Bhopal Sugar Industries Ltd.

Vs

State of Madhya Pradesh and Others

Civil Appeal No. 1293 of 1969

(P. N. Shinghal, D. A. Desai JJ)

05.12.1978

JUDGMENT

SHINGHAL J.

1. This appeal by a certificate issued by the Madhya Pradesh High Court is directed against it judgment dated April 25, 1968.

2. The appellant is a company which cultivates sugarcane and manufactures sugar in its factory in Sehore, Madhya Pradesh, by crushing the sugarcane cultivated by it and purchased from other cultivators. The State Legislature enacted the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958, hereinafter referred to as the State Act, which came into force on July 1, 1959. The State Government issued a notification on November 28, 1959, which appeared in the State Gazette dated December 4, 1959, under Section 23 of the State Act imposing a cess of 12 paise per maund on the entry of sugarcane during a crushing season in the area comprised within "such of the factories in which the total quantity of cane entering for consumption, use or sale to the factory during such season exceeded 10 lakh maunds". The appellants challenged the validity of the imposition, and the High Court, on August 31, 1961, held that the notification was illegal as the imposition of the levy was with reference to particular premises. A similar view was taken in regard to the Acts in some other States and Parliament thereupon enacted the Sugarcane Cess (Validation) Act, 1961, hereinafter referred to as the Validation Act, which came into force on December 26, 1961. Section 3 of the Validation Act was taken to validate the imposition and collection of the cess under the State Act. The Manager of the appellant company received an intimation from the Additional Collector of Sehore dated April 13/15, 1964, stating that a sum of Rs. 5,49,262.92 was due from it on account of cess for the period "1959-60 to December 25, 1961" and asking for a bank guarantee for payment of the balance. The appellant wrote back saying that the amount of the cane cess worked out to Rs. 5,44,835.68 and not Rs. 5,49,262.92, and that as the Collector had not assessed the amount of the cess in accordance with the rules, it was not payable by the appellant. As the Collector ignored the objection of the appellant, a demand notice was served upon it under Section 146 of the Madhya Pradesh Land Revenue Code, 1959, asking it to deposit Rs. 5,49,262.92 by August 1, 1964. Once again the appellant denied its liability, but as that was not acceptable to the Collector, the appellant filed a writ petition in the High Court stating that the Collector's demand on account of the cess was illegal as the Validation Act was ultra vires the Constitution.

3. The State of Madhya Pradesh traversed the claim in the writ petition. The High Court upheld the imposition of the cess but reduced it to Rs. 5,44,835.69, by its impugned judgment dated May 25, 1968, and that is why the Company has come up in appeal to this Court.

4. It has been argued by Mr. Desai on behalf of the appellant that Section 23 of the State Act was not ultra vires the Constitution and there could be no question of validating a valid Act. According to him, the State Act fell within the scope of Entry 52 of List II of the Seventh Schedule of the Constitution and was valid, and Parliament could not legislate in respect of that occupied field and pass the Validation Act. These arguments have been based on the main contention that the expression "an area" in sub-section (1) of Section 23 of the State Act really means "a local area" within the meaning of the aforesaid Entry 52 and no other area.

5. Sub-section (1) of Section 23 of the State Act reads as follows :

> 23. Levy of cess on cane. - (1) The State Government may, by notification, impose a cess not exceeding 25 paise a maund, on the entry of cane into an area, specified in such notification, for consumption, use or sale therein.
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> There are two provisos to the sub-section, but they are not relevant for the purpose of the controversy before us. It would appear from the sub-section that it permits the State Government to impose the cess on the entry of sugarcane into any area that may be specified in its notification, and there is nothing in it to confine the imposition to a "local area". As has been held by this Court in Diamond Sugar Mills Ltd. v. State of U. P. ((1961) 3 SCR 242 : AIR 1961 SC 652) when a similar point arose for consideration with the U.P. Sugarcane Cess Act, 1956, the proper meaning to be attached to the words "local area" in Entry 52 List II of the Seventh Schedule of the Constitution, (when the area is a part of the State imposing the law) is an area administered by a local body like a municipality, a district board, a local board, a union board, a panchayat or the like". It has been clearly laid down that the premises of a factory are therefore not a "local area". This court accordingly struck down Section 3 of the U.P. Act empowering the Governor to impose a cess on the entry of sugarcane into the premises of the factory on the ground that it did not fall within Entry 52 of the State List and there was no other Entry in the State List or the Concurrent List in which the Act could fall. It is therefore futile for the appellant to contend that Section 23 of the State Act was not ultra vires the Constitution or that it can be upheld on such a construction of the words "an area" in Section 23 as to restrict it to mean a "local area".

6. The decision in Diamond Sugar Mills case came up for consideration in this court in Jaora Sugar Mills (P) Ltd. v. State of Madhya Pradesh ((1966) 1 SCR 523 : AIR 1966 SC 416) with a specific reference to the provisions of the State Act, and it was once again held, following that decision, that the imposition of the cess was outside the legislative competence of the State. While examining that aspect of the controversy, this Court made it clear that what Parliament had done by enacting Section 3 of the Validation Act was not to validate the invalid State statutes, but to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation retrospectively. This Court clarified that by virtue of Section 3 of the Validation Act, the command under which the cess would be deemed to have been recovered would be the command of the Parliament, because the relevant sections, notifications, orders, and rules had been adopted by the Parliamentary statute itself.

7. It will thus appear that the argument of Mr. Desai to the contrary is of no consequence.

8. The other argument of Mr. Desai that the writ of mandamus issued by the High Court on August

31, 1961, quashing the notification dated November 28, 1959, could not be made, and was not in fact made, ineffective by the Validation Act, is also of no consequence. Section 3 of the Validation Act makes this quite clear for it provides as follows :

> 3. Validation of imposition ad collection of cesses under State Acts. - (1) Notwithstanding any judgment, decree or order of any court, all cesses imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before the commencement of this Act shall be deemed to have been validly imposed, assessed or collected in accordance with law as if the provisions of the State Acts and of all notifications, orders and rules issued or made thereunder, insofar as such provisions relate to the imposition, assessment, collection of such cess had been included in and formed part of this section and this section had been in force at all material times when such cess was imposed, assessed or collected; and accordingly -
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> (a) no suit or other proceedings shall be maintained or continued in any Court for the refund of any cess paid under any State Act;
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> (b) no Court shall enforce a decree or order directing the refund of any cess paid under any State Act; and
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> (c) any cess imposed or assessed under any State Act before the commencement of this Act but not collected before such commencement may be recovered (after assessment of the cess, where necessary) in the manner provided under that Act.
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> (2) For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person -
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> (a) from questioning in accordance with the provisions of any State Act and rules made thereunder the assessment of any cess for any period; or
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> (b) from claiming refund of any cess paid by him in excess of the amount due from him under any State Act and the rules made thereunder.
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> The section thus specifically validates the notification in question in regard, inter alia, to the imposition of the cess. The mandamus which was issued by the High Court on August 31, 1961, could not therefore avail the appellant thereafter.

9. It has lastly been argued by Mr. Desai that when a law provides for the assessment of a cess or tax, it is necessary that it should be done by a specific order to that effect, and that an order of assessment cannot be presumed when it has not really been made. It has therefore been argued that as an order of assessment was not made in the present case, it could not be presumed or deemed to have been made simply because a demand was raised for the purpose of effecting the recovery of the cess from the appellant.

10. The charging provision for the levy of the cess is to be found in Section 23 of the State Act, to which we shall continue to refer for the sake of convenience even after the passing of the Validation Act. Sub-section (2) of that section provides that the State Government shall make rules specifying the authority empowered to assess and collect the cess and the manner in which it shall be collected. The Madhya Pradesh Government accordingly made the Madhya Pradesh Sugarcane (Regulation of

Supply and Purchase) Rules, 1959, hereinafter referred to as the Rules which were also "validated" by Section 3 of the Validation Act. Rule 60 of the Rules provides that the Collector shall be the authority empowered to "assess and collect" the cess. Rule 61 makes it obligatory for the occupier of a factory to maintain a correct account, day to day, in the prescribed form, of the cess entering the area specified in the notification under Section 23. Rule 62 provides further that the occupier of the factory shall submit to the Collector, before the close of each month, a return in the prescribed form, showing the quantity of cane that has entered the specified area during the immediately preceding month. It further provides that within 15 days of the close of the crushing season, the occupier shall deposit the cess leviable on the total quantity of cane which has entered the specified area during the crushing season and shall send the treasury receipt showing the amount of cess deposited to the Collector. Then comes Rule 63, which places the following responsibility on the Collector :

> 63. The Collector shall check the amount of cess deposited by the occupier of the factory from the returns submitted under Rule 62 and see if the full amount of cess due from the occupier has been credited into the Treasury. If the Collector finds that the full amount of cess due from the occupier of the factory has not been deposited he shall by a written notice call upon the occupier to deposit the amount due from him within the period specified in such a notice and the occupier shall deposit the amount within the period specified.
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> The responsibility of the Collector for purposes of assessing and collecting the Tax under Rule 60 of the Rules is therefore to check the amount of the cess deposited by the occupier of the factory. The check has to be made with the returns submitted by the occupier, and the Collector has to see that the full amount of the cess has been credited to the treasury. If he finds that this is not so, it is his duty to call upon the occupier, by a written notice, to deposit the amount due from him within the period specified in the notice.

11. The State Act and the Rules do not therefore require that the Collector shall make a formal order of assessment, and then collect the cess.

12. It has to be appreciated that the purpose of an assessment is to compute the amount of the cess payable by the person concerned. "Assess" is a comprehensive word, and in a taxing statute it often means the computation of the income of the assessee, the determination of the tax payable by him, and the procedure for collecting or recovering the tax. In a case where there is a dispute about the identity of the assessee, the order of assessment serves the purpose of establishing that identity and naming the person from whom the tax has to be recovered. In the present case there is no controversy regarding the identity of the assessee, and the provision regarding the assessment of the cess in sub-section (2) of Section 23 of the State Act and Rule 60 of the Rules related to the checking of the quantity of cane which had entered the specified area, and the amount of cess deposited in respect of it. It is for that purpose that Form 4 provides the details to be submitted by the occupier of the factory, and a duty is cast on him to deposit the cess leviable on the total quantity of the cane, within 15 days of the close of the crushing season, and to send the receipt evidencing the deposit to the Collector.

13. As has been pointed out by the High Court, the appellant's letter (Ex. R-1) dated May 25, 1964, shows that it admitted that the amount of the cess payable by it worked out to a total of Rs. 5,44,835.69. That was therefore the admitted amount of the cess which had to be recovered. The Collector recorded an order (Ex. R-2) dated July 21, 1964, in which he clearly stated that he had

gone through the case and that the Tehsildar should immediately recover the entire amount of the cess due from the appellant forthwith. He further directed that the "entire amount of the cane cess due from the B.S.I." should be recovered and monthly progress report sent to him. This shows that the Collector did apply his mind to the matter, and made an express order for the recovery of the total amount of the cess admitted by the appellant. It seems that the Naib-Tehsildar increased the amount beyond what had been admitted by the appellant and directed by the Collector, but the High Court rightly confined the recovery to Rs. 5,44,835.69 which was admitted by the appellant to be due from it on account of cess for the two seasons. There is thus no force in the argument of Mr. Desai to the contrary.

14. The appeal fails and is dismissed with costs.

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