Jullundur Rubber Goods ... vs Union Of India & Anr on 25 August, 1969

Equivalent citations: 1970 AIR 1589, 1970 SCR (2) 68, AIR 1970 SUPREME COURT 1589

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:
JULLUNDUR RUBBER GOODS MANUFACTURERS'ASSOCIATION

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT:
25/08/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1970 AIR 1589 1970 SCR (2) 68
1970 SCC (2) 644
CITATOR INFO :
R 1984 SC 420 (47)
RF 1986 SC 649 (28)

ACT:
Rubber Act (24 of 1947), s. 12 and Rules 33, 33A and 33D-Duty leviable from users of rubber-If violative of Art. 14 and Entry 84 of List I of VII Schedule of the Constitution.

HEADNOTE:
The appellants, an 'association of rubber chappal manufacturers who were using rubber in their manufacturing process, filed a petition in the High Court challenging the levy and collection from the manufacturers of chappals, of a duty under s. 12 of the Rubber Act, 1947 aS amended by

Rubber Amendment Act, 1960. The grounds of challenge were: (1) that the imposition on the appellants was outside the ambit of Entry 84 of List I of VII Schedule of the Constitution, which deals with the duties which can be levied on goods manufactured or produced in India; (2) Section 12(2) which provides the machinery for levy and collection has given uncontrolled and unbridled discretion to the Rubber Board and no guiding principle or policy was laid down in the Act to enable the Board to choose between the owners of estates of rubber or the users of the rubber; and (3) the rules framed under the section do not indicate with sufficient clarity and precision on whom the levy was to be made. The High Court dismissed the petition.

In appeal to this Court,

HELD: (1) (a) The excise duty could be imposed at the stage which was found to be most convenient and lucrative as that is a matter relating to the machinery of collection and did not affect the essential nature of the tax. Therefore, merely because the incidence of tax is shifted to the users of rubber under s. 12(2) which provides for the method of collection, the tax would not cease to be one falling within Entry 84.[73 B--C;F G]

R.C. fall v. Union of India, [1962] Supp. 3 S.C.R. 436, followed.

Re: the Central Provinces and Berar Act, 14 of 1938, [1939] F.C.R. 18, applied.

(b) If the duty is not excise duty because it is imposed on the user Parliament would even then have legislative competence to provide for its collection from users, whatever be its nature, under Entry 97 of List I read with Art. 248 of the Constitution. [73 H; 74 A B]

(2) The task of subordinate legislation necessary for implementing the purpose and objects of an enactment can be delegated, so long as the law has provided the method by which the. delegate can be controlled, there is a guidance for fixing rates of tax and there is a provision to see that reasonable rates are fixed. [74 D--F]

Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, [1968] 3 S.C.R. 251, followed.

In the present case, the Act was enacted for the purpose of development of rubber industry under the control of the Union Parliament has

69

enacted that the Rubber Board can levy and collect the duty either from the owner of the rubber estate or the user of the rubber. But the Board is enjoined to do so in accordance with the Rules made by Central Government under s. 25(1) (a) of the Act and which are placed before each House of Parliament for approval. The Board itself is a high powered body and all interests are represented among its members 'and all its acts are subject to the control of the Central Government under s. 22. [74 H; 75 Ii; 78 C]

Further. the Board is vitally interested in the

collection of the duty and it has to see that such duty is collected without undue delay and proper expedition. The objects and reasons of the Amending Act (which can be taken into consideration for the purpose of seeing if there is any alleged infringement of Art. 14) show that the Board was finding it difficult to levy and collect the duty from the owners and it was considered that it would be much more easy to collect it from the users, in accordance with the rules. Thus it is necessary that it should be left to the rule making authority to indicate the cases and the circumstances in which the duty was to be collected from the owner or user. [75 C; 77 H; 78 A B]

Since the policy of the Act has been enunciated with sufficient clarity, and guidance has been furnished as to how the Board should exercise its powers in the matter of levy, there is no discrimination and Art. 14 is not violated.

Ipoh v.C.I.T. Madras, [1968] 1 S.C.R. 65 and Raghubar Dayal Jai Prakash v. Union of India, [1962] 3 S.C.R. 547, referred to.

(3) A combined reading of rr. 33, 33A and 33D indicates that a definite provision is made with regard to the category of persons on whom the collection of the duty is to be made, namely, the users of rubber.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1220 of 1966. Appeal by special leave from the judgment and order dated April 6, 1965 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeal No.. 58-D of 1966. M.C. Chagla, B. Datta and J.B. Dadachanji, for the appellant.

Niren De, Attorney-General, V. A. Seyid Muhammad, R.H. Dhebar and S.P. Nayar, for respondent No. 1. Niren De, Attorney-General, V.A. Seyid Muhammad, R.H. Dhebar, S.P. Nayar and Joy Joseph, for respondent No. 2. S.J. Sorabji, A.J. Rana K.L. Hathi and K.N. Bhat, for the interveners.

The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Punjab High Court (Circuit Bench) Delhi in which the validity and legality of the levy of cess by way of excise duty on the rubber used by manufacturers of chappals under the provisions of the Rubber Act 1947, (Act XXIV of 1947) as amended, hereinafter called the Act, have been assailed.

M/s. Jullundur Rubber Goods Manufacturers' Association is an association of rubber chappal manufacturers at Jullundur in the State of Punjab. Its members, who manufacture chappals, are stated to use. about 15 to 20% of rubber in the process of their manufacture while the rest 'of the material used by them consists of various other articles. A petition was filed under Arts. 226 & 227 on behalf of the aforesaid Association, the second petitioner being its Secretary, challenging the levy

and collection from the manufacturers of chappals under the provisions of the Act, the Rules framed and the relevant notification issued thereunder of a duty as a result of the amendment made in s. 12 of the Act by the Rubber Amendment Act of 1960. A learned Single Judge dismissed the writ petition and his judgment was affirmed by a division bench of the High Court.

The contentions which have been raised are: (1) the duty sought to be imposed under s. 12 as amended being outside the ambit of Entry 84 of List I in the Seventh Schedule to the Constitution is beyond the legislative competence of the Parliament; (2) Section 12(2) suffers from the vice of excessive delegation. It confers uncontrolled and unrestricted discretion upon the Rubber Board to levy upon and collect duty of excise from either the owners of the rubber producing estates or the users so called manufacturers (of rubber) without specifying the circumstances under which it should be imposed upon the one or the other nor has any guiding policy or principle been laid down in the Act for making a choice. (3) In any case, the Rules which have been framed do not satisfy the provisions of s. 12(2) of the Act and do not indicate with sufficient clarity and precision on whom the levy is to be made and from whom the duty is to be collected as between the owners of the estates and the manufacturers. The relevant statutory provisions may first be noticed. In 1947 the Central legislature enacted The Rubber (Production and Marketing) Act, 1947. Its name was changed to Rubber Act 1947 by the Rubber (Production and Marketing) Amendment Act, 1954. The Act was enacted to provide for the development under the control of the Union of the rubber industry. Under s. 4 the Rubber Board was to be constituted. The functions of the Board were enumerated in s. 8. It was to be its duty to promote by such measure as it thought fit development of the rubber industry. Under s. 10 it was obligatory on every person owning land planted with rubber plants to get himself registered as an owner by applying to the Board. Section 12 provided for the imposition of rubber cess. Under s. 14 no person could sell or otherwise dispose of or buy or otherwise acquire rubber except in accordance with the terms of general or special license issued by the Board. The Central Government was given the over-all control over the acts of the Board by s.

22. Section 25 empowered the Central Government to make Rules. Prior to the amendment made by the Rubber Amendment Act of 1960 (Act XXI of 1960) the duty of excise was payable under s.12(2) by the owners of the estates on which rubber was produced and it was to be paid by' them to the Board within one month from the date on which they received a notice of demand. By Act XXI of 1960 an important change was made which affected the manufacturers and the duty could be collected by the Board either from the owners of the estates or from the manufacturers by whom the rubber is used.

At this stage the relevant provisions of the Act with which we are concerned may be reproduced :--

> S. B(e) "manufacturer" means any person engaged in the manufacture of any article in the making of which rubber is used;"
>
> (h) "rubber" means--
>
> (i)

(ii)

(iii) latex, (dry rubber content) in any state of concentration, and includes scrap rubber, sheet rubber, rubber in powder and all forms and varieties of crepe rubber, but does not include. rubber contained in any manufactured article;"

S. 4(3) "The Board shall consist of-

(a) a Chairman to be appointed by the Central Government;

(b) two members to represent the State of Madras, one of whom shall be a person representing rubber producing interests;

(c) eight members to represent the State of Kerala, six of whom shall be persons representing the rubber producing interests, three of such six being persons representing the small growers;

(d) ten members to be nominated by the Central Government of whom two. shall represent the manufacturers and four labour; and

(e) three members of Parliament of whom two shall be elected by the House of the People and one by the Council of States; and

(f) the Rubber Production Commissioner, ex-Officio."

S. 12(4)"For the purpose of enabling the Board to assess the amount of duty of excise levied under the section--

(a) the Board shall, by notification in the Official Gazette, fix a period in respect of which assessments shall be made; and

(b) without prejudice to the provisions of section 20, every manufacturer shall furnish to the Board a return not later than fifteen days after the expiry of the period to. which the return relates, stating-

(i) in the case of an owner, the total quantity of rubber produced on the estate in each such period; Provided that in respect of an estate situated only partly in India, the owner shall in the said return show separately the quantity of rubber produced within and outside India;

(ii) in the case of a manufacturer, the total quantity of rubber used by him in such period out of the rubber produced in India."

The contention raised on behalf of the appellant- association is that under Entry 84 of List I in the Seventh Schedule to the Constitution the duties can be levied on goods manufactured or produced in India. Excise duty, it is pointed out, can be levied only on the actual producers and manufacturers of rubber but in the very nature of such duty it could not be imposed on users o.r consumers of that commodity. It is suggested that sub-s. (1) of s. 12 is the charging section and sub-s. (2) provides for the machinery for levy and collection of tax. But sub-section (2) cannot alter the substantive provision in the charging sub-section (1) and since the Parliament has employed the words ':duty of excise" which have a well understood meaning the incidence of tax would fall only on the actual producers. Once the incidence of tax was shifted to the users the tax would cease to be one which would fall within Entry 84. In re the Central Provinces and Berar Act No.. XIV of 1938(1) Gwyer C.J. described "excise duty" thus:

> "But its primary and fundamental meaning in English is still that of a tax on articles produced or (1) [1939] F.C.R. 18, 40-41.

manufactured in the taxing country and intended for home consumption".

The learned Chief Justice, however, proceeded to add that there could be no reason in theory why such duty should not be imposed even on the retail sale of an article if the taxing .Act so provided. It could obviously be imposed at the stage which was found to be most convenient and lucrative as that was a matter of the machinery of collection and did not affect the essential nature of the tax. Referring to this decision of the Federal Court and several other cases it was observed in R.C. Jail v. Union of India(1) at page 451:

> "Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, its ultimate incidence will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is, it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to-the machinery of collection for administrative convenience. Whether in a particular case the tax ceases to be in essence an excise duty, and the rational connection between the duty and the person on whom it is imposed ceased to exist, is to be decided on a fair construction of the provisions of a particular Act".

The above statement of law in no way supports the argument that the excise duty cannot be collected from persons who are neither producers nor manufacturers. Its incidence certainly falls directly on the production or manufacture of goods but the method of collecting will not affect the essence of the duty. In our opinion sub-s. (2) of s. 12 provides for the method of collection as the excise duty can be collected either from the producers or from the manufacturers as defined by the Act which would include members of the appellant association who use rubber in the manufacture of chappals.

It seems to us that if the provisions of Entry 97 in List I in the Seventh Schedule as also the provisions of Art. 248 of the Constitution are kept in view the Parliament would have legislative competence even with regard to the imposition of a tax which does not fall within Entry 84. It will be a kind of non-descripts tax which has been given the nomenclature of a duty of excise.

(1) [1962] Supp. 3 S.C.R. 436.

Sup. CI/70--6 Counsel for the appellant-association quite properly has not challenged this position but has merely sought to lay emphasis on sub-s.-(1) being the charging section. We find it difficult to endorse the reading of sub-s. (1) and sub-s. (2) of s. 12 in isolation. Not only the statute but also, the section have to be read as a whole and together, and in our judgment whatever be the nature of duty, Parliament would undoubtedly have legislative competence under Entry 97 of List I in the Seventh Schedule read with Art. 248 of the Constitution.

We may next deal with the question whether s. 12(2) suffers from the vice of excessive delegation and whether there has been violation of Art. 14 as uncontrolled and unbridled discretion has been conferred on the Board to levy and collect the tax from either the producer or the manufacturer (the user of rubber). It is pointed out that there is no guiding principle or policy laid down in the Act to enable the Board to make a choice between the two categories. The principles governing such questions have been laid down in several decisions of this Court. It is well established that essential legislative functions consist of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. What can be delegated is the task of subordinate legislation necessary for implementing the purpose and objects of an enactment. Where legislative policy is enunciated with sufficient clearness or a standard is laid down the 'courts will not interfere. It will depend on consideration of the provisions of a particular Act including its preamble as to the guidance which has been given and the legislative policy which has been laid down in the matter. In a taxing statute the guidance may take the form subjecting the rate to be fixed by the local body to the approval of the Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. The reasonableness of the rates may be ensured by providing Safeguards laying down the procedure for consulting the wishes of the local inhabitants. So long as the law has provided the method by which the local body can be controlled and there is a provisions to see that reasonable rates are fixed it can be said that there is guidance in the matter of fixing the rates for local taxation; vide Wanchoo, C.J. in Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi & Anr.(1) In s. 12(2) the Parliament has made it quite clear that the Board can levy and collect the duty of excise either from the owner of a rubber estate on which the rubber is produced or from the manufacturer by whom such rubber is used. The Board has (1) [1968] 3 S.C.R. 251 at pp. 269-270.

further been enjoined to do so in accordance with Rules made in this behalf. The Board, as constituted under s. 4, has to be a high powered body and among its members those representing the rubber producing interests, the small growers, the manufacturers and the labour are included. It can, therefore, keep in view the interests of all concerned. AccOrding to the preamble of the Act it was meant for the development of the rubber industry under the control of the Union. That is the main purpose for which the Board has to function. All amounts paid to the Board by the Central

Government under s. 12(7) of the Act have to go to the general fund of the Board under s. 9A. Section 12(7) provides that the proceeds of the duty of excise collected has first to be credited to the Consolidated Fund of India reduced by the cost of collection and then it has to be paid over by the Central Government to the Board. The Board is thus vitally interested in the collection of the duty and it has to see that such duty is collected without undue delay and proper expedition. It has also to look to the best possible method of realization. In the light of this scheme as embodied in the Act it is difficult to sustain the challenge on the ground of excessive delegation. The policy of the Act has been enunciated with sufficient clarity and the guidance has been furnished by the provisions to which reference has been made as to how the Board should exercise its powers in the matter of levy and collection of tax. There is also another important safeguard which is contained in s. 22 of the Act. All acts of the Board by virtue of that section shall be subject to the control of the Central Government which may cancel, suspend or modify any action taken by the Board.

The provision in s. 12(2) that the Board shall levy and collect the duty, in accordance with the Rules is another important safeguard against the Board acting arbitrarily in the matter of collection of duty from the owners of the rubber estates or the manufacturers. These Rules are to be framed by the Central Government under s. 25(1)(xxa) which is to the following effect:

> "the cases and circumstances in which the duty of excise under section 12 shall be payable by the owner and the manufacturers respectively, the manner in which the duty may be assessed, paid or collected, the regulation of the production, manufacture, transport or sale of rubber in so far as such regulation is necessary for the proper levy, payment or collection of duty;"

Section 25(3) makes it obligatory on the Central Government to place every rule before each House of Parliament for a specified period of 30 days and those Rules can be subject to criticism and can be modified or even be abrogated. Thus it is not possible to hold that the Parliament has abdicated its functions in enacting s. 12(2) of the Act.

Learned Attorney General has relied on certain decisions of this Court according to which it can be left to the authority which has to levy and collect the tax to decide whether to collect from one category of persons or the other category where persons in both categories can be subjected to tax. In M.M. Ipoh & Ors. Income-tax Madras(1) the validity of s. 3 the Income-tax Act, 1922 was challenged on the ground that it was violative of Art. 14 of the Constitution. That section invested the taxing authority with an option to assess to tax the income collectively of the association of persons. The argument raised was that that Act set no principles and disclosed no guidance to the Income-tax Officer in exercising the option. The scheme of the Income-tax Act was considered and it was observed that the duty of the Income-tax Officer was to administer its. provisions in the interest of public revenue and to prevent evasion of tax and his function was mainly quasi- judicial. The decision of bringing to tax either the income of the association collectively or the shares of the members of the association separately was not final and was subject to appeal. It was held that the very nature of the authority exercised by the Income-tax Officer and his duty to prevent evasion or escapement of liability constituted adequate enunciation of principles and policy for his guidance. In Raghubar Dayal Jai Prakash v. The Union of India(2) the validity of certain provisions of the

Forward Contracts (Regulation) Act, 1952 was assailed. In regard to s. 15 of that Act the argument was that it conferred unguided and arbitrary power upon the Central Government to choose any commodity it liked and bring the Act into operation in respect of the commodity which the Government chose at any time it pleased. In this manner the interest of the traders could be vitally affected by rendering illegal a contract which was. perfectly legal when it was entered into. This Court referred to the Report of the Expert Committee on the Bill which became an Act, dealing with the economic implications of forward trading and for the necessity of regulating such- contracts in particular goods. It was observed that the suitability of a commodity for forward trading depended on factors which were far from static and which were subject to variations over a period of, time. A continuous assessment was required of all elements which would necessitate regulation. All this could not. be specified in a statute. It was for that reason that a Forward Markets Commission had been constituted on whom the duty had been cast of advising the Government on the situation as it existed from time to time. The following observations are pertinent and may be reproduced:

(1) [1968] 1 S.C.R. 65. (2) [1962] 3 S.CR.

547.

> "In our opinion, the selection of the commodity the regulation of forward trading in it or of prohibition such trading can only be left to the Government and the purpose for which the power is to be used and the machinery created for the investigation furnish sufficient guidance as to preclude any challenge on the ground a violation of Art.
>
> 14."

In the statement of objects and reasons appended to Bill No. 32 of 1960 when amendments were made in s. 12 of the Act by the Rubber Amendment Act, 1960, it was stated inter alia:

> "This method of collection of the cess provided under the Act has led to considerable evasion of cess by the owners of the estates, either by evasion of registration or by failure to submit correct returns or any returns at all. There are about 26,000 estates under production in the country and most of them are small holdings. Many of them do not render returns of production to the Rubber Board and thus evade payment of duty. From October, 1947 to December 1954, it was found that 20,608 tons of rubber escaped assessment and the Board suffered during the period a loss Rs. 2,30,805. The Rubber Board estimates that under the present system there is no likelihood of more than 65 per cent of the potential revenue being realised each year.
>
> With a view to improving the efficiency of collection, it is proposed to amend section 12 of the Act so as to enable the cess to be collected either from the owners or the manufacturer who ultimately consumes the rubber produced in the estates. There are at present 347 registered rubber manufacturers in the country. It is felt that it would be far more easy to collect the cess from a small number of manufacturers than from about 26,000 producers whose number will increase year by year. The proposed

> amendment of section 12 in the amending Bill is an enabling measure for the administrative change in the method of collection being contemplated."

Although it may not be permissible to take the statement of objects and reasons into consideration for construing the provisions of an Act the facts contained in such a statement can certainly be looked at for the purpose of seeing any alleged infringement of Art. 14. It is quite clear from the data given that the Rubber Board was finding it difficult to levy and collect the duty from the owners of rubber estates and it was considered that it would be much easier to collect the same from the manufacturers. The Board was, therefore, to collect the duty in accordance with the rules made in this behalf by the Central Government. Thus it was necessary, in view of the entire facts and circumstances stated before, that it should be left to the rule-making authority to indicate the cases and the circumstances in which the duty of excise was to be collected from the owner or the manufacturer respectively. It was open to the rule making authority to vary the rules according to the changing circumstances and conditions. The Board which was a high powered body was mainly responsible for collection of the duty and the rules would naturally be made in consultation with it from time to time. We are unable to see how the challenge on the ground of discrimination under Art. 14 can be sustained in view of all these reasons. It does not appear that the Board can 'discriminate in an arbitrary manner between owners of rubber estates and the manufacturers or between persons inter se of the same category.

The Central Government has framed rules pursuant to the power conferred by s. 25 of the Act. Unfortunately the rules relating to furnishing of returns and collection of duties are not properly worded and suffer from lack of clarity. Under Rule 33 the Board can call for information and documents from owners of rubber estates or any licensed dealer or manufacturer relating to the stock of rubber held and sale of rubber etc. Under el. (e) all manufacturers have to submit half yearly returns in form M showing the total quantity of all rubber purchased or otherwise acquired and consumed or used in the process of manufacture. Rule 33A provides for production of accounts by an owner if he fails to furnish in time the return referred to in sub-s. (4) of s. 12 or if he furnishes a defective return. The Board can, after checking the amounts and after, making such further enquiry as it may deem fit assess the amount payable under sub-s.(2) of s. 12. Similar provision is made with regard to manufacturers by Rule 33B. Rule 33D, however, is material and may be reproduced:

> (1) "Every manufacturer shall by demand notice sent through registered post or in such other manner as the Board may direct be intimated of the amount assessed on the quantity of rubber acquired during the periods specified in rule 33(e). On receipt of such notice, the manufacturer shall pay to the Board the amount specified therein either in cash at the Board's office at Kottayam or by money order or by bank draft or .cheque duly crossed and payable at Kottayam to the Secretary of the Board within 30 days of the receipt of the said notice.
>
> (2) On such demand being made, if a manufacturer fails to pay the amount within the due date, the Board may take steps to report the fact to the Central Government or the State Government concerned for recovery of the outstanding amount as an after of land revenue."

Now the above rule seems to contemplate the filing of return both by the owners of rubber estates and manufacturers. But under Rule 33D the demand notice can be sent only to a manufacturer on receipt of which he must make payment to the Board of the amounts specified therein. On his failure to make such payment the Board can take steps for recovery of the amounts due as arrears of land revenue by reporting to the Central Government or the State Government as the case may be There is no such procedure prescribed with regard to owners of estates. It would follow that under the rules the demand notice is to be sent only to the manufacturers and the amounts of duty are to be realised from them alone. The substantive provisions of sub-ss. (4), (5) and (6) of s. 12 also contemplate assessment being made with regard to the returns to be furnished by owners and manufacturers. Any person aggrieved by an assessment has been given the right of appeal to the District Judge. But as pointed out before, there is no provision either in the statute or in the rules for a demand to be made and a coercive process to be employed in the event of failure to make the payment. That is done by Rule 33D alone from which it would be reasonable to conclude that under the rules it is only the manufacturers who are liable to pay the amount of duty. The rules can, therefore, be said to make a definite provision with regard to the category of persons from whom the collection of the duty is to be made, namely, the manufacturers.

For all the reasons given above the appeal fails and it is dismissed with costs.

Y.P. Appeal dismissed.