it to a fund called the Coconut Improvement Fund.

The impost was on copra consumed in any mill in India. The emphasis was on consumption in a mill within the country. The other sections in that

Act made elaborate provision for the collection of the cess imposed by Section 3 of the Act, for the establishment of an Indian Coconut

Committee and for other allied matters. An excise duty by way of cess on copra was thus being collected from 1944 onwards. The Indian Central

Cotton Committee, the Indian Lac Cess Committee, Indian Central Coconut Committee and the Indian Central Oil Seeds Committee stood

dissolved with effect from 1-4-1966 and therefore, the continuance of levy of cess on these products after 31-3-1966 was not legally possible.

The Produce Cess Act, 1966, was accordingly passed to provide for the imposition of cess on certain produces including copra for the

improvement and development of the methods of cultivation and marketing such produces and for such matters connected therewith. Section 3 of

the Produce Cess Act, 1966, was in the following terms:

3. Imposition of cess -

(1) There shall be levied and collected as a cess, for the purpose of this Act, on every produce specified in Column 2 of the First Schedule which

is exported from any customs port to any port beyond the limits of India, a duty of customs 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 Customs shall be levied and collected at the rate specified in the

corresponding entry in Column 4 of the said Schedule.

(2) There shall be levied and collected as a cess, for the purposes of this 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.

13. Item 2 in the Second Schedule to that Act is copra consumed in any mill in India with a view to producing or manufacturing any goods

therefrom. The Act permitted collection of cess at the maximum rate of 75 Paise per quintal of copra. However, the Act further provided that cess

at 60 paise per quintal is to be collected until a different rate is notified by the Central Government, which was given power to modify the rate at

which the cess was to be collected by making appropriate notification in the Official Gazette. It is significant that in both 1944 Act and 1966 Act,

reference was made to copra consumed in a mill in India and that the consumption had to be with a view to producing or manufacturing any goods.

In other words, in all the enactments of the years 1944, 1966 and the present Act of 1979, the Legislature intended to levy and collect as cess a

duty of excise in relation to copra consumed in a mill for the purpose of producing or manufacturing goods therefrom.

14. In 1979, The Union of India decided to take control on the coconut industry and accordingly, Coconut Development Board was proposed to

be established and with the said object in view, the Coconut Development Board Act, 1979 (Act 5 of 1979) was intended to be passed, which

contains elaborate provisions regarding the establishment and functions of the Coconut Development Board and for allied matters. It was also

considered necessary to provide for the imposition of a cess for the development of the coconut industry and for matters connected therewith. The

cess proposed was to be credited in the first instance to the consolidated fund of India and such amount as was to be allocated to the Board.

Therefore, the Government of India decided to repeal the provisions of the Produce Cess Act to the extent to which they authorise a levy of cess

on copra consumed in mills for the manufacture of other articles and to simultaneously pass a comprehensive legislation authorising for the imposition of a separate cess on copra. The Act came into effect from 1-4-1979 and as per Section 3, levy was made with effect from 1-4-1979.

15. In our opinion, the taxable event contemplated by the legislation in the manufacture of any goods by the consumption of copra in any mill in

India. The petitioner, in our view, has erroneously assumed that the taxable event is the purchase of copra. As rightly contended by the learned

counsel for the contesting respondents the quantification of the tax has been made with reference to the quantity of copra which is consumed in the

manufacturing process but the excise duty is not imposed on copra or on the purchase of copra. It is difficult for us to accept the contention of the

learned counsel for the petitioner that the Central Government has no legislative competence to levy such a tax. The Central Government has the

legislative competence by virtue of Entry 84 of List I of the 7th Schedule of the Constitution of India or in the alternative Entry 97 of List I read

with Article 248. We are of the view, that the basic character of the tax as a duty of excise on the manufacture of goods from copra is not lost

merely because the tax is to be levied with reference to the quantity of copra which is consumed in the manufacturing process.

16. We have already seen the charging provision in three enactments. The charging provision in the present Act is in identical terms with the

charging provision in the Produce Cess Act, 1966, and the charging provision in the Coconut Committee Act, 1944. We are unable to appreciate

the contention of Mr. S. V. Subramaniam, that the words "duty of excise" means duty on manufacture or production and not on consumption. The

words "duty of excise" are very wide in amplitude and cover all aspects of activities like production, consumption, etc. Hence, the contention of

the petitioner that excise duty can be imposed only on production cannot be accepted.

17. The further contention of the learned counsel for the petitioner that the levy of cess as duty of excise is not justifiable under Item No. 84 of List

[I] of the Seventh Schedule cannot also be accepted since cess is being levied as tax on the copra consumed only under the Act as stated earlier.

Our attention was drawn to a decision of the Kerala High Court reported in 1969 Kerala Law Reporter, page 503, Wherein it has been held that

the cess levied under the Produce Cess Act, the earlier Act to Copra Cess Act, 1979, is only a tax and not fee and hence falls under Item No. 84

of List I of the Seventh Schedule. It has also been held therein that the tax collected as cess does not alter its nature and that the nomenclature

"cess" is certainly not decisive of the character of the levy. In our opinion, Section 3 of the Act is clear that duty of excise is to be levied and

collected for the purposes mentioned in the Act. Being a tax by way of excise duty, the legislation in our opinion, is clearly within Entry 84 of List I

of the Seventh Schedule and therefore, within the legislative field of Parliament.

18. The next contention of the learned counsel for the petitioner is that Entry 52 of List II of the Seventh Schedule provides for taxes on the entry

of goods into a Local area for consumption, use or sale therein, and as such tax can be levied only by the State Government under the above entry.

This is not correct. It mainly provides for levying the local taxes like octroi, toll and sales tax and according to this entry, the levy and collection is

being made at the entry point and not at the consumption point as contended by the petitioner. Hence, in our view, the petitioner's contention is

incorrect.

19. As pointed out by the learned Addl. Central Govt. Standing Counsel, the amount collected as cess is credited first to the consolidated fund of

India, from which it is allocated to the Coconut Development Board as and when it requires such allocation. When the Parliament has authority to

collect cess, it has inherent power to distribute the amount so collected within the ambit of the Act and for the purpose for which cess is collected.

It is nowhere stated in the Act that the excess amount in the consolidated fund will be utilised for any other purpose. We, therefore, reject this

contention of the petitioner as well.

20. The Kerala High Court in *Chirukandan v. Superintendent, Central Excise* 1983 KLT 792 DB has dismissed a batch of writ petitions urging the

same grounds and the constitutional validity of the Central Act 4 of 1979 was upheld by the Division Bench of the Kerala High Court in the above

judgment. We are in entire agreement with the opinion expressed by the Division Bench of the Kerala High Court and the reasons offered

therefore upholding the validity of the enactment.

21. We can usefully refer to a recent decision of the Supreme Court reported in

M/s. B.K. Industries and others, Vs. Union of India and others,

which also held that the cess imposed u/s 3(1) of the Cess Act is a duty of excise as stated in Section 3 itself. The above was a case which deals with the levy of cess which is not a duty of excise levied u/s 3 of the Cess Act, which was intended to serve the purposes of the Board Act. The said cess was accordingly levied and collected on and from 1983. The Cess Act was, however, repealed by Section 12 of the Cotton, Copra and Vegetable Oils Cess (Abolition) Act 1987 (Act 4 of 1987). Section 12 is the repealing section. Section 13 provided for collection of arrears of duty of excise levied under any of the Acts immediately before the commencement of the Cess Act. This section provides that cess is liable to be collected after such commencement in accordance with the provides of the Act for being paid into the consolidated fund of India as if the repealed Act had not been enacted if the cess has not been collected before the commencement. The contention of the appellant before the Supreme Court was that they are not liable to pay with effect from 31-3-1987. It was contended before the Supreme Court that in the budget speech of the Finance Minister delivered on the floor of the Lok Sabha on 28-2-1986, he said that the cesses levied as excise duties contribute to the multiplicity of taxes and as an endeavour to reduce the number of these cesses, it has been decided to dispense with the cess on cotton, copra and vegetable oils. Therefore, the said speech of the Finance Minister in the Lok Sabha constitutes an enforceable and effective decision upon which the parties were entitled to act and that it is not open to the Government to go back upon the said decision and demand cess for the period subsequent to 1-3-1986. It is also contended that by virtue of Section 3(4) of the Cess Act, Rule 8 of the Central Excise Rules is attracted among other provisions of the Central Excise Act and Rules and that Rule 8 empowers the Central Government to grant exemption on any excisable goods from the whole or any part of duty leviable on such goods. The Supreme Court rejected both the contentions and held that the repealing Act expressly provided in Section 13 that the cess due before the date of the said repeal but not collected shall be collected according to law as if the Cess Act is not repealed, which provision amounts to a positive affirmation of the intention of the parliament to keep such imposition alive and effective till the date

of the repeal of the Cess Act. The Supreme Court further held that the Finance Minister's speech in the Parliament is not law and that the

Parliament may or may not accept his proposal.

22. Coming to the argument based upon Rules 8 of the Central Excise Rules, read with Section 3(4) of the Cess Act, the Supreme Court said that

the contention put forward by the appellants was totally unacceptable. It is useful to reproduce paragraph 10 of the Judgment which runs thus:

Now coming to the argument based upon Rule 8 of the Central Excise Rules read with Section 3(4) of the Cess Act, we find it totally

unacceptable. No notification has been issued under Rule 8(1) by the Central Government much less was any such notification published in the

Gazette. No special order has also been made by the Central Board of Excise and Customs in this behalf under Rule 8(2). The cess imposed u/s

3(1) of the Cess Act, it may be remembered, is a duty of Excise as stated in Section 3 itself. Therefore, the Central Board of Excise and Customs

was perhaps competent to grant exemption even in the case of said cess though we do not wish to express any definite opinion on this question

since it was not debate at the Bar. Suffice it to say that the Central Government cannot again be brought in under sub-rule (2) of Rule 8 in the place

of Central Board nor can the Directorate of Vanaspathi and Vegetable Oils be equated to Central Board of Excise and Customs. The words "so

far as may be" occurring in Section 3(4) of the Cess Act cannot be stretched to that extent. Above all, it is extremely doubtful whether the power

of exemption conferred by Rule 8 can be carried to the extent of nullifying the very Act itself. It would be difficult to agree that by virtue of the

power of exemption, the very levy created by Section 3(1) can be dispensed with. Doing so would amount to nullifying the Cess Act itself. Nothing

remains thereafter to be done under the Cess Act. Even the language of Rule 8 does not warrant such extensive power. Rule 8 contemplates

merely exempting of certain excisable goods from the whole or any part of the duty leviable on such goods

23. It is thus seen from the observations of the Supreme Court that the cess imposed u/s 3(1) of the Cess Act is a duty of excise as stated in

Section 3 itself. None of the grounds put forward in the writ petition and urged by the learned counsel for the petitioner challenging the

constitutional validity of the Act is maintainable in law.

24. For the foregoing reasons, we dismiss the writ petition. However, there will be no order as to costs.