

Supreme Court of India

The Jiyajeerao Cotton Mills Ltd vs State Of Madhya Pradesh on 31 October, 1961

Equivalent citations: 1963 AIR 414, 1962 SCR Supl. (1) 282

Author: M R.

Bench: Sinha, Bhuvneshwar P.(Cj), Kapur, J.L., Hidayatullah, M., Shah, J.C., Mudholkar, J.R.

PETITIONER:

THE JIYAJEERAO COTTON MILLS LTD.

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH

DATE OF JUDGMENT:

31/10/1961

BENCH:

MUDHOLKAR, J.R.

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MUDHOLKAR, J.R.

SINHA, BHUVNESHWAR P.(CJ)

KAPUR, J.L.

HIDAYATULLAH, M.

SHAH, J.C.

CITATION:

1963 AIR 414

1962 SCR Supl. (1) 282

ACT:

Electricity-Levy of duty-Producer, if liable to pay duly on electricity consumed by himself-Such levy if ultra vires the Constitution-Government of India Act, 1935 (26 Geo. 5 Ch. 2), List II Entry 48B-Constitution of India, List I Entry 84, List II, Entry 53-Central Provinces and Berar Electricity Duty Act, 1949 (C. P. & Berar 10 of 1959), as amended by Madhya Pradesh Taxation laws Amendment Act , 1956 (311. P. 7 of 1956), 88. 2, 3

HEADNOTE:

The appellant mill produced electricity over 100 volts exclusively for its own consumption. It challenged the levy of the electricity duty by the Government of Madhya Pradesh

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under the C. P. and Berar Electricity Act as 1949, by the Madhya Pradesh Act 7 of 1956, on the

grounds, firstly that on proper construction of s. 3 of the Act it was not liable to pay any duty at all as the Table of rates did not prescribe any rate for electricity consumed by producers and, secondly, the levy of duty on electricity consumed by producer himself being in substance an excise duty could be levied only by the Parliament under Entry 84 List I. If it was not an excise duty the levying of it was beyond the competence of the State Legislature in the absence of any appropriate Entry in the List.

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Held, that on a combined reading of the definition of 'consumer' in s. 2(a) and 'producer' in s. 2(d-1) of the C. P. & Berar Act, 10 of 1949, a producer, consuming the electrical energy generated by him is also a consumer as he consumes electrical energy supplied by himself, falls squarely within the Table under s. 3 of the Act prescribing rates of duty payable by a consumer and is therefore liable to pay duty thereunder.

Held, further, that the present Act for levy of duty upon consumption of electric energy was enacted under Entry 45B of the List II of the Government of India Act, 1935, corresponding to Entry 53 of List II of the Constitution where as the levy of duty of excise on manufacturer production of goods by Parliament is under Entry 84 of List I. The taxable event with respect to a duty of excise is 'manufacture' or 'production'; and not 'consumption'; the levy upon consumption of electric energy cannot be regarded as duty of excise falling within Entry 84 of List I.

Held, also, the language used in the Legislative Entries in the Constitution must be interpreted in a broad way so as to give the widest amplitude of power to the Legislature to legislate and not in a narrow and pendantic sense.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: CIVIL Appeal No. 582 of 1960.

Appeal from the judgment and order dated February 5, 1959, of the Madhya Pradesh High Court (Gwalior Bench) at Indore in Civil Misc. Case No. 11 of 1959.

A. V. Viswanatha Sastri, Rameshwar Nath," S. N. Andley and P. L. Vohra, for the appellant.

B. Sen, B. K. B.Naidu and I. N. Shroff, for the respondent.

1961. October 31. The Judgment of the Court was delivered by MUDHOLKAR, J.-This is an appeal on a certificate of fitness granted by the High Court of Madhya Pradesh under Art. 133 (1) (a) of the constitution.

The appellant is a textile mill at Gwalior in Madhya Pradesh. It generates electricity for the purpose of running its mills and for other purpose connected therewith. It does not sell electrical energy to any person.

Under the provisions of the Central Provinces and Berar Electricity Duty Act, 1949 (No. 10 of 1949) as amended by the Madhya Pradesh Taxation Laws Amendment Act, 1956 (Act No. 7 of 1956) the Government of Madhya Pradesh levied upon the appellant electricity duty amounting to Rs. 2,78,417/- for a certain period. The appellant paid it under compulsion and thereafter preferred a writ petition to the High Court of Madhya Pradesh under Art. 226 of the Constitution in which it challenged the validity of the levy on two grounds. The first ground was that upon a proper construction of s. 3 of the C. P. & Berar Electricity Duty Act, 1949 as amended by the Madhya Pradesh Taxation Laws amendment Act, 1966 the appellant would not be liable to pay any duty at all. The second ground was that if the Act permitted the levy of duty on electricity consumed by the producer himself it was ultra vires the Constitution because in substance it would be a duty of excise which can be levied only by Parliament under Entry 84 of List I and that even if it was not excise duty it was beyond the competence of the Madhya Pradesh legislature to levy it in the absence of any appropriate entry in List II. The petition was summarily rejected by the High Court, but upon an application made by the appellant it granted to it certificate of fitness, as already stated.

Mr. Viswanatha Sastri has reiterated before us the same grounds which were urged in the High Court.

For the purpose of appreciating the first ground it would be useful to reproduce the terms of B. 3 of the Act. The section runs thus:

"Levy of duty on sale or consumption of electrical energy-Subject to the exceptions specified in Section 3-A every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself or his employees during the preceding month.

#### Table Rates of Duty

(i) Electrical energy supplied for consumption for lights, fans of any other appliances normally connected to a lighting circuit.

6 nP. per unit of energy.

(ii) Electrical energy supplied for purposes other than those specified in item (i) above.

1 nP. per unit of energy.

This is the charging section. It is not disputed by Mr. Sastri that under this provision a producer of electrical energy is made liable to pay duty for the units of electrical energy consumed by himself. He, however, contends that rates of duty have been prescribed in the Table below s. 3 only with respect to electrical energy "supplied for consumption" to others and that no rates have been prescribed with respect to electrical energy consumed by the producer himself. Section 2(a) of the Act defines "consumer". The definition, so far as relevant, runs thus:

" `Consumer' means any person who consumes electrical energy sold or supplied by a distributor of electrical energy or a producer....."

`Producer' as defined s. 2(d-1) of the Act means "a person who generates electrical energy at a voltage exceeding hundred volts for his own consumption or for supplying to others". If we read the two definitions together, omitting the non-essentials, 'consumer' would include "any person who consumes electrical energy supplied by a person who generates electrical energy for his own consumption". under s. 3 a person who generates electrical energy over hundred volts for his own consumption is liable to pay duty on the units of electrical energy consumed by himself. A producer consuming the electrical energy generated by him is also a consumer, that is to say, he is a person who consumes electrical energy supplied by himself. The Table prescribes rates of duty payable with respect to electrical energy supplied for consumption and, therefore, the levy on the appellant falls squarely within the Table under s. 3 of the Act and M/s. Viswanatha Sastri's argument is devoid of substance.

It is difficult to see how the levy of duty upon consumption of electrical energy can be regarded as duty of excise falling within Entry 84 of List I. Under that Entry what is permitted to Parliament is levy of duty of excise on manufacture or production of goods (other than those excepted expressly by that entry). The taxable event with respect to a duty of excise is "manufacture" or "production". Here the taxable event is not production or generation of electrical energy but its consumption. If producer generates electrical energy and stores it up, he would not be required to pay any duty under the Act. It is only when he sells, it or consumes it that he would be rendered liable to pay any duty prescribed by the Act. The Central Provinces and Berar Electricity Act was enacted under Entry 48B of List II of the Government of India act, 1935. The relevant portion of that Entry read thus:

"Taxes on the consumption or sale of electricity..... " Entry 53 of List II of the Constitution is to the same effect. The argument of Mr. Sastri is that the word "consumption" should be accorded the meaning which it had under the various Act, including the Indian Electricity Act, 1980. Under that Act and under the various Provincial and Act, consumption of electricity mean, according to him, consumption by persons other than producers and that both in the Government of India Act any under the Constitution the word 'consumption' must be deemed to have been used in the same sense. The Acts in question deal only with a certain aspect of the topic "electricity", and not with all

of them. Therefore, in those Acts the word "consumption" they have a limited meaning, as pointed out by learned counsel. But the word "consumption" has a wider meaning. It means also "use up" "spend" etc. The mere fact that a series of laws were concerned only with a certain kind of use of electricity, that is consumption of electricity by persons other than the producer cannot justify the conclusion that the British Parliament in using the word "consumption" in Entry 48B and the Constituent Assembly in Entry 53 of List he wanted to limit the meaning of "consumption" in the same way. The language used in the legislative entries in the Constitution must be interpreted in a broad way so as to give the widest amplitude of power to the legislature to legislate and not in a narrow and pedantic sense. we cannot, therefore, accept either of the two grounds urged by or. Viswanatha Sastri challenging the vires of the Act.

The appeal fails and is dismissed with costs.

Appeal dismissed