MYSORE HIGH COURT

State of Mysore by General Manager

Vs

Union of India

Writ Petn. No. 1416 of 1965

(A.R. Somnath Iyer and B.M. Kalagate, JJ.)

05.09.1967

JUDGMENT

A.R. Somnath Iyer, J.

1. This is an unusual case in which the State Government is the applicant for our writs. It asks us to quash a demand for the payment of excise duty on agricultural implements manufactured in its factory known as the Mysore Implements Factory.

2. Section 3 of the Central Excises and Salt Act, 1944, which will be referred to as the Excise Act, imposed excise duty on the excisable goods enumerated in Schedule I to that Act. By finance Act 20 of 1962, item 26-AA was added to that schedule. Again, by Finance Act 13 of 1963, another clause was added to item 26-AA.

3. Item 26-AA was added to the first schedule with effect from April 23, 1962 and the new clause introduced into it became effective from April 28, 1963.

4. On July 21, 1962, the Inspector of Central Excise called upon the State Government to pay excise duty amounting to ₹ 2,465-91 P. on the agricultural implements manufactured in its factory, after April 23, 1962. The foundation of the demand was clause (i) of item 26-AA as it was when it was introduced into the schedule by the Finance Act of 1962. That clause as it then stood reads :

"Item No.	Description of goods	Rate of Duty
26AA	IRON OR STEEL PRODUCTS	THE FOLLOWING NAMELY,-
(i)	Bars rods coils wires joists girders angles channels tees; Flats beams zeds trough piling and all other rolled forged or extruded shapes and sections not otherwise specified	Five per cent ad valorem plus the excise duty for the time being leviable on pig iron or steel ingots as the case may be

5. When this clause became clause (i-a), the rate of duty was altered. But, with that, we are not

concerned.

6. It is undisputed that when item 26-AA was added to the schedule, the State Government had in its possession in its factory, stocks of iron and steel products, such as flats, squares, and rods and the like. Those products had been acquired from their manufacturers, when they were not excisable goods. Excise duty on such products became payable only when item 26-AA became part of the First Schedule to the Act.
7. But when the products owned by the factory were used for the manufacture of agricultural implements, such as mumties, pickaxes, sledge hammers, shovels and ploughs, the Central Excise Collectorate made the impugned demand on the supposition that those manufactured articles fell within the enumeration of item 26-AA(i), and so, became excisable goods. In the letter addressed by the Assistant Collector of Central Excise to the General Manager if the Factory on June 19, 1962, it was stated that the agricultural implements fell under that enumeration since forging or extrusion with the aid of power was the process of their manufacture. The demand was also defended on the ground that the iron and steel products out of which the implements were manufactured had not borne excise duty.

8. From this demand, there was an appeal to the Collector of Central Excise under Section 35 of the Excise Act which was dismissed and. against the decision of the Collector a revision petition was presented to the Central Government under Section 36 of the Act which was also dismissed.

9. In this writ petition, the State Government asks us to quash the demand made by the Inspector of Central Excise on July 21, 1962, which was reiterated by the Assistant Collector on December 13, 1962 We are also asked to quash the order made in appeal by the Collector on January 15, 1963 and by the Central Government in revision on April 8, 1965. There is also a prayer that we should quash a communication addressed to the General Manager of the Factory by the Assistant Collector of Central Excise on June 16, 1962 in which there is no more than a reiteration of the previous assertion made by the Assistant Collector that the agricultural implements were excisable goods. There is also a prayer for a direction for the refund of the excise duty paid in compliance with the demand.

10. The criticism of the demand rested on a twin argument placed before us by Mr. Advocate General, The first was that the manufactured implements are not iron or steel products and the second was that even if they were, they were outside the enumeration of clause (i) of that item and so not excisable.

11. Before pronouncing on the validity of these submissions, we should notice an argument by Mr. Keshava Iyengar, the learned Central Government Pleader that our power under Article 226 of the Constitution stands excluded by Article 131 in this case. It was maintained that this writ petition raises a dispute between the Government of India and the State of Mysore concerning the existence of a legal right and that Article 131 invests the Supreme Court with exclusive jurisdiction to adjudicate upon that dispute.

12. A considerable part of the argument surrounded the question as to how we should understand the expression 'legal right' to which this article refers, and, the words 'subject to the provisions of this Constitution' with which it opens.

13. But the appeal to Article 131 is possible only if the Central Government and the State are the disputants before us. If they are, it becomes necessary to examine the character of the dispute between them. Otherwise not.

14. We think that this writ petition presents no dispute between the Central Government and the State Whether Mr. Advocate General is right or not, in his argument that not even the State Government is a disputant before us, it is clear that the Central Government is not. The Central Government functioned as a Tribunal when it disposed of the revision petition under Section 36 of the Excise Act, and, a tribunal which disposes of a revision petition in the exercise of power conferred on it cannot be a disputant in the dispute which it decides. A tribunal does not decide its own dispute, and, as explained by the Supreme Court on at least four occasions, the Central Government is a tribunal when it decides a revision petition or an appeal or an application for review.

15. In *M.P. Industries Ltd. v. Union of India*[1]. in which there was a discussion of the earlier decisions of the Supreme Court, it was explained that the Central Government exercising revisional jurisdiction under rule 55 of the Mineral Concession Rules 1960, exercises judicial power as a tribunal whose decision is subject to an appeal to the Supreme Court under Article 136 of the Constitution. Subba Rao, J. as he then was from whose exposition of this particular aspect of the matter there was no dissent by the other two Judges, said this :

> "The entire scheme of rules posits a judicial procedure and the Central Government is constituted as a tribunal to dispose of the said revision. Indeed, this Court in *Shivji Nathubhai v. Union of India*[2], ruled that the Central Government, exercising its power of review under Rule 54 of the Mineral Concession Rules, 1949, was acting judicially as a tribunal."

The same enunciation emerges from the decisions in 1960-2 SCR 775 : AIR 1960 SC 606 and *Harinagar Sugar Mills v. Shyam Sunder*[3], In the first, the Central Government decided a review matter and in the second an appeal.

16. The decision in *Indo-China S. Navign Co. v. Jasjit Singh*[4], rested on the enunciation that the Central Board of Revenue exercising appellate power under Section 190 of the Sea Customs Act and the Central Government invested with revisional power under Section 191 were tribunals from whose decisions an appeal under Article 136 of the Constitution was possible. Gajendragadkar, C.J. said this :

> "In our opinion, having regard to the scheme of the sections which we have just cited, there is no difficulty in holding that the Central Board of Revenue

[1] AIR 1966 SC 671
[2] 1960-2 SCR 775: AIR 1960 SC 606
[3] AIR 1961 SC 1669
[4] AIR 1964 SC 1140

> which functions as an appellate authority, and the Central Government which exercises revisional powers are both tribunals within the meaning of Article 136 of the Constitution. A dispute is raised either by way of appeal or revision by the party aggrieved by the order passed by the Customs Officers, and that dispute has to be tried by the appellate or the

revisional authority in the light of the facts adduced in the proceedings and according to law". (P. 1148).

17. So it is plain that the Government of India which exercised in the case before us revisional jurisdiction under section 36 of the Central Excise Act, functioned only as a tribunal.

18. Sections 35 and 36 of that Act read :

"35. Appeals - (1) Any person deeming himself aggrieved by any decision or order passed by a Central Excise Officer under this Act or the rules made thereunder may, within three months from the date of such decision or order, appeal therefrom to the Central Board of Revenue, or, in such cases as the Central Government directs, to any Central Excise Officer not inferior in rank to an Assistant Collector of Central Excise and empowered in that behalf by the Central Government. Such authority or Officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against.
Provided that .....
(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by section 36, be final.

36. Revision by Central Government – The Central Government may on the application of any person aggrieved by any decision or order passed under this Act or The rules made thereunder by any Central Excise Officer or by the Central Board of Revenue, and from which no appeal lies, reverse or modify such decision or order."

19. It will be seen from these two provisions that there is great similarity between the powers exercised by the Customs Officer under the Sea Customs Act and that exercised by a Central Excise Officer who makes an order from which an appeal lies under Section 35. Similarly, there is similitude between the appellate power exercised by the Central Board of Revenue under the Sea Customs Act and that exercised by the appellate authority under Section 35 of the Excise Act. Likewise, the revisional power of the Central Government under Section 191 of the Sea Customs Act is comparable to the revisional power exercised by the Central Government under Section 36 of the Excise Act. Under both these laws, the aggrieved party could bring up a matter by way of an appeal or revision before the appellate authority and before the revisional authority which has to decide the question which is so brought up in the light of the facts adduced in the proceedings and according to law as explained by the Supreme Court in the case of AIR 1964 SC 1140. In exercising that power, the appellate authority and the Central Government functions as tribunals and do not figure as disputants.

20. It is of importance to observe that as stated in Section 35 of the Excise Act, the Central Excise Officer from whose order an appeal is permitted under Section 35 makes a decision or order. The appellate authority may confirm, alter or annul the decision of the Central Excise Officer or may make a further enquiry. Similarly, the Central Government in the exercise of its power of revision under Section 36 may reverse or modify the decision or order of the Appellate Authority under Section 35.

21. That the Central Government is interested in the recovery of the duty which is properly payable under the provisions of the Excise Act, does not transform it from1 a tribunal into a disputant.

22. A dispute falls within Article 131 of the Constitution only when the Central Government is a disputant as such. The dispute must directly arise between the State and the Central Government as the repository of the executive power of the Union. An indirect interest in the collection of the revenue in the form of excise duty if the excise duty demanded by the Central Excise is exigible, is far too slender a foundation for the postulate that in every controversy arising under the provisions of the Central Excise Act, the Central Government is necessarily a disputant. The acceptance of such interpretation would make the Central Government a party to every proceeding under the Central Excise Act in the role of a disputant, and, that consequence can scarcely fit into its constitution as a tribunal under Section 36 of the Act :

23. The Central Government is before us not because it is a party to any dispute but as the tribunal which decided it. It happens that the revisional jurisdiction was confided to it in the same way in which it could have been bestowed on some one else.

24. So, we negative the argument' constructed on Article 131 of the Constitution.

25. The discussion so far made takes us on to the real question which concerns the interpretation of clause (i) of item 26-AA of the First Schedule to the Excise Act. That clause imposes excise duty on iron or steel products which are enumerated in it. That enumeration is :

> "Bars, rods, coils, wires, joists, girders, angles, channels, tees, flats, beams, zeds, trough, piling, and all other rolled, forged or extruded shapes and sections, not otherwise specified."

26. It is not disputed that the articles produced in the factory owned by the State Government are :

> "Mumties, pick axes, sledge hammers, shovels, ploughs and other implements needed for agricultural purposes."

27. Mr. Iyengar has explained to us that it is not the case of the Central Excise Collectorate that these agricultural implements fall within any other clause of item 26-AA. So, they are excisable articles only if they are in the enumeration of clause (i) of that item. Since they are not within the specific enumeration of that clause, it was urged that they are "other rolled, forged or extruded shapes and sections, not otherwise specified" to which the clause refers.

28. It will be observed that the implements would not fall within item 26-AA if they are not "iron or steel products" in the sense in which that expression which occurs at the top of the second column of that entry has to be understood. Even if they are, they would be the unspecified products to which clause (i) refers only if they are "rolled, forged or extruded shapes and sections."

28-A. Mr. Advocate General who did not dispute that forging was one of the processes employed for the manufacture of the implements, contended that the manufacture also involved process other than rolling or extrusion, and that products so manufactured remained outside clause (1). So, we should first consider whether the implements are iron or steel products to which item 26-AA refers, and, next, whether they are rolled, forged or extruded shapes or sections. The demand would be above reproach only if they conform to both descriptions.

29. It is common ground that the iron and steel products which the factory owned, were, used for the manufacture of the implements, and, that neither crude iron in any form nor steel ingots were used for that purpose. This iron and steel products were described by the Assistant Collector of Central Excise in his letter written to the General Manager of the factory on June 19, 1962 as bars and rods. In one part of his letter, he stated :

> "Since duty has not been paid on the present stock of bars and rods in your factory and they are put to further process by forging into shovels, spades and other agricultural implements, etc., duty will have to be paid on the forged products, till such quantity of the bars and rods is stock from 24-4-62 have been utilized and converted into forged implements and cleared from the factory."

30. In the affidavit accompanying this petition, it is stated that the material used for the manufacture was "high carbon steel in the form of flats, squares and rods only". Rods and flats are in clause (i), and, those rods and flats were not excisable articles when they were acquired by the factory, since, item 26-AA was not then m the First Schedule to the Act. It is not disputed that the squares to which the affidavit refers also fall within clause (i) although they are not in the express enumeration of that clause.

31. It was maintained by Mr. Advocate General that the agricultural implements which were not manufactured out of pig iron or steel ingots, but, came into being by conversion of the already manufactured iron or steel products, are not iron or steel products in the sense in which that expression occurs in item 26-AA.

32. We think that the iron or steel products to which item 26-AA refers, are products manufactured out of iron in any crude form such as pig iron, scrap iron or the like to which there is a reference in item 25, or steel ingots including steel melting scrap of which item 26 speaks. A product so manufactured is the iron or steel product which becomes excisable and not a product of that product.

33. Support for this view is available in the notification of the Government of India made on May 14, 1962 under rule 8 of the Central Excise Rules 1944 which authorizes exemptions from duty. That notification reads:

> "NOTIFICATION CENTRAL EXCISES.

In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules 1944, as in force in India as applied to the State of Pondicherry, the Central Government hereby exempts

the iron or steel products falling under item No. 26-AA of the first Schedule to the Central Excises and Salt Act, 1944 (I of 1944) and specified in column 2 of the Table hereto annexed, if made from pig iron or steel ingots on which the appropriate amount of excise duty has already been paid, from so much of the duty of excise leviable on such products as is in excess of the duty specified in the corresponding entry in column 3 of the said table.

> Provided that if the products are made from pig iron or steel ingots on which the appropriate amount of duty has not been paid, the excise duty for the time being leviable on pig iron or steel ingots, as the case may be, shall be payable in addition to the duty specified in the appropriate entries in column 3 of the table."

34. The exemption created by this notification is in truth relief, against plural taxation. It could be claimed when a product is manufactured from pig iron or steel in-gots - and the expression pig iron or steel" is the expression used compendiously in the notification to describe the raw material referred to in items 25 and 26 of the First Schedule - and such raw material had already borne excise duty. Else, it is excisable.

35. There is thus in this notification a clear indication that the iron or steel products
which are excisable are those which are manufactured from pig iron or steel ingots. Any other interpretation would make the exemption created by the notification unavailable, if, a product manufactured from duty paid pig iron or steel ingots becomes another steel or iron product. There would then be double taxation and a construction which so debilitates the exemption, cannot be true.

36. If a product is manufactured from pig iron or steel, it is an iron or steel product to which item 26-AA refers. But if that product is again used for the manufacture of another product, it would not be correct to regard it as an iron or steel product which had already come into being when the first product was manufactured. It is a product manufactured out of an earlier product and not a product made from the raw material out of which that earlier product was manufactured. That, is, precisely the reason why the notification made under rule 8 speaks only of products made from "pig iron or steel ingots", and not of products made out of such products.

37. There is in the other clauses of item 26-AA some guidance for a proper comprehension of the expression "iron or steel products". The products which are enumerated in the enumeration of those other clauses, are manifestly products manufactured out of pig iron or steel ingots, and, none of them is a product manufactured out of an iron or steel product. Mr. Central Government Pleader who did not dispute that it was so, maintained that even a product manufactured out of an already manufactured product falls within the comprehensive concluding portion of clause (i) of item 26. But this submission overlooks the title of item 26-AA which refers to iron or steel products, and, in our opinion, since those products had already been made before they became agricultural implements, those implements do not fall within the description. It is reasonable to say that the product to which item 26-AA refers are the products first manufactured out of the raw material.

38. That those products did not bear excise duty cannot have any relevance. If, as we think, an iron or steel product is a product manufactured out of pig iron or steel ingots and if a product

manufactured out of that already manufactured product if not an iron or steel product, it becomes immaterial whether the product which was first manufactured was an excisable product or not.

39. So, the impugned demand must fail on this interpretation.

40. But, since some considerable argument was expended over the other contention urged by Mr. Advocate General we think it right to make our pronouncement on it. That question is whether even if the agricultural implements are iron or steel products, they are excisable. The words "Iron or Steel Products. The Following, Namely," in item 26-AA make it clear that not, all iron or steel products are excisable articles, and, that only those of which there is an enumeration in item 26-AA are. But we are concerned only with clause (1) of that item.

41. Now, the agricultural implements are not expressly named in that clause and unless they are "other rolled, forged or extruded shapes and sections", they are outside the clause. It is plain that the words "other rolled, forged or extruded shapes and sections" refer to articles of the same kind or nature as those named.

42. We do not think that the agricultural implements such as mumties, pick axes, shovels, sledge hammers and ploughs are of the same kind or nature as bars, rods, coils, wires, joists, girders, angles, channels, tees, flats, beams, zeds, troughs and piles which are in the express enumeration. The named items are iron or steel materials in various forms given to them by the process of forging, rolling or extrusion to bring into existence merchandise of a kind which is often required for immediate use of the metal in that form. They are thus appropriately referred to as "shapes and sections". The description of the unspecified products as "other rolled, forged, or extruded shapes and sections" clearly demonstrates that the named ones are shapes or sections and it appears to us that those words have a technical meaning which we shall presently discuss. So, the products catalogued retain their character as metal in more than one form although for the purpose of item 26-AA they are iron or steel products. It is so because that item says so.

43. But agricultural implements are tools or instruments which are used as such, for agricultural operations. They are not shapes or sections which the metal of which they are made has become. They constitute merchandise of a very different kind from what the named products are. Unlike the implements in the named products, there is nothing but the metal.

44. The submission of Mr. Central Government Pleader that a joint or a girder or an angle which is within the express enumeration could be used for a building purpose in the same way in which an agricultural implement could be used for an agricultural operation, does not make all of them ejusdem generis. The criterion is not the possibility of user for some purpose or the other. It is the sameness of the kind or nature of the product.

45. We do not think that agricultural implements can properly be called shapes or sections. Unless they are, they are not excisable. The words "shapes and sections" occurring in clause (i), it is obvious, are used in a technical sense. In Webster's New International Dictionary Volume II page 2302, the meaning of the word 'shape' when it refers to a product manufactured out of iron is thus stated :

> "Iron Mfg. a. A rolled or hammered piece, as a bar, beam, angle, iron etc., having a cross

> section different from merchant bar. b. A piece roughly forged nearly to the form it is to receive when completely forged or fitted."

It is clear from this exposition that a shape is a hammered piece such as a bar or beam, angle iron etc., having a cross section different from the cross section which a merchant bar has.

46. We shall next proceed to refer to the meaning of the words "merchant bar". "But before we do so, we should point out that a beam, a bar and an angle to which the dictionary refers, are, three of the enumerated items in clause (i) and this strengthens the view that the unspecified articles are ejusdem generis. It is the plain dissimilarity between an agricultural implement and a product such as a bar, a beam or angle iron to which the dictionary refers which is presumably the reason why such implement is not referred to in the dictionary as included in the word 'shape."

47. Now, the meaning of the word 'merchant' occurring in the expression 'merchant bar' is available in the same volume of the dictionary at page 1538. The meaning reads :

> "Designating ordinary shapes and sizes of wrought iron and steel bars not made according to specification, or the rolls or mill by which they are formed etc. Hence : merchant bar, merchant iron, merchant mill."

While a merchant bar is an article of wrought iron or steel which has an ordinary shape and size not made according to specification, a shape has a cross section different from the cross section of the merchant bar. But no product is a shape unless it is ordinary wrought iron or steel, which has been brought into some kind of shape with a cross section different from that which a merchant bar has. So it is that a bar, a rod or an angle is a shape and an agricultural implement is not.

48. Now, the meaning of the word 'section' is given in the same volume of the dictionary at page 2262. It refers to a profile and its section is longitudinal if it is cut through its centre lengthwise and vertically and is a cross section if it is cut crosswise and vertically. It has a horizontal section if it is cut through its section at the centre horizontally. The word 'section' occurring in clause (i) has, therefore, reference to a profile of the product and no one can suggest that an agricultural implement is a section in that sense. The 'shape' to which clause (i) refers is not the physical appearance as ordinarily understood. If the intendment was that every iron or steel product of every shape in that sense shall be an excisable article, the word 'products' or 'articles' could have been substituted in that clause for the words "shapes and sections".

49. An article becomes excisable only when it is clearly within the enumeration of excisable goods. In our opinion, the agricultural implements manufactured by the State Government are not.

50. In this view of the matter, it becomes unnecessary to investigate whether their manufacture involves a process in addition to those which clause (i) refers.

51. So, we quash the impugned demand made by the Inspector of Central Excise on January 27, 1962 and that made by the Assistant Collector of Excise on December 13, 1962. We set aside the

order made by the Collector on January 6, 1963 and the order made by the Central Government in revision on April 8, 1965. We make a direction that all amounts collected by way of excise duty under item 26-AA in respect of the Agricultural implements manufactured by the factory owned by the State shall be refunded.

52. No costs.

Petition allowed.