

Union Of India vs State Of Mysore on 19 October, 1976

Equivalent citations: 1977 AIR 127, 1977 SCR (1) 842, AIR 1977 SUPREME COURT 127, 1976 4 SCC 531, 1977 (1) SCR 842, 1977 (1) SCWR 498, 1977 (1) KANTLJ 28, 1976 U J (SC) 871, ILR 1977 1 KANT 169

Author: P.N. Shingal

Bench: P.N. Shingal, A.N. Ray, M. Hameedullah Beg

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
STATE OF MYSORE

DATE OF JUDGMENT 19/10/1976

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH

CITATION:
1977 AIR 127 1977 SCR (1) 842
1976 SCC (4) 531
CITATOR INFO :
1984 SC1675 (8,9)

ACT:
Constitution of India - 131--Disputes between
State and Union-Jurisdiction of High Court---Charge of
Excise Duty---Condition of--Whether an article manufactured
or produced before the levy is imposed is excisable.

HEADNOTE:
The respondent State of Mysore runs an implements
Factory. The first schedule Central Excises and Salt
Act, 1944 amended whereby item No. 26AA was inserted by
Finance Act, 1962. On the date when the said amendment came
into force the respondent had in his stock, certain iron
rods and bars. After the amendment, however, the rods and
bars were put through a further manufacturing process and

were converted into shovels, spades and other agricultural implements which were not covered by schedule 1. The Central Excise Inspector issued a demand notice in respect of the said rods and the bars on the ground that they were excisable. The respondent contended that no excise duty was payable on the said articles because when the amendment came into force, they were already in the stock of the respondent and that they were not manufactured after the amendment came into force. The contention of the respondent was negated by the authorities under the Act. The Writ Petition filed by the respondent under Article 226, was allowed.

Dismissing the appeal by Special Leave,

HELD: Section 3 of the Act the excise duty is payable on articles produced or manufactured. It was admitted in the counter affidavit of the appellant that the rods and bars were not produced or manufactured in the implements factory of the respondent. The goods which were made out of the rods and bars were admittedly not excisable goods. The appeal was dismissed as the goods were not liable to excise duty. [844 E-H]

2. The contention that the High Court could not have decided the matter in view of the provision of Article 131 of the Constitution was negated on the ground that there was nothing on record to show that there was any dispute between the Central and the State Governments. The Union of India was made a party merely because it had dismissed the revision application of the State Government. [845 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1695 of 1968.

Appeal by Special Leave from the Judgment and Order dated 4/5-9-67 of the Mysore High Court in W.P. No. 1416/65. V.P. Raman, Addl. Sol. Genl., S.K. Mehta and Girish Chandra for the Appellant.

H.R. Datar and N. Nettar, for the Respondent. The Judgment of the Court was delivered by SHINGHAL, J.--This appeal by special leave is directed against the judgment of the High Court of Mysore dated September 4/5, 1967. The High Court was moved by the State of Mysore under article 226 of the Constitution for quashing the demand notice dated July 21, 1962 issued by the Inspector of Central Excise for the payment of Rs. 2,465.91 as excise duty on the products despatched by the State's Implements Factory. The demand was made with reference to the newly inserted item 26AA in the First Schedule to the Central Excises and Salt Act, 1944, hereinafter referred to as the Act. That item was added to the Schedule by the Finance Act of 1962, and it was claimed by the Central Excise Department that, on the date of the amendment, the State Government was in possession of some stock of iron and steel products, namely, flats, squares and rods in its factory, which had been obtained from their manufacturers when they were not excisable articles. The precise claim of the Excise authorities was that the duty became payable on those articles by virtue of the newly inserted

item 26AA because the aforesaid stock of iron and steel products was used for the manufacture of agricultural implements like 'mamties, pickaxes, 'sledge hammers, shovels and ploughs. The Assistant Collector of Central Excise explained in his letter dated June 19, 1962, that the agricultural implements which were manufactured in the State's Implements Factory fell within the purview of item 26AA as they were forged or extruded during the process of manufacturing the agricultural implements. It was contended that the demand was justified because the aforesaid iron and steel products, out of which the agricultural implements were manufactured, had not borne any excise duty at all. An appeal was preferred to the Collector of Central Excise against the demand, but without success. A revision was taken to the Central Government under the provisions of the Act, but it was also dismissed. That was why the State Government applied to the High Court for quashing the demand and for setting aside the appellate order of the Collector and the revisional order of the Central Government. The Central Government traversed the claim of the State Government on the ground that as the rods and bars, which were held in stock by the State's Implements Factory, were "pre-excise stock", and as they were put to further process by forging them into shovels, spades and other agricultural implements, they became liable to duty until the "pre-excise stock" held by the factory on April 24, 1962, was utilised and converted into forged implements and was cleared from the factory. It was also urged that the petition was not maintainable in the High Court as it raised a dispute between the Government of India and the State Government within the meaning of article 131 of the Constitution.

The High Court rejected both the contentions of the Central Government and quashed the impugned demand notice and the appellate and the revisional orders. That is why the Union of India has preferred the present appeal. It is not in controversy that the claim for the levy of excise duty was based on sub-sections (1) and (1A) of section 3 of the Act which read as follows,--

"3(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the First Schedule.

(1A) The provisions of sub-section (i) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government."

It is therefore quite clear, and is not in dispute before us, that the claim for the levy of excise duty in question could be justified only if it could be shown that excisable goods (other than salt) were produced or manufactured in the Implements Factory of the State Government. It was however admitted in the counter-affidavit of the Senior Superintendent of Central Excise as follows,--

"In the case of the petitioner, since the rods and bars held in stock by the Implements Factory were pre-excise stock and since those rods and bars were put to further process by forging the same into shovels, spades and other agricultural implements etc., they became liable to duty and therefore, duty was demanded on

such forged articles during the period that is till such quantities of the bars and rods as were in stock with the factory on 24-4-62 were utilised and converted into forged implements and cleared from the factory."

This makes it quite clear that the rods and bars in question were not "produced or manufactured" in the State Government's implements Factory. They could not therefore be subjected to the levy of excise duty. It is true that the rods and bars were utilised for the manufacture of agricultural implements like shovels and spades; but those agricultural implements were not of the description specified in item 26AA of the First Schedule with reference to section 3 of the Act.

It is admitted by Mr. Raman that agricultural implements were not included in the First Schedule to the Act and were not excisable articles. This appears to be so because they are the basic tools of trade by which a vast majority of the citizens of the country earn their livelihood. There could therefore be no question of levying any excise duty on shovels and spades or other agricultural instruments 'manufactured by the Implements Factory of the State Government and, as has been shown, the rods and bars which formed the pre-excise stock of the factory had not been manufactured by the Implements Factory. Section 3 of the Act could not therefore be invoked to levy excise duty merely on the ground that the "pre-excise stock" of rods and bars was utilised for the purpose of manufacturing agricultural instruments. There is therefore nothing wrong with the view which has prevailed with the High Court in this respect.

Mr. Raman tried to argue that the High Court erred in not applying article 131 of the Constitution to the controversy even though the writ petition was barred thereunder as it fell exclusively within the jurisdiction of this Court under article 131 of the Constitution as a dispute between the Government of India and the State of Mysore. The argument is however futile because there is nothing on the record to show that there was any such dispute between the Central and the State Governments. As the High Court has pointed out, the Union of India was made a party to the writ petition merely because it had dismissed the revision application of the State Government.

There is thus no merit in this appeal and it is dismissed with costs.

M.R.
missed.

Appeal dismissed.