

SUPREME COURT OF INDIA

Assistant Director of Mines & Geology

Vs.

Deccan Cements Ltd.

C.A.No.5481 of 2002

(Arijit Pasayat and S.H. Kapadia JJ.)

25.01.008

JUDGMENT

Arijit Pasayat, J.

1. During the hearing of these appeals reliance was placed by the respondents in C.A. No.5481/2002 on a decision of this *Court in District Mining Officer and Ors. v. Tata Iron and Steel Co. and Anr*¹. Appellant in the said appeal placed reliance on *Somaiya Organics (India) Ltd. and Anr. v. State of U.P. and Anr*²

2. High Court in the order impugned relied on District Mining Officers case (supra) to hold that though levy up to 4.4.1991 was permissible, no collection of cess could be made.

3. In District Mining Officers case (supra) it was, inter-alia, observed as follows:

“We do find considerable force in the aforesaid submission, as in our view, the interpretation we have already given to the Validation Act was the real intention of Parliament and it never intended to confer a right of collection of cess. In agreement with the conclusion arrived at by the Patna High Court, we hold the Validation Act to be valid, but such validated Acts do not authorize any fresh levy or collection in respect of liabilities accrued prior to 4.4.1991, though it prohibits refund of the collection already made prior to that date.”

4. It is to be noted that in the said case the validity of the cess and other taxes under the Cass and Other Taxes on Minerals (Validation) Act, 1992 (hereinafter referred to as the Validation Act) was under consideration. This Court held that the Validation Act did not suffer from any invalidity. Having observed so, the aforesaid conclusions were arrived at regarding impermissibility for collection not already made. In *Somaiya Organics (India)s* case (supra) the conceptual difference between levy and collect was noted in the following words :

“Reading the two paras 89 and 90 together it does appear that this Court regarded the declaration of the provisions being illegal prospectively as only meaning that if the States had already collected the tax they would not be liable to pay back the same. It is the States which were protected as a result of the declaration for otherwise on the conclusion that the impugned Acts lacked legislative competence the result would have been that any tax collected would have become refundable as no State could retain the same because levy would be without the authority of law and contrary to Article 265 of the Constitution. At the same time, it was clearly stipulated that the States were restrained from enforcing the levy any further. The words used in Article 265 are levy and collect. In taxing statute the words levy and collect are not synonymous terms (refer to *CCE v. National Tobacco Co. of India Ltd*³ at p.572), while levy would mean the assessment or charging or imposing tax, collect in Article 265 would mean the physical realization of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same. The enforcement of levy could only mean realization of the tax imposed or demanded. That the States were prevented from recovering the tax, if not already realized, in respect of the period prior to 25-10-1989 is further evident from para 90 of the judgment. The said para shows that as on the date of the judgment, for the period subsequent to 1-3-1986 the demand of the Central Excise Department on the alcohol manufactured was over Rs.4 crores. The Court referred to its orders dated 1-10-1986 and 16-10-1986 whereby the State Government was permitted to collect the levy on alcohol manufactured in the Companys distilleries. With respect to the said amount of Rs.4 crores, it was observed that it is, therefore, necessary to declare that in future no further realisation will be made in respect of this by the State Government from the petitioners. The implication clearly was that if out of Rs.4 crores the State Government had collected some levy the balance outstanding cannot be collected after 25-10-1989.

5. It appears in District Mining Officers case (supra) this Court was of the view that the levy may have been validated and that did not authorize collection. It is to be noted that there are different stages in the matter of imposition of tax or cess. First is the source of power for levying tax or cess as the case may be. The second is the actual levy by an adjudication or assessment order. Sometimes, the quantification of the amount payable is done in the adjudication/assessment order. Finally, comes the question of collection. That being so, collection is a natural corollary of the levy. It is inconceivable that the levy is valid but collection can be held to be impermissible. This is an irreconcilable situation.

6. We, therefore, find it difficult to agree with the view expressed in District Mining Officers case (supra) regarding impermissibility of collection in the portion quoted above.

7. The matter can be looked from another angle. Supposing somebody has paid the taxes and in other words there has been collection of the amount levied. There may be another person who may not have paid it. The latter person cannot be placed at a better footing than the former one.

8. We, therefore, refer the matter to a larger bench to test the correctness of the conclusions that the levy was permissible by the Validation Act, but amounts which have not already been collected, cannot be collected. The records may be placed before Honble the Chief Justice of India for appropriate directions.

9. Ordered accordingly.

Cases Referred

¹(2001 7 SCC 358)

²(2001 5 SCC 519)

³(1972 2 SCC 560)