The State of West Bengal

Vs

The Indian Iron and Steel Co. Ltd.

Civil Appeal No. 1729 of 1966

(J. C. Shah, K. S. Hegde JJ)

16.04.1970

JUDGMENT

HEGDE, J. -

1. Two questions of law viz., (1) whether the levies impugned in the suit from which this appeal arises, are invalid and (2) whether the Civil Courts have jurisdiction to entrain that suit, arise for decision in this appeal by certificate.

2. The respondent company is the owner of Ramnagar colliery. It is also the owner of iron and steel factories and workshops at Hirapur and Kulti. Ramnagar colliery is a "coal mine". The coal raised from the Ramnagar colliery is by and large used in the manufacturing processes carried on in the iron and steel factories and workshops at Hirapur and Kulti. Some coal was also sold by the respondent company to outsiders. In the year 1946-47, 1947-48 and 1948-49, the respondent company lodged a return before the Collector of Burdwan under Section 72 of the Bengal Cess Act of 1880 (to be hereinafter referred to as the Act). Therein the company valued the coal supplied by the colliery to the factories mentioned earlier at Rs. 6/11/5 per ton, a sum less than the actual cost of raising the coal and computed the profits of the colliery on that basis. The company adopted the same basis for the purpose of paying education cess under Section 31 of the Bengal Primary Education Act, 1930. The provisions of the said Act in the matter of levy of education cess are similar to that of the Act. The Cess Deputy Collector who was the assessing authority under the Act as well as the Collector of Burdwan, the assessing authority under the Bengal Primary Education Act, rejected the returns submitted by the respondent company and computed the profits of the colliery, valuing the coal supplied by it to the factories mentioned at Rs. 12/8/-per ton, which was the control rate at the relevant time. On that basis the Cess Deputy Collector called upon the respondent company to pay Rs. 30,852/5/- as road cess and public works cess for the years 1946-47, 1947-48 and 1948-49. The Collector of Burdwan computed the education cess payable by the company for the years 1946-47 and 1947-48 at Rs. 21,661/90 P. and called upon the company to pay the same. The respondent company paid the said amounts under protest. Thereafter it instituted the present suit for refund of Rs. 44,428/4/3, which according to it was the excess amount collected from it. It also prayed for a declaration that it earned no profits from the Ramnagar colliery during the years 1946-47, 1947-48 and 1948-49, from the coal consumed in its own workshops and factories and as such no road or public works cess or education cess in respect of the same could have been assessed and levied on its and that the impugned levies were ultra vires.

3. The Trial Court decreed the suit as prayed for. The appellant took up the matter in appeal to the High Court of Calcutta. The High Court dismissed the appeal by its judgment dated April 17, 1962.

4. In order to decide the points in controversy, it is necessary to read the relevant provisions of the Act. It is not necessary to refer to the provisions of the Bengal Primary Education Act separately as the provisions therein, relevant to the topics under the discussion being similar to those in the Act. The preamble to the Act says that it is a law relating to rating for the construction, charges, and of Provincial Public Works within the territories administered by the Lt. Governor of Bengal and to the levy of a road cess and a public works cess on immovable property situate therein and to the construction of local also to provide for the construction and maintenance of other works of public utility out of the proceeds of the said road cess. It was not disputed that the validity of education cess depends on our findings as regards the validity of public works cess and road cess. Section 5 of the Act which is the charging section read at the relevant time :

> "From and after the commencement of this Act in any district or any part of a district, all immovable property situate therein, except as otherwise in Section 2 provided, shall be liable to the payment of a road cess and a public works cess."

Section 6 at the relevant time provided :

> "The road cess and the public works cess shall be assessed on the annual value of lands and until provision to the contrary is made by the Parliament, on the annual net profits from mines, quarries, tramways, railways and other immovable property ascertained respectively as this Act prescribed."

5. That section further provides that the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner prescribed in the Act. Part II of the Act sets out the mode of assessment. Chapter II laid down the procedure for the valuation of lands. Chapter III provides for rating and levy of cesses. Chapter IV prescribes the mode of valuation and assessment of lands held rent free and payment and recovery of cesses in respect thereof. Chapter V deals with valuation assessment and very of cess on mines, railways and other immovable property. This chapter contains Sections 72 to 84. Section 72 at the relevant time read :

> "On the commencement of this Act in any district and thereafter before the close of each year, the Collector of the district shall cause a notice to be served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway and other immovable property not included within the provisions of Chapter II; such notice shall be in the form in Schedule E contained and shall require such owner, chief agent, manager or occupier to lodge in the office of such Collector within two months a return of the net annual profits of such property calculated on the average of the annual net profits thereof for the last three years for which accounts have been made up.
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> Such Collector may in his discretion extend the time allowed for lodging such return."

6. Section 72-A prescribes the penalty for omitting to lodge a return. Section 73 prescribes the manner of submitting the return when the property lies in different districts. Section 74 provides for the submissions of the return when property is partly in and partly outside the State. Section 75 is important for our present purpose. That section at the relevant time read :

> "If such return be not furnished within the period of two months from the date on

> which such notice was served or within any extended time allowed by the Collector shall deem that any return made in pursuance of such notice is untrue or incorrect, such Collector shall proceed to ascertain and determine by such ways or means as to him shall seem expedient, the annual net profits of such property calculated as aforesaid."

Section 76 as it stood at the relevant time provided that if the Collector is unable to ascertain the annual net profits of any property assessable under Chapter V in accordance with the provisions of Section 75, he may, by such ways and means as shall seem to him expedient ascertain and determine the value of such property and shall thereupon determine six per centum on such value to be the annual net profits thereon. Section 78 provides for the issue of a notice of valuation to the person concerned. The other provisions in that Chapter are not relevant for our present purpose. Now we come to Section 102 in Chapter VII. That section reads :

> "Every person who shall deem himself to be aggrieved by any valuation made by a Collector under the provisions of Section 75 or 76 may within one month after the issue of the notice mentioned in Section 78 and every person who shall deem himself to be aggrieved by any valuation made by the Collector under the provisions of any other section of this Part may within one month after the posting up of a copy of the valuation roll as mentioned in Section 35, prefer his objections to the Collector; and if such objections, or any of them, are disallowed, may within one month of such disallowance, appeal to the Commissioner against such valuation, and the decision of the Commissioner shall be final."

7. Before proceeding to discuss the questions of law arising in the appeal, it is necessary to mention that the respondent company had unsuccessfully appealed against the cesses imposed on it.

8. It was urged on behalf of the respondent that supply of coal made by Ramnagar colliery to the factories and workshops cannot be considered as a sale and without a sale, there can be no profit; and hence in computing the profits of the colliery the value of the coal supplied to the factories and workshops mentioned earlier should not have been taken into consideration. This contention has to be rejected in view of the decision of this Court is Tata Iron and Steel Co. Ltd. v. The State of Bihar. The ratio of that decision directly bears on the point under consideration. It may be noted that the appellant therein as well as the respondent in this appeal are both Tata concerns. In that case the appellant company was the owner of certain mines in Bihar from where it extracted iron ore which it utilized in its factory at Jamshedpur for making iron and steel. Under Sections 5 and 6 of the Act as amended in Bihar all immovable property situate in any part of the State of Bihar was liable to the payment of local cess which in the case of mines was to be assessed on the annual profit earned by them. For the assessment year 1954-56, the company was assessed by the Cess Deputy Collector on the basis that it had made profits of Rs. 4/7/- per ton of iron ore extracted. Tata Iron and Steel Co. Ltd., claimed that it was not liable to the payment of cess as it did not sell any ore as such and could not therefore be treated as having made 'any profit' from the mines within the meaning of Section 6 of the Act. The question in that case was whether the appellant company extracted was not sold by it as such but was utilised by it for the purpose of manufacturing finished products which it sold. This Court ruled in that appeal that on a true construction of Sections 6 and 72 of the Act as amended in Bihar - which amendments are not material for the decision of this case - where activities other than mere winning the ore are carried on by an assessee with a view to convert the ore into a finished product and there is a transaction of sale of the ultimate product, the profit derived form the working of the mine is imbedded in the final realisation, and the profit which

accuses to the assessee from the mining operation can be disintegrated from the total profit and ascertained and cess levied thereon. Mr. Chagla, learned Counsel for the assessee tried to distinguish that decision on the ground that in Tata Iron and Steel Case, the iron ore won became imbedded in the steel produced but that is not the position in the present case as no part of the coal raised got imbedded in the ultimate product namely the steel. This difference in fact has no bearing on the ratio of the decision. The rule laid down in Tata Iron and Steel Case is that where the profit derived from the working of a mine is imbedded in the profits earned by the sale of the ultimate product, it is open for the assessing authority to disintegrate that profit and to find out the profit earned by the mine. The fact that in the one case the winning was that of the iron and in the other it is coal makes no difference in principle. In that case this Court ruled that the winning of the ore and converting it into a finished product could not be construed as two transactions conducted by them but it should be viewed as a single integrated undertaking for the production of steel and steel products. Similar is the position in the present case. Hence we hold that it was open to the assessing authority to take into consideration the value of the coal supplied to the factories and workshops referred to earlier in computing the profits of the colliery.

9. Mr. Chagla next assailed the cesses imposed on another ground. He contended that in view of the decision of this Court in Tata Iron and Steel Company's case it was not open to the assessing authority to value the coal supplied to the factories and workshops at the controlled rate; he should have, as suggested in that decision disintegrated the ultimate profits earned and found out the profit earned by the mine. We are of the opinion that it is impermissible for us to go into that question in these proceedings. The liability to pay tax is one thing and mode of computation of the net profits is another. The mode of computation is a matter for the assessing authorities except whether the computation is done in violation of any provision of law. If there was any mistake in the computation, that mistake should have been got rectified by following the procedure prescribed in the Act. If the respondent company was aggrieved by the mode of computation adopted by the assessing authority, it should have agitated that question firstly before that authority and thereafter before the appellate authority. Having not done so, the company cannot be permitted to raise that question in the present suit; otherwise the finality contemplated by Section 102 of the Act would become illusory. It is true, as observed by Lord Thankerton in Collector of South Arcot v. Mask and Co., (67 IA 222) that it is settled law that the exclusion of jurisdiction of a Civil Court is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled as observed by His Lordship that even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In the present case what is contended is not that any provision in the Act had been ignored by the assessing authority but that Section 72 thereof has not been properly interpreted by that authority. If the provisions of the Act form a precise, self-contained code, as we hold them to be, the assessee cannot be permitted to challenge the levy on the ground that the levy imposed on him is excessive. It must be remembered that the levy under the Act is imposed by a special law which law also provides its own remedies for correcting the error that may be committed by the assessing authority. Where a liability not existing previously is created by a statute which statute at the same time provides a special or particular remedy for correcting any mistake that may occur in its enforcement the aggrieved party must adopt the form of remedy given by the statute and no other. In Dhulabhai and Others v. The State of Madhya Pradesh and Another, ((1968) 3 SCR 662) our present Chief Justice speaking for the Court has formulated the circumstances under which the jurisdiction of the Civil Court can be invoked in the matter of a levy of tax. Therein this Court has laid down that where the statute gives a finality to the orders of the special tribunals, the Civil

Courts' jurisdiction must be held to be excluded, if there is adequate remedy to do what the Civil Court would normally do in a suit. It is further laid down in that case that question of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authority are declared final or there is an express prohibition under the particular Act. We do not think that the Civil Courts have jurisdiction to examine the correctness of the computation of the net profits made by the authorities under the Act.

10. For the reasons mentioned above, this appeal is allowed and the suit brought by the respondent company dismissed with costs throughout.

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