

## **B.K. Industries And Ors. Etc. Etc vs Union Of India And Others on 13 April, 1993**

**Equivalent citations: 1993 AIR 2123, 1993 SCR (3) 51, AIR 1993 SUPREME COURT 2123, 1993 AIR SCW 2503, 1993 (3) SCC(SUPP) 621, 1994 (19) UPSTJ 188, 1993 SCC (SUPP) 3 621, 1994 UPSTJ 19 188, (1993) 2 JT 709 (SC), (1993) 3 SCR 51 (SC), (1993) 68 TAXMAN 138, (1993) 65 ELT 465, (1993) 47 ECR 32, (1993) 116 TAXATION 133**

**Author: B.P. Jeevan Reddy**

**Bench: B.P. Jeevan Reddy, N Venkatachala**

PETITIONER:

B.K. INDUSTRIES AND ORS. ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 13/04/1993

BENCH:

JEEVAN REDDY, B.P. (J)

BENCH:

JEEVAN REDDY, B.P. (J)

VENKATACHALA N. (J)

CITATION:

1993 AIR 2123                      1993 SCR (3) 51

1993 SCC Supl. (3) 621 JT 1993 (2) 709

1993 SCALE (2)541

ACT:

Vegetable Oils Cess Act, 1983: Section 3. Levy and collection of cess for period March. 1986 to March 31, 1987- Validity of.

Statutory Interpretation:

Power of exemption--Cannot be utilised nor extended to scrapping of the Act itself.

HEADNOTE:

Parliament enacted In 1983 the National Oilseeds and Vegetable Oils Development Board Act, 1983 to provide for

the development, under the control of the Union, of the Oilseeds Industry and the Vegetable Oils Industry and for matters connected therewith. The Act contemplated the establishment of a board called the National Oilseeds and Vegetable Oils Development Board, and the Constitution of Oilseeds and Vegetable Oils Development Fund for promoting the purposes of the Act. The Vegetable Oils Cess Act, 1983, was, simultaneously enacted to levy and collect by way of cess, for the purpose of the National Oilseeds and Vegetable Oils Development Board Act, 1983, a duty of excise on vegetable oils produced in any mill in India at such rate not exceeding Rs. 5 per quintal on vegetable oil. This Cess Act was, however, repealed by Section 12 of the Cotton, Copra and Vegetable Oils Cess (Abolition) Act, 1987. Chapter 5 of the said Act carried the heading 'Collection and Payment of Arrears of Duties and Excise'.

The petitioners who were manufacturers of vegetable oil, which was subject to the cess/duty of excise under Section 3 of the Cess Act, in their writ petitions to this Court questioned the validity of the levy and collection of cess for the period commencing on, 1st March, 1986 and ending with 31st March, 1987. It was contended that (1) In his Budget Speech delivered on 28.2.1986 while presenting the Budget

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1986-87, the Union Finance Minister had stated that as an endeavour to reduce the number of cesses it had been decided to dispense with the cotton, copra and vegetable oils and that this statement was exemplified and implemented by way of a communication from the Directorate of Vanaspati. It is not open to the Government to go back upon the said decision and demand cess for the period subsequent to March 1, 1986, and (2) By virtue of Sub-section (4) of Section 3 of the Cess Act, Rule 8 of the Central Excise Rules is attracted among other provisions of the Central Excise Act and Rules. Reading the budget proposals of the Finance Minister and the letter of the Directorate of Vanaspati together it must be held that vegetable oils have been exempted from the levy under Section 3 (1).

Dismissing the Writ Petitions, this Court,

HELD: 1 (a) The cess having been imposed by a Parliamentary enactment could be rendered inoperative only, by a parliamentary enactment. Such repealing enactment came only in the year 1987 with effect from April 1, 1987. (58-C) (b) The repealing Act expressly provided in Section 13 that the cess due before the date of said repeal, but not collected, shall be collected according to law, as if the Cess Act is not repealed. This provision amounts to a positive affirmation of the intention of the parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act. (58-1.)

(c) In the face of the aforesaid statutory provisions, no rights can be founded-nor can the levy of the cess be said

to have been dispensed with by virtue of the alleged decision referred to in the Finance Minister's speech or on account of the letter dated August 11., 1986. (58-E)

(d) The Finance Minister's speech is not law. The Parliament may or may not accept his proposal. Indeed, in this case, it did not accept the said proposal immediately but only a year later. It is only from the date of the repeal that the said levy becomes inoperative. (58 F)

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2 (a) The cess imposed under section 3 (1) of the Cess Act. is a duty of Excise as stated in Section 3 Itself. Therefore, the Central Board of Excise and Customs was perhaps competent to grant exemption even in the case of said cess though no definite opinion on this question need be expressed since it was not debated. Suffice It to say that the Central Government cannot again be brought in under sub-rule (2) of rule 8 in the place of the Central Board nor can the Directorate of Vanaspati and Vegetable Oils be equated to the Central Board of excise and customs. (58-H, 59-A)

(b) The words "so far as may bell occurring In section 3 (4) of the Cess Act cannot be stretched to that extent. Above all It Is extremely doubtful whether the power of exemption conferred by rule 8 can be carried to the extent of nullifying the very Act itself. It would be difficult to Wee that by virtue of the power of exemption, the very levy created by Section 3 (1) can be dispensed with. Doing so would amount to nullifying the Cess Act Itself. Nothing remains thereafter to be done under the cess Act. Even the language of Rule 8 does not warrant such extensive power; Rule 8 contemplates merely exempting of certain excisable goods from the whole or any part of the duty leviable on such goods. (59-B)

3. The power of exemption cannot be utilised to dispense with the very levy created under Section 3 of the Cess Act or for that matter under Section 3 of the Central Excise Act. (59-E)

Kesavananda Bharti Sripadagalvaru and others v.. State of kerala and another A.I.R. 1973 S.C. 1461, (62-G) relied on.

#### JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (c) No. 857/87 etc. etc. (Under Article 32 of the Constitution of India). Altaf Ahmed, Addl. SolicitorGeneral, M.L. Verma, G.L. Sanghi. K. Labiri, Sarva Miner, Narain, S. Bhattacharya, Vivek Gambhir, S.K. Gambhir, Vijay-Hansaria, P. Pameswaran, P.K.Jain, Rajiv Dutta, M.N. Shroff, Ms. A.Subhashini, Ms. PratibhaJain, L.K. Gupta, M.A. Firoz, Naresh K. Sharma, A.K. Goel, Ashok K. Mahajan, Ms. Sushma Suri and Kailash Vasdev for the appearing parties. The judgment of the Court was delivered by B.P. JEEVAN REDDY, J. The petitioners in this batch of writ petitions question in the validity of the levy and collection of cess

under section 3 of the Vegetable Oils Cess Act, 1983 for the period commencing 1st March, 1986 and ending with 31st March, 1987.

Parliament enacted in the year 1983 the National Oilseeds and Vegetable Oils Development Board Act, 1983 (being Act 29 of 1983) hereinafter referred to as the Board Act. The Act was intended to provide for the development, under the control of the Union, of the oilseeds Industry and the Vegetable Oils Industry and for matters connected therewith. The Act contemplated establishment and constitution of a board called the National Oilseeds and Vegetable Oils Development Board. The functions of the Board were specified in section 9. In short the duty of the Board was to promote the development, by such measures as it thought fit, subject to the control of the Central Government, the Oilseeds Industry and the Vegetable Oils Industry. Section 12 provided for constitution of Oilseeds and Vegetable Oils Development Fund. The fund was to be applied for promoting the purposes of the Act.

Simultaneously with the Board Act was enacted the Vegetable Oils Cess Act, 1983 (being Act 30 of 1983), hereinafter referred to as the Cess Act. The purpose of this Act is stated in sub-section (1) of section 3. It is to levy and collect "by way of cess, for the purposes of the National Oilseeds and Vegetable Oils Development Board Act, 1983, a duty of excise on vegetable Oils produced in any mill in India at such rate not exceeding Rs.5 per quintal on vegetable oil, as the Central Government may, from time to time, specify by notification in the Official Gazette". Sub-section (2) of Section 3 clarified that the duty of excise levied under sub-section (1) section 3 shall be in addition to the duty of excise leviable on vegetable oils under the Central Excises and Salt Act, 1944 or any other law for the time being in force. Sub-section (3) stated that the duty of excise levied on section 3 (1) shall be payable by the occupier of the mill in which the vegetable oil is produced. Sub-section (.4) provided that the provisions of the Central Excise Act 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 the said duty of excise as they apply in relation to the levy and collection of the duty of excise on vegetable oils under that Act". Section 4 provided that the proceeds ,of the duty of excise levied under section 3 (1) shall first be credited to the Consolidated Fund of India. Subject to appropriation made by law by the Parliament, the Central Government could pay to the Board from time to time such amounts from out of the said collections as it thought fit for being utilised for the purposes of the Board. Section 7 amended certain provisions of the Produce Cess Act, 1966.

It is thus clear that the cess, which is called a duty of excise, levied under section 3 of the cess Act was intended to serve the purposes of the Board Act. The said cess was accordingly levied and collected on and from 1983. The Cess Act was, however, repealed by section 12 of the Cotton, Copra and Vegetable Oils Cess (Abolition) Act, 1987 (being Act 4 of 1987), hereinafter referred to as the Repeal Act. Chapter IV of the Repeal Act provides for the repeal inter alia of the Vegetable Oil Cess Act, 1983. Section 12 is the repealing section. Chapter V, containing only one section namely section 13, is relevant for purposes. Chapter V carries the heading "COLLECTION OF ARREARS OF DUTIES OF EXCISE",. Section 13 reads as follows:

"13. Collection and payment of arrears of duties of excise-Notwithstanding anything contained in the amendments made to the Produce Cess Act, 1966 (15 of 1966) or the repeal of the Copra Cess

Act, 1979 (4 of 1979) or the Vegetable Oils Cess Act, 1983 (30 of 1983) , by this Act, any duty of excise, levied under any of the said Acts immediately before the commencement of this Act, but has not been collected before such commencement, shall be liable to be collected after such commencement in accordance with the provisions of the said Acts for being paid into the Consolidated Fund of India as if this Act had not been enacted,"

The Statement of Objects and Reasons appended to the Bill,.

(which became the Repeal Act) stated inter alia that the abolition of the said cess was with a view to reduce the number of cesses and multiplicity of taxes. The petitioners do not dispute the validity of the levy of the said cess/duty of excise till the 28th February, 1986. Their submission is confined, as stated hereinbefore, to the period commencing on March 1, 1986 and ending with March 31, 1987. As noticed here in before, the Cess Act was repealed on and with effect from March 31, 1987 by section 12 of the Repeal Act. Section 13 of the Repeal Act expressly provides notwithstanding the said repeal, the duty of excise levied under the said Act immediately before the commencement of the Repeal Act, but which has not been collected before such commencement, shall be liable to be collected even after the repeal, in accordance with the Cess Act, as if the said Cess Act has not been repealed. In the face of this provision, it would appear that the petitioners' dispute as to their liability to pay the said cess for the period March 1, 1986 to March 31, 1987 is of little avail. The petitioners, however, rely upon certain circumstances/grounds in support of their contention which we may now deal with.

The petitioners are manufacturers of vegetable oil, which was subject to the cess/duty of excise under section 3 of the Cess Act. They rely upon the following circumstances and ground in supports of their plea:

(1) In his Budget Speech delivered on 28.2.1986, presenting the Budget 1986-87, the Union Minister of Finance stated:

"the long term Fiscal Policy recognises that cesses levied as excise duties contribute to the multiplicity of taxes. As an endeavour to reduce the number of the cesses it has been decided to dispense with the cess on cotton, copra and vegetable oils. The Ministry of Agriculture will take appropriate action in the matter. The loss to the exchequer on this account will be Rs.5.90 crores." The Budget proposals also specify the loss of revenue on account of the decision to dispense with the cess on vegetable oils among others. This, Speech made on the floor of the Lok Sabha speaks of a decision already taken by the Government and is enforceable and effective from the said date.

(2) In pursuance of the said decision of the Government of India, the Directorate of Vanaspati, Vegetable Oils and Fats addressed the letter dated August 11, 1986 to the Commissioner (Tax Research) Department of Revenue,. New Delhi asking him to

issue instructions to all concerned indicating that the cess on vegetable oils has been dispensed with and as such the cess shall not be collected.

It was further directed that the cess collected, if any, since April 1, 1986 shall be refunded. A copy of this letter was sent to the President, Central Organisation for Oil Industries and Trade, Bombay.

Counsel for the petitioners Shri M.L. Verma and G.L. Sanghi urged the following contentions:

(a) The Budget Speech of the Finance Minister delivered on the floor of the Lok Sabha constitutes an enforceable and effective decision upon which the petitioners were entitled to act. The said decision was exemplified and implemented by way of a communication from the Directorate of Vanaspati, Vegetable Oils and Fats referred to above. In view of the said communication, the petitioners did not pass on the burden of the said cess to their purchasers on and from March 1, 1986. It is not open to the Government to go back upon the said decision and demand cess for the period subsequent to March 1, 1986.

(b) By virtue of sub-section (4) of section 3 of the Cess Act, Rule 8 of the Central Excise Rules is attracted among other provisions of the Central Excise Act and Rules.

Rule 8 empowers the Central Government to grant exemption on any excisable goods from the whole or any part of duty leviable on such goods. Sub-rule (1) of Rule 8 empowers the Central Government to grant exemption while Sub-rule (2) empowers the Central Board of Excise and Customs to grant exemption. Inasmuch as section 3 (4) of the Cess Act applies the provisions of the Central Excise Act and the Rules subject to the rider "so far as may be", the provisions in Rule 8 should be read with the necessary modification. In other words, while sub-rule (1) of rule 8 must be read as empowering the Central Government to grant exemption, sub-rule (2) must be read as conferring a similar power upon the Central Government and/or the Directorate of Vanaspati, Vegetable Oils and Fats. Unlike sub-rule (1), sub-rule (2) does not require the order of exemption to be published in the Official Gazette nor does it require that such exemption should be through a notification. The budget proposals of the Finance Minister and the letter of the Directorate of the Vanaspati and Vegetable Oils aforesaid are relatable to sub-rule (2) or Rule 8 of Central Excise Rule read with sub-section (4) of section 3 of the Cess Act. Reading them together it must be held that the Government and the Directorate have exempted the vegetable oils from the levy under section (1) of section 3.

We find it difficult to agree. It is not brought to our notice that the budget proposals contained in the Finance Minister's speech were accepted by the Parliament. The cess having been imposed by a Parliamentary enactment could be rendered inoperative only by a Parliamentary enactment. Such repealing enactment came only in the year 1987 with effect from April 1, 1987. Not only that. The repealing Act expressly provided in section 13 that the cess due before the date of said repeal, but not collected, shall be collected according to law as if the Cess Act is not repealed. This provision amounts to a positive affirmation of the intention of the Parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act. In the face of the said statutory

provisions, no rights can be founded-nor can the levy of the cess be said to have been dispensed with by virtue of the alleged decision referred to in the Finance Minister's speech or on account of the letter dated August 11, 1986. The Finance Minister's speech is not law. The Parliament may or may not accept his proposal. Indeed, in this case, it did not accept the said proposal immediately but only a year later. It is only from the date of the repeal that the said levy becomes inoperative.

Now coming to the argument based upon Rule 8 of the Central Excise Rules read with section 3(4) of the Cess Act, we find it totally unacceptable. No notification has been issued under rule 8 (1) by the Central Government-much less was any such notification published in the Gazette. No special order has also been made by the Central Board of Excise and Customs in this behalf under rule 8 (2). The cess imposed under section 3 (1) of the Cess Act, it may be remembered, is a duty or Excise as stated in section 3 itself. Therefore, the Central Board of Excise and Customs was perhaps competent to grant exemption even in the case of said cess-though we do not wish to express any definite opinion on this question since it was not debated at the Bar. Suffice it to say that the Central Government cannot again be brought in under sub-rule (2) of rule 8 in the place of Central Board nor can the Directorate of Vanaspati and Vegetable Oils be equated to Central Board of Excise and Customs. The words "so far as may be" occurring in section 3 (4) of the Cess Act can not be stretched to that extent. Above all it is extremely doubtful whether the power of exemption conferred by rule 8 can be carried to the extent of nullifying the very Act itself. It would be difficult to agree that by virtue of the power of exemption, the very levy created by section 3(1) can be dispensed with. Doing so would amount to nullifying the Cess Act itself. Nothing remains thereafter to be done under the Cess Act. Even the language of rule 8 does not warrant such extensive power. Rule 8 contemplates merely exempting of certain excisable goods from the whole or any part of the duty leviable on such goods. The principle of the decision of this Court in *Kesavananda Bharti Sripadagalvaru and others v. State of Kerala* and another A.I.R. 1973 S.C. 1461 applies here perfectly. It was held therein that the power of amendment conferred by Article 368 cannot extend to scrapping of the Constitution or to altering the basic structure of the constitution. Applying the principle of the decision, it must be held that the power of exemption cannot be utilised for, nor can it extend to, the scrapping of the very Act itself. To repeat, the power of exemption cannot be utilised to dispense with the very levy created under section 3 of the Cess Act or for that matter under section 3 of the Central Excise Act.

Mr. Sanghi submitted that the Board contemplated under the Board Act never did actually start functioning and, therefore, the levy of cess is impermissible. It is difficult to agree with this contention either. As the Preamble to the Cess Act indicates, the levy of the said cess was not for the purpose of the Board but for the purpose of the development of the Oilseeds Industry and Vegetable Oils Industry. The Board was merely a medium in that effort. It must be noticed that the cess was to be credited to the Consolidated Fund of India, out of which requisite sums of money to be utilised for the purpose of the Board Act. In any event there is nothing to show that the Board did not become operational except the bare assertion to that effect. A vague allegation cannot merit any credence.

In Writ Petition 963 of 1987 Mr. Sanghi raised an additional contention that the goods concerned therein cannot be called "Veg-

eatable Oil" within the meaning of section 3 (1) of the Cess Act and, therefore, the levy of the cess thereon is incompetent. We cannot, however, allow this contention to be raised in a petition under Article 32 of the Constitution. It is open to the petitioner to raise the said contention before the appropriate authority at the appropriate stage.

For the above reasons the writ petitions fail and are dismissed but in the circumstances without costs.

N. V. K.

Petitions dismissed.