

A ASSISTANT DIRECTOR OF MINES & GEOLOGY
v.
M/S DECCAN CEMENTS LTD. & ANR.
(Civil Appeal No. 5481 of 2002)

B JANUARY 25, 2008

(DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

Cess and Other Taxes on Minerals (Validation) Act, 1992:

C *Minerals – Cess and other taxes on – Levy and collection of – Correctness of conclusions that “the levy was permissible but amounts which have not already been collected, cannot be collected” arrived at by Supreme Court in District Mining Officer’s case*– Referred to larger Bench.*

D **District Mining Officer and Ors. Vs. Tata Iron and Steel Co. and Anr. 2001 (7) SCC 358 – referred to.*

Somaiya Organics (India) Ltd. and Anr. Vs. State of U.P. and Anr. 2001(5) SCC 519 – cited.

E CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5481 of 2002.

From the final Judgment/Order dated 12.9.2001 of the High Court of Judicature, Andhra Pradesh at Hyderabad in W.P. No. 6494/1992.

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C.A. Nos. 5483, 5484, 5487 of 2002, SLP (C) Nos. 10887-10888, 10889-10891, 10892-10894/2002 and 10895-10896/2002.

G Anoop G. Chaudhary, M.N. Rao, Nagendra Rai, June Chaudhari, T.V. Ratnam, Manoj Saxena, Rajnish Kr. Singh, Devendra Kumar Singh, Rahul Shukla, Buddy A. Ranganadhan, A. Ramesh, A.V. Rangam, S. Udaya Kr. Sagar, Bina Madhavan, M/S. Lawyer’s Knit & Co., Ajay Sharma, B.V. Balram Das, B.

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Krishna Prasad, B. Partha Sarthy, Mohanprasad Meharia for A
the appearing parties.

The Order of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. During the hearing of these B
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.* (2001 (7) SCC 358). Appellant in the said appeal placed reliance on *Somaiya Organics (India) Ltd. and Anr. v. State of U.P. and Anr.* (2001 (5) SCC 519). C

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

3. In *District Mining Officer's case* (supra) it was, inter-alia, observed as follows: D

"...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." E F

4. It is to be noted that in the said case the validity of the cess and other taxes under the Cess 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 H

A words :

“29. 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. (1972 (2) SCC 560*) at p.572), while “levy” would mean the assessment or charging or imposing tax, “collect” in Article 265 would mean the physical realisation 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 realisation of the tax imposed or demanded. That the States were prevented from recovering the tax, if not already realised, 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 Company's 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

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of this by the State Government from the petitioners". The A
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 Officer's* case (supra) this B
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. C
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 D
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 Officer's* case (supra) regarding
impermissibility of collection in the portion quoted above.

7. The matter can be looked from another angle. E
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 F
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 Hon'ble the Chief Justice of India for appropriate G
directions.

9. Ordered accordingly.

R.P.

Referred to larger bench.

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