

## **M/S. Dhanpat Oil & General Mills vs Union Of India & Ors on 8 July, 1985**

**Equivalent citations: 1985 AIR 1255, 1985 SCR SUPL. (2) 4, AIR 1985 SUPREME COURT 1255, 1985 (3) SCC 599, (1985) 23 TAXMAN 18, (1985) 21 ELT 636, 1985 SCC(TAX) 460**

**Author: R.S. Pathak**

**Bench: R.S. Pathak, E.S. Venkataramiah**

PETITIONER:

M/S. DHANPAT OIL & GENERAL MILLS

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 08/07/1985

BENCH:

PATHAK, R.S.

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PATHAK, R.S.

VENKATARAMIAH, E.S. (J)

CITATION:

1985 AIR 1255	1985 SCR Supl. (2) 4
1985 SCC (3) 599	1985 SCALE (2) 46

ACT:

Produce Cess Act, 1966, Sections 2(a), 7, 8, 9(2), 10 and 15(2), scope of - Whether proceedings under the Act can be taken without appointing a "Collector" and an "Appellate Authority" by resort to the provisions of section 15 (2) of the Act Monthly filing of obligatory returns under section 8, whether can be discontinued on the plea of non-appointment of a "Collector" Liability to the payment of cess for the products manufactured and a liability to prosecution for not filing returns and paying the cess during the period when the Collector and Appellate Authority had not been appointed.

HEADNOTE:

The Produce Cess Act, 1966 is a dual enactment. It

provides for the levy and collection, as a cess, of customs duty on produce specified in the first schedule to the Act and exported beyond the limits of India; and (ii) of excise duty of the produce specified in the second schedule. Section 8 of the Act requires the occupier of a mill to furnish to the "Collector" every month a return stating the total amount of produce, specified in the Second Schedule consumed or brought under processing or extracted in the mill during the preceding month. The return has to be furnished before the seventh day of each month together with such other information as may be prescribed, and every such return is to be made in such form and to be verified in such manner as may be prescribed. There must be a "Collector" within the meaning of the Act, that is as defined in section 2(a) of the Act to whom such monthly returns are to be furnished. On noncompliance with the provisions of section 8, the "Collector" so appointed by the Central Government under the Act, is empowered under sub-section 2 of section 9 to proceed at once and make an assessment in the manner prescribed by the Produce Cess Rules 1969. Such a "Collector" was appointed under the Act on July 13, 1970. The Appellate Authority, entitled to hear appeals from the orders of the collector was appointed on August 21, 1972. The appellant carries on the business of oil extraction from ground nut, cotton-seeds, sarson and other oil seed and also deals in vegetable and other essential oils. On September 29, 1972 the Superintendent, Central Excise, issued a notice requiring the

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appellant to produce certain documents and to appear before the authority for the purpose of an enquiry pertaining to the cess leviable under the Act. The appellant did not comply with the notice. On December 22, 1972, the Superintendent, Central Excise, issued a further notice requiring the appellant to show cause against the imposition of a penalty for its failure to file a return and deposit the cess. The appellant questioned the jurisdiction of the authority to levy cess. A further notice dated September 3, 1973 was issued by the Assistant Collector, Central Excise requiring the appellant to appear before him in connection with the aforesaid proceedings. The appellant, admittedly, did not deposit any cess nor file any return, contending that there was no jurisdiction in the authorities to levy and recover the cess on the products manufactured and dealt in by it. The appellant then filed a writ petition in the High Court of Punjab & Haryana raising various points, including the question whether sub-section (2) of section 3 and section 4 of the Act and rule 6 of the Cess Rules were ultra vires and whether the notices issued by the authorities were valid on the ground that no machinery had been provided for the levy of the cess during the relevant period and prayed for relief against the proceedings. The Writ Petition was dismissed and hence the appeal by special

leave.

Dismissing the appeal, the Court,

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HELD: 1.1. The entire machinery under the Produce Cess Act, 1966 through which the occupier of a mill must discharge his statutory obligations remains non-existent unless a "Collector" within the meaning of the definition in section 2(a) is appointed. So long as there is no Collector there is no obligation on the occupier of a mill to furnish monthly returns and there is no existing statutory authority for taking proceedings for the assessment and collection of the cess. Clearly there can be no Collector for the purpose of the Act unless he is an officer appointed by the Central Government to perform the duties of a Collector provided under the Act and Rules. A subordinate officer is also envisaged within the definition of section 2(a) but he must be an officer authorised in writing by the Collector appointed under the Act to perform such duties. Even the earliest step required of an occupier, that is to say, the furnishing of a statement containing the particulars specified under section 7 must be made to a Collector, and that is also not possible in the absence of a duly appointed Collector under the Act. [10 B-D]

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1.2 The appellant in this case, cannot be prosecuted for its omission to furnish monthly returns required under section 8 of the Act during the period upto July 30, 1970 for which there was no Collector appointed under the Act. The Appellate Authority was appointed on August 21, 1972, but the delay in appointing the Appellate Authority can be no ground for not furnishing the returns after July 30, 1970, when the Collector was appointed. [11 G-H, 12 A & 13 B]

1.3 The absence of duly appointed Collector under the Act for a certain period is a good defence against a prosecution for non-compliance with section 8 of the Act during that period only. However, the delay in appointing the Collector under the Act does not relieve the appellant of the liability to excise duty in respect of the period during which the Collector was not appointed. [13 B-D]

The levy is imposed by sub-section 2 of section 3 of the Act and comes into existence immediately on the taxable event attracting excise duty. The accrual of the obligation to suffer the duty does not depend on the appointment of a Collector, which is only part of the machinery designed by the Act for the Assessment and recovery of the duty. The imposition and accrual of the duty is a thing apart from its assessment and collection. There is an obligation to file a return under section 8 of the produce and a return must be filed every month before the 7th day. Noncompliance with the latter obligation is sufficient to bring the occupier within the mischief of sub-section 2 of section 9 of the Act. But where such non-compliance is due to the circumstance that

Collector was appointed to whom such returns could be furnished, sub-section 2 of section 9 cannot come into play. However, the obligation to file a return remains and it remains in respect of the entire period during which the Collector had not been appointed, and once the Collector is appointed the occupier is obliged to file a return for the entire period from the commencement of the levy including the period during which there was no Collector. That is because the liability to excise duty had already accrued with the earliest excisable event and it subsisted during the entire period including the period during which there was no Collector. The position is that when the Collector is appointed the occupier must within a reasonable time thereafter, file monthly returns of the produce consumed or brought under processing or extracted in the mill during each preceding month, such monthly returns being in respect of all the months included in the period upto date. Or the occupier may

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make a composite return specifying the amount of such produce monthwise or the entire period. The Collector will then take the return into consideration and take proceedings under section 9 of the Act. [12 C-H 13 A]

2. Recourse to sub-section 2 of section 15 of the Act on the ground that no steps are instituted by the Government to bring Sections 2(a), 6, 7, 8, 9 and 20 into working life by taking action under them cannot be resorted to. Sub-section 2 of section 15 is not intended as a substitute for the other provisions of the Act. It is not an interim provision intending that recourse may be had to it until action is taken by the Government to instal the machinery and institute the steps required by the Act for making its provisions workable. Sub-section 2 of section 15 is intended to cover that area only which is not included within the area covered by the remaining provisions of the Act. It is a residual provision and nothing more. For example, a Collector appointed under the Cess Act can alone be the assessing authority authorised to receive returns and make assessments. No officer or authority constituted under the Central Excises and Salt Act can do so. Nor can the appellate authority appointed under the latter enactment entertain and hear appeals against assessments made under the Cess Act. The jurisdiction to do so belongs solely to the appellate authority appointed under subsection 1 of section 10 of the Act. [11 C-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 138 of 1979.

From the Judgment and Order dated 29.11.1978 of the Punjab & Haryana High Court in C.W. No. 35 of 1974.

A.K. Sen, R.L. Batta, V.K. Bahl and H.K. Puri for the Appellant.

Hardyal Hardy, K. S. Gurumoorthy and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by PATHAK, J. This civil appeal arises out of a writ petition filed in the High Court of Punjab and Haryana for the quashing of proceedings taken under the Produce Cess Act, 1966 for the assessment and recovery of the cess.

The Indian Cotton Cess Act, 1923, the Indian Lac Cess Act, 1930, the Indian Coconut Committee Act, 1944 and the Indian Oil-seeds Committee Act, 1946 ceased to have effect from April 1, 1966 in consequence of which the relative Committees constituted under those Acts stood dissolved and there was no legislative sanction for the continuance of the levy of cess on the produce after March 31, 1966. While the Research Institutes and Stations and other research projects of those Committees now fell within the administrative control of the Indian Council of Agricultural Research, and the work relating to development, marketing and other functions was to be looked after directly by the Ministry of Food and Agriculture, Department of Agriculture, assisted by Development Councils constituted by the Government, and suitable grants were envisaged to the Indian Council of Agricultural Research for the maintenance of Research Institutes and for carrying on the research activities, the Government felt need for larger investments on such projects in order to undertake an effective programme of research and development. Accordingly, it decided to continue the cess on the produce even after the abolition of the Commodity Committees. For the achievement of that objective Parliament enacted the Produce Cess Act, 1966 (shortly referred to as "the Act"). The Produce Cess Rules, 1969 were published on March 28, 1969.

The Act is a dual enactment. It provides for the levy and collection, as a cess, of customs duty on produce specified in the First Schedule to the Act exported beyond the limits of India. And it provides for the levy and collection, as cess, of excise duty on the produce specified in the Second Schedule. We are concerned in this case with the levy and collection of excise duty.

The appellant carries on the business of oil extraction from groundnut, cotton-seeds, sarson and other oil seeds and also deals in vegetable and other essential oils. On September 29, 1972, the Superintendent, Central Excise, issued a notice requiring the appellant to produce certain documents and to appear before the authority for the purpose of an enquiry pertaining to the cess leviable under the Act. The appellant did not comply with the notice. On December 22, 1972, the Superintendent, Central Excise, issued a further notice requiring the appellant to show cause against the imposition of a penalty for its failure to file a return and to deposit the cess. The appellant questioned the jurisdiction of the authority to levy cess.

A further notice dated September 3, 1973 was issued by the Assistant Collector, Central Excise requiring the appellant to appear before him in connection with the aforesaid proceedings. Admittedly, the appellant did not deposit any cess nor filed any return, contending that there was no

jurisdiction in the authorities to levy and recover the cess on the products manufactured and dealt in by it.

The appellant filed a writ petition in the High Court of Punjab and Haryana. Various points were raised before the High Court, including the question whether sub-s.(2) of s.3 and s.4 of the Act and rule 6 of the Cess Rules were ultra vires and whether the notices issued by the authorities were valid on the ground that no machinery had been provided for the levy of the cess during the relevant period. All the contentions were rejected by the High Court, and the writ petition was dismissed.

In the appeal before us the limited point raised is that the appellant is not liable to payment of cess for the period during which the Collector and appellate authority had not been appointed, and no penal proceeding can be taken against the appellant for not furnishing returns and depositing the cess pertaining to such period. It is pointed out that while s.9 of the Act confers power on the Collector to make assessment and recovery of the excise duty such Collector was appointed only on July 13, 1970. It is also pointed out that while s.10 of the Act provides for an appeal against the assessment, the appellate authority was appointed as late as August 21, 1972.

The case before us falls into two parts. Is the appellant liable to prosecution for not filing returns and paying the cess during the period when the Collector and appellate authority had not been appointed? And is the appellant not liable to cess at all for the products manufactured during such period ?

It seems to us that the appellant is right in the contention that so long as the Collector is not appointed for the purposes of the Act no fault can be found with the appellant in not furnishing returns during such period. s.8 of the Act requires the occupier of a mill to furnish to the "Collector" every month a return stating the total amount of produce, specified in the Second Schedule, consumed or brought under processing or extracted in the mill during the preceding month. The return has to be furnished before the seventh day of each month together with such other information as may be prescribed, and every such return is to be made in such form and to be verified in such manner as may be prescribed. There must be a Collector within the meaning of the Act to whom such monthly returns are to be furnished. The expression "Collector" has been defined by clause (a) of s.2 of the Act to mean "the officer appointed by the Central Government to perform in any specified area the duties of a Collector under the provisions of this Act and the rules made thereunder, and includes any officer subordinate to that officer when he may, by order in writing, authorise to perform his duties under those provisions." Clearly there can be no Collector for the purpose of the Act unless he is an officer appointed by the Central Government to perform the duties of a Collector provided under the Act and Rules. A subordinate officer is also envisaged within the definition, but he must be an officer authorised in writing by the Collector appointed under the Act to perform such duties. It would be true to say that unless there is a Collector" within the contemplation of the Act, there can be no obligation on any occupier of a mill to furnish monthly returns. Even the earliest step required of an occupier, that is to say, the furnishing of a statement containing the particulars specified under s. 7 must be made to a Collector, and that is also not possible in the absence of a duly appointed Collector under the Act. The entire machinery under the Act through which the occupier of a mill must discharge his statutory obligations remains

non-existent unless such "Collectors is appointed. So long as there is no Collector there is no obligation on the occupier of a mill to furnish monthly returns and there is no existing statutory authority for taking proceedings for the assessment and collection of the cess.

Reliance was placed before the High Court by the respondent on sub-s.(2) of s.15 of the Act. Sub-s.(2) of s. 15 declares that the provisions of the Central Excises and Salt Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of duties of excise on any produce specified in the Second Schedule as they apply in relation to the levy and collection of duty payable to the Central Government under that Act. The High Court took the view that the absence of a Collector appointed under the Act was of no significance and proceedings could be taken under the provisions of sub-s.(2) of s. 15 of the Act. We are unable to agree. In our opinion, in order to ascertain the scope of sub-s.(2) of s. 15 is necessary to read the Act as a whole. We have pointed out earlier that the expression "Collector" has been specifically defined by the Act itself, and the definition requires that the officer must be one specifically appointed by the Central Government to perform the duties of a Collector detailed under the Act and Rules. There are other provisions which have been particularly enacted in the Act. They specify the persons who are liable to pay duty, their obligations, the powers and procedures in relation to assessment of the duty, the constitution of an appellate authority and its powers, and the powers of the Central Government to revise the appellate orders. Included also are specific provisions in respect of the recovery of sums due under the Act to the Government, and there are other incidental provisions. There is also an express provision by s.20 empowering the Central Government to make rules to carry out the purposes of the Act, and particularly sub-s.(2) of s.20 envisages that such rules should provide for the form of the monthly return and the manner in which such return should be verified, the information which every occupier is required to furnish in the monthly returns and the manner in which assessment of excise duty shall be made where no return is furnished or the return furnished is believed by the Collector to be incorrect or defective. It is inconceivable to our mind that recourse should be permissible to sub-s.(2) of s.15 of the Act on the ground that no steps were instituted by the Government to bring the aforesaid provisions into working life by taking action under them. Sub-s.(2) of s.15, we think, is not intended as a substitute for the other provisions of the Act. It is not an interim provision intending that recourse may be had to it until action is taken by the Government to instal the machinery and institute the steps required by the Act for making its provisions workable. In our opinion, sub-s.(2) of s.15 is intended to cover that area only which is not included within the area covered by the remaining provisions of the Act. It is a residual provision and nothing more. For example, a Collector appointed under the Cess Act can alone be the assessing authority authorised to receive returns and make assessments. No officer or authority constituted under the Central Excise and Salt Act can do so. Nor can the appellate authority appointed under the later enactment entertain and hear appeals against assessments made under the Cess Act. The jurisdiction to do so belongs solely to the appellate authority appointed under sub-s.(1) of s.10 of the Cess Act.

We hold that the appellant cannot be prosecuted for its omission to furnish monthly returns required under s.8 of the Act during the period upto July 30, 1970 for which there was no Collector appointed under the Act. The appellate authority was appointed on August 21, 1972 but the delay in appointing the appellate authority can be no ground for not furnishing the returns after July 30,

1970, when the Collector was appointed. We find it unnecessary to go into the further question whether the appellant can be excused from furnishing monthly returns upto March 28, 1969, that is to say, until the Produce Cess Rules, which prescribed the form of the return and the mode of the verification, were published. That is unnecessary because in any event the Collector was not appointed until July 30, 1970 and for that reason no returns could be filed upto that date.

The absence of a duly appointed Collector under the Act for a certain period is a good defence against a prosecution for non-compliance with s.8 of the Act during that period. It does not however, relieve the occupier of a mill from the burden of the levy. The levy is imposed by sub-s.(2) of s.3 of the Act and comes into existence immediately on the taxable event attracting excise duty. The accrual of the obligation to suffer the duty does not depend on the appointment of a Collector. The appointment of a Collector is only a part of the machinery designed by the Act for the assessment and recovery of the duty. The imposition and accrual of the duty is a thing apart from its assessment and collection. Now s.8 requires the occupier to furnish a return every month stating the total amount of produce consumed or brought under processing or extracted in the mill during the preceding month. There is an obligation to file the return every month. Non-compliance with the latter obligation is sufficient to bring the occupier within the mischief of sub-s.(2) of s.9 of the Act. It empowers the Collector to proceed at once and make an assessment in the manner prescribed by the Rules. But where such non-compliance is due to the circumstances that no Collector was appointed to whom such returns could be furnished, sub-s.(2) of s.9 cannot come into play. However, the obligation to file a return remains and it remains in respect of the entire period during which the Collector had not been appointed, and once the Collector is appointed the occupier is obliged to file a return for the entire period from the commencement of the levy including the period during which there was no Collector. That is because the liability to excise duty had already accrued with the earliest excisable event and it subsisted during the entire period including the period during which there was no Collector. The position is that when the Collector is appointed the occupier must within a reasonable time thereafter, file monthly returns of the produce consumed or brought under processing or extracts in the mill during each preceding month, such monthly returns being in respect of all the months included in the period upto date. Or the occupier may make a composite return specifying the amount of such produce monthwise for the entire period. The Collector will then take the return into consideration and take proceedings under s.9 of the Act.

We hold that the delay in appointing the Collector under the Act does not relieve the appellant of the liability to excise duty in respect of the period during which the Collector was not appointed.

This disposes of the further argument of the appellant that as the appellate authority was appointed on August 21, 1972 only there was no liability to pay the duty in respect of the period until such appointment. If the delay in appointing the Collector does not furnish good ground for excusing the occupier from such liability, the delayed appointment of the appellate authority also constitutes no defence.

The only relief therefore to which the appellant can be entitled in the present appeal would be an order restraining the respondents from asking any penal action against the appellant for not furnishing monthly returns during the period in which no Collector had been appointed under the



Act. It seems, however, that counsel for the respondents stated in the High Court during the hearing of the writ petition that no penal action would be taken against the appellant for not furnishing monthly returns within the period mentioned in sub-s.(2) of s.8 of the Act. We take it that the concession remains binding on the respondents, and it is not necessary for us to pass any express order in that regard.

In the result, the appeal is dismissed, but without any order as to costs.

S.R.

Appeal dismissed.