Supreme Court of India
R. C. Jall vs Union Of India on 27 February, 1962
Equivalent citations: 1962 AIR 1281, 1962 SCR Supl. (3) 436
Author: K Subbarao
Bench: Sinha, Bhuvneshwar P.(Cj), Subbarao, K., Ayyangar, N. Rajagopala, Mudholkar, J.R., Aiyyar, T.L. Venkatarama

PETITIONER:
R. C. JALL

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
27/02/1962

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.(CJ)
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1962 AIR 1281 1962 SCR Supl. (3) 436
CITATOR INFO :

RF	1963 SC1742	(54)
RF	1963 SC1760	(24)
R	1964 SC 925	(23)
R	1967 SC1512	(19,48,66)
R	1970 SC1589	(5)
RF	1971 SC 152	(8)
R	1977 SC1459	(6)
RF	1984 SC 420	(13)
RF	1986 SC 649	(25,28)
RF	1990 SC 781	(67)
RF	1990 SC1927	(70)

ACT:
Railway--Suit for recovery of cess--Limitation--Maintainability--Consignee, if liable--Indian Limitation Act, 1908(IX of 1908), Arts. 149,120.50--Constitution of India, Arts 265, 372--Ordinance No. 39 of 1944--Ordinance 6 of 1947, s.3--Coal Production Fund Rules, 1944, rr.6, 3, 3(a), 3(b)--Supreme Court Rules,1950, as amended, O. XVIII, r.2.
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HEADNOTE:
The appellant, Amalgamated Coalfields, despatched by rail three consignments of coal to appellant R. C. Jall from Junner-Deo to Indore. The appellant R. C. Jall took delivery of the coal after paying the freight, but by, mistake the cess payable as surcharge was not 'recovered from him at the time of delivery of goods. On April 15, 1953, the Union of India representing the Central and Western Railways filed a suit before the Civil judge Chhindwara, for the recovery of the mid cess. Since important questions of interpretation of the Government of India Act, 1935 and the Constitution were involved, the High Court withdrew the case to its own file for trial. The appellants inter alia, pleaded then the levy was illegal and the suit was barred by limitation. The High Court decreed the suit and held that it was within time and the appellants were liable to pay the cess against which the present appeals were preferred. It was urged by the appellants (1) that art. 149 of the Indian Limitation Act did not apply and the suit was governed by art. 120 of the Limitation Act; (2) that the tax could not be sustained under Art. 265 of the Constitution; (3) that the excise duty could not be levied on the consignee; (4) that the purpose of the Ordinance had exhausted and the Central Government could no longer levy the tax; (5) that under the statutory rules only the consignee was liable to pay.
Held that art. 149 of the Indian Limitation Act read with art. 120 of the said Act applied to the present case and the suit was within time.
Kirpa Sanker v. Janki Prasad A.I.R. 1942 Pat. 87, Secretary of State for India v. Guru Proshad Dhur, (1893) 1. L.R. 20 Cal 51;Inderchand v. Secretary of State for India (1941) 9 I.T.R. 673 and Government of India v. Taylor, (1955) 27 I.T.R. 356, held inapplicable.
The repealing Ordinance, being a temporary one, expired after it fulfilled its purpose. As it had continued the life of the original Ordinance which was a permanent one, in respect of past transaction, the expiry of its life could not have any effect on that law to the extent saved. The repealed to ordinance, to the extent saved, continued to have force under Art. 372 of the Constitution and it could not be said that the coal cess was levied without authority of law within the meaning of Art. 265 of the Constitution.
Hansraj Moolji v. The State of Bombay, (1957) S.C.R. 634, relied on.
The Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within
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the country. 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, 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 connccction 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.
In re the Central Proviaces and Berar Act. No. XIV of 1938, (1939) F.C.R. 18, The Province of Madras v. Boddu Paidanna and Sons, (1942) F.C.R. 90 and Governor General in Council v. Province of Madras, (1945) L.R. 72 1. A. 91 applied.
In view of s. 3 of the repealing Ordinance it could not be said that the purpose of the Ordinance had been exhausted
In the present case r. 3(a) of the Coal Production Fund Rules 1944, had no application and the only rules applicable was r. 3 (b). Rule 6 does not say that if the consignee does not pay the consignor is liable to pay and it does not purport to enlarge the statutory liability of the consignor or the consignee, as the case may be.
Held, further, that a point of law not taken in the state- ment of case cannot ordinarily be allowed to be urged at the time of hearing of the appeal.

JUDGMENT:

CIVIL APPELLATE JURISDIICTION: Civil Appeals Nos. 183, 184 of 1959.

Appeals from the judgment and decree dated September 5, 1954, of the Madhya Pradesh High Court in M.C. case No. 214 of 1954.

A. V. Vinwnatha Sastri and J. B. Dadachanji for the appellant (in C. A. No. 183 of 1959) and respondent No. 2 (in C. A. No. 184 of 1959).

B. Sen and I-N. Shroff for the appellant in O.A. No. 184 of 1959) and Respondent No. (In C. A No. 183 of 1959). C. K. Daphthary, Solicitor-General of Y. Kumar and P. D. Menon for respondent No. 1. (in both-the appeals).

1962. February 27. The Judgment of the Court was delivered by SUBBA RAO, J.-These two appeals by certificates are filed against the judgment and decree of the High Court of Madhya Pradesh, Jabalpur, by the two defendants in Civil Suit No. 1 of 1957, a suit filed by the Union of India, owing and representing the Central and Western Railways Adminis- trations, Now Delhi; against the said defendants for the recovery of coal cess amounting to Rs. 81-4-0 and costs. The material facts may be briefly stated. Under Ordinance No. 39 of 1944, the Central Government was authorised to levy and collect as a cess on all coal and coke despatched from collieries in British India a duty of excise at such rate, not exceeding Rs. 1-4-0 per ton. In exercise of the power conferred on the Central Government under s. 5 of the Ordinance, the said Government made rules ; and r. 3 thereof, the

duty of excise imposed under the Ordinance on coal and coke shall, when such coal and coke is despatched by rail from collieries or coke plants, be collected by the Railway Administration by means of a surcharge on freight, and such duty of excise shall be recovered either from the consignor or the consignee, as the case may be. On January 1, 1947, February 1, 1947 and February 7/9, 1947, the second defendant, namely the Amalgamated Coal fields, despatched by rail to the first defendant three consignments of coal from Junner-Deo to Indore. The freight for the three consignments was payable at the destination station i. e. Indore. The first defendant duly paid the freight and took delivery of the coal but by some mistake the cess payable as surcharge on the three consignments was not recovered from the first defendant at the time of delivery of the goods. Under s. 55(5) of the Indian Railways Act the Railway Administration can recover the freight or any balance thereof left unrecovered by way of suit. On April 15, 1953, the Union of India,, representing the Central and Western Railways I Administrations, filed Civil Suit No. 126 of 1953 in the Court of the Civil Judge, II Class, at Chhindwara, for the recovery of the said cess. The High Court withdrew the case and took it on its own file for trial on the ground that important questions of interpretation of the Government of India Act, 1935, and the Constitution were involved, and it was numbered as Civil Brit No. 1 on 1957. The defendants inter alia pleaded that the levy was illegal and the suit was barred by limitation. The High Court held that the suit was within time under Art. 149 of the Limitation Act and that the defendants were liable to pay the cess and decreed the suit. The first defendant filed Civil Appeal No. 183 of 1959 and the second defendant filed Civil Appeal No. 184 of 1959 against the said decree.

At the outset we may take up two of the points, which were not mentioned in the statement of case, raised by Mr. Viswanatha Sastri. learned counsel for the appellant in Civil Appeal No. 183 of 1959. The said points are : (1) Coal cess is a fee and not a tax or duty and (2) the first defendant i.e., the consignee, was a non-resident and, therefore, the Ordinance not having extra-territorial operation could not reach him. These two contentions do not find place in the statement of case as they should. Under Order XVIII r. 2 of the Supreme Court Rules, each party shall lodge his case within the time prescribed therein, and, under r. 3 thereof, the said case shall consist of two parts, and Part II, which is relevant now, says that it shall set out the propositions of law to be urged in support of the contentions of the party lodging the case. The object of the statement of case is not only to enlighten the Court on the questions that would be raised before it, but also Co enable the opposite party to know before hand the arguments he would have to meet and to prepare his case that the statement of case should be complete and full is also emphasized by the fact that, under the Schedule of Fees, a decent fee is prescribed to the junior and senior advocates for preparing the same. But we regret to observe that sufficient care is not being taken in the preparation of the statement of case as contemplated by the said Rules. If the rules should serve the purpose they were intended for, it is necessary that counsel should, at the time of preparing the case, read their brief thoroughly, decide for themselves the questions that will be raised and express them clearly therein. Any dereliction of this obvious duty cannot easily be overlooked. This Court, therefore, ordinarily will not allow counsel at the time of hearing an appeal to raise questions not disclosed in the statement of case. There axe no exceptional circumstances in this case for us to depart from that salutary practice, and we, therefore., cannot allow the appellant to raise these two questions before us.

The first question is whether the suit is barred by limitation. The coal cess should have been collected at the time of the delivery of the three consignments, namely, January 9, 1947, February 8, 1947., and February 18, 1947, respectively. The suit was filed on April 24. 1953, that is, more than six years from the date of amount was payable. It is contended that the suit was, therefore, barred ,under Art, 120 of the Limitation Act. The High Court held the suit was within time under Art. 149, read with Art. 50, of the Limitation Act. The said Articles read

---------- Description of suit Period Time from which of limi- period begins to tation. run.

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149.Anysuitby or on Sixty When the period behalf of the Central years of limitation Government or any would begin to State Government run under this except a suit before Act against a the Supreme Court like suit by a in the exercise of its private person.

original Jurisdic--

tion.

50. For the hire of ani- Three When the hire mals, vehicles, boats years becomes payable. or house-hold furni-

ture.

120. Suit for which no Six When the right period of limitation years to sue accrues. is provided else-

where in this sche-

dule.

---------- The High Court held that the suit was of the character of a suit contemplated by Art. 50 and therefore the Central Government could file the suit within 60 years from the date the freight became payable. Mr. Sastri contends that a private person cannot file a suit like the suit filed by the Central Government to recover a statutory cess and, therefore, Art. 149 does not avail the Government and that in the circumstances the suit is governed only by Art. 120 of the Limitation Act, which prescribes a period of six years from the date the right to sue accrues. The argument of the- learned counsel appears to be plausible, but, in our view, has no merits. It mixes up the question of maintainability of the suit with that of limitation prescribed under the Act. For a. suit described in Art. 149 a period of limitation of 60 years is prescribed and the period would begin to run as it would "against a like suit by a private person". The article does not posit that such a suit should have been maintainable at the instance of a private party: it assumes its maintainability and, on that basis, refers' to the appropriate, article of the Limitation Act for the limited purpose of ascertaining the starting point of limitation. The statute of limitation

assumes the existence of a cause of action and does not define it or create one. To state it differently, if a private party had filed a suit for the recovery of a statutory duty, what would be the article of the Limitation Act applicable to such a suit? Article 50, which prescribes the period of limitation for a suit to recover the hire of animals, vehicles, boats or household furniture, cannot obviously apply to a suit for the recovery of a statutory cess filed at the instance of a private party. There is no other specific article in the Limitation Act applicable to such a suit and,. therefore, it would be governed only by the residuary Article 120. Under the said article, time runs from the time when the right to sue accrues. It follows that when such a suit is filed by the Central Government, the period of limitation of 60 years should be computed when the right to sue accrues. The right to sue accrued in the present case when the defendants refused to pay the cess when demanded. The decisions relied upon by the learned counsel in support of his contention, namely, Kirpa Sanker v. Janki Prasad Secretary of State for India Guru Prasad Dhur Inderchand v. Secretary of State for India(3) and Government of India v. Taylor (1) have. no bearing on the question raised in the present case, as none of those cases related to a suit filed by Government to recover amount due to it from defendants therein (1) A.I.R. 1942 Pat. 87.

(3) (1941) 9 I.T.R. 673.

(2) (1893) I.L.R. 20 Cal. 51.

(4) (1955) 27 I.T.R. 356.

We, therefore, hold that the suit was clearly well within time and was not barred by limitation.

The next contention raises the question of validity of the levy. The argument of the learned counsel may be summarized thus: Ordinance 39 of 1944 was a temporary Ordinance, and that it was repealed by Ordinance 6 of 1947; that the saving clause in the latter Ordinance applying s. 6 of the General Clauses Act to the repealed Ordinance fell with the expiry of the repealing Ordinance on January 1, 1947, with the result that there was no law when the Constitution came 'into force so as to be continued 'under Art. 372 thereof and, therefore, the duty, if any, payable under Ordinance 39 of 1944 could neither be levied nor recovered after the Constitution came into force, as there was no longer any authority of law to sustain the said tax within the meaning of Art. 265 of the Constitution. To appreciate the contention it would be necessary to read the material parts of the relevant provisions.

Ordinance 39 of 1944 Section 2. Imposition and Collection of excise and Customs duties.-

> (1) With effect from such date is the Central Government may, notification in-
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> the Official Gazette, appoint in this behalf, there shall be levied and collected as a cess for the purposes of this Ordinance, on all coal and coke despatched from collieries in British India a duty of excise at such rate, not exceeding one rupee and four annas per ton, as may from time to time be fixed by the Central Government by notification in the Official Gazette.

The Repealing ordinance. Ordinance 6 of 1947.

Section 2. The Coal Production Fund Ordinance shall be repealed, and for the avoidance of doubts it is hereby declared that the provisions of Section 6 of the General Clauses Act, 1897 (X of 1897) shall apply in respect of such repeal.

General Clauses Act, 1897 (X of 1897). Section 6. Where this Act, or any Central Actor Regulation made after the commencement of this Act, repeals any enactment hitherto, made or hereafter to be made, then unless a different intention appears, the repeal shall not :

(c) affect any right privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

(e) affect any legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such legal proceedings or remedy may be instituted, continued or enforced as if the Regulating Repealing Act or Regulation had not been passed.

Section 30. In this Act, the expression Central Act, wherever it occurs shall be deemed to include an Ordinance made and promulgated by the Governor-General Constitution of India Article 372. (i) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediatel y before the commencement of this Constitution shall continue in force therein Until altered or repealed or amended by a competent Legislature or other competent authority.

On August 26, 1944, the Governor-General of India, in exercise of the powers vested in him under a. 72 of the Ninth Schedule to the Government of India Act, 1935, read 'with India & Burma (Emergency Provisions) Act, 1940 promulgated the Coal Production Fund Ordinance 1944 (39 of 1944). to constitute a fund for the financing of activities for the improvement of production, marketing and distribu- tion of coal and coke. This Court in Hansrdi Moolji v. The, State of Bombay(1) held that the deletion of the words "for the space of not more than six months from its promulgation" from s. 72 of the 9th Schedule of the Government of India Act, 1935, by s.1(3) of The India and Burma (Emergency Provisions) Act, 1940, had the effect of equating Ordinances which were promulgated between June 27, 1940, and April 1, 1946, with Acts passed by the Indian Legislature without any limitation of time as regards their duration, and therefore continuing in force until they were repealed. It follows from this decision that the Ordinance promulgated on August 26, 1944. was a permanent one and would continue to be in fore till it was repealed. The second Ordinance, that is repealing, Ordinance, was promulgated on April 26, 1947, and the repeal took effect from May 1, 1947. But in express term it declared that the provisions of s.. 6 of the General Clauses Act, 1897 (X of 1897) shall apply in respect of the repeal. Without the said express provision, s.6, read with s.30, of the General Clauses Act, might have achieved the said result, but ex abundanti cautela and to place the matter beyond any controversy. s.6 of the General Clauses Act was expressly made applicable to the repeal. Under s.6 (1) [1957].S.C.R.,634 of General Clauses Act,

so far it is material to the present case, the repeal did not affect the right of the railway to recover the freight or the liability of the defendants to pay the same, and the remedy in respect of the said right and liability. The result was that Ordinance 39 of 1944 and the rules made thereunder must be held to continue to be in respect of the said right and liability, accrued or incurred before the said Ordinance was repealed and the remedies available thereunder. But the life of the repealing Ordinance had expired on November 1, 1917. What was the effect of the expiry of the repealing Ordinance on the said liability continued after repeal in respect of past transactions? The repealing Ordinance, being a temporary one, expired after it fulfilled its purpose. As it had continued the lift, of the original Ordinance, which was a permanent one, in respect of past transactions, the expiry of its life could not have any effect on that law to the extent saved. The decisions relating to the repeal of a temporary Ordinance with a saving clause have no bearing in the present Context, for in that case the repealed Ordinance, in so far as it was kept alive, could not have a larger lease of' life than the repealed and the repealing Ordinances possessed. If so, it follows that the repealed Ordinance, to the extent saved, continued to have force under the Art. 372 of the Constitution until it was altered, repealed or amended by competent Legislature. It cannot, therefore, be said that the coal cess was levied or collected without the authority of', law. It is when contended that the excise duty not legally be levied on the consignee , who had nothing to do with the manufacture or production of coal. The argument confuses of the incidence of taxation with the machinery provided for the collection thereof. The or an excise duty has been considered by the Federal Court and the Privy Council. In re the Central Provinces and Berar Act No. XIV of 1938(1), which was a special reference by the Governor-General to the Federal Court under is. 213 of the Government of India Act, 1935. Gwyer, O.J., described "excise duty" thus:

> But its primary and fundamental meaning in English is still that of a tax on articles produced or manufactured in the taxing country and intended for home consumption."

In dealing with the contention advanced on behalf of the Government of India that an excise duty was a duty which may be imposed on home-produced goods at any stage from production to consumption, the learned Chief Justice observed:

> "This is to confuse two things the nature of excise duties and the extent of the federal legislative power to impose them."

After referring to Blackstone and Stephen's Commentaries, the learned Chief Justice proceeded to state:

> "..... a brief examination of those duties shows that in practically all cases it is the producer or manufacturer from whom the duty is collected. But there can be no reason in theory why an excise duty should not be im. posed even on the retail sale of an article, if the taxing Act so provides. Subject always to the legislative competence of the taxing authority, a duty on home-produced goods will obviously be imposed at the stage which the authority find to be the most convenient and the most lucrative, wherever it may be: but that is a matter of the machinery of collection, and does not

> affect the essential nature of the tax. The ultimate incidence of an excise duty, a typical indirect tax, must (1) [1939] F.C.R. 18, 40, 41, 107.

always be on the consumer, who pays as he consumes or expends : and it continues to be excise duty, that is, a duty on home-produced or home-manufactured goods, no matter at what stage it is collected."' Jayakar, J., made the following pertinent remarks ,,And this, in my opinion, is as it should be, for if the proper import of an "excise duty" is that it is a tax on consumption, there is no reason why the State should not have the power to levy and collect it at any stage before consumption, namely, from the time the commodity is produced or manufactured up to the time it reaches the consumer."

The Federal Court again, in The Province of Madras v. Boddu Paidanna and in the context of a question that arose under the Madras General Sales Tax Act, 1939, restated the scope of an excise duty. Therein the learned Chief Justice observed:

> "There is in theory nothing to prevent the Central Legislature from imposing a duty of excise on a commodity as soon as it comes into existence, no matter what happens to it afterwards, whether it be sold, consumed, des- troyed, or given away. A taxing authority will not ordinarily impose such a duty, be- cause it is much more convenient administra- tively to collect the duty (as in the case of most of the Indian Excise Acts) when the commodity leaves the factory for the first time, and also because the duty is intended to be an indirect duty which the manufacturer or producer is to pass on to the ultimate consumer, which he could not do if the commodity had, for example, been destroyed in the factory itself. It is the fact of manufacture which (1) [1942] F.C.R. 90, 101.
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> attracts the duty,, even though it may, be collected later.....

The Judicial Committee, in Governor-General in Council v. Province of Madras (1), approved the views expressed by the Federal Court in regard to excise duties. In that case, Lord Simonds, speaking for the Board, observed:

> "An exhaustive discussion of this subject, from which their Lordships have obtained valuable assistance, is to be found in the judgment of the Federal Court in In re the Central Provinces Berar Act No. XIV of 1935 (2). Consistently with this decision their Lordships are of opinion that a duty of excise is primarily a duty levied on a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax on goods not on sales or the proceeds of sale of goods. Here, again, their Lordships find themselves in complete accord with the reasoning and conclusions of the Federal Court in the Boddu Paidanna case(3)."

Adverting to the decision of Boddu Paidanna with approval, Lord Simonds made the following observations in pointing out the difference between excise tax and sales tax:

> "The two taxes, the one levied on a manufacturer in respect of his goods, the other on a vendor in respect of his sales, may, as is there pointed out, in one sense overlap. But in law there is no overlapping The taxes are separate and distinct imposts. If in fact they overlap, that may be because the taxing authority, imposing a duty of excise finds it convenient to impose that duty at the moment when the exciseable article leaves the (1) (1945) L.R. 72 I.A. 91, 103. 101 (3) [1942] F.C.R. 90. 101 [1939] F.C.R. 18, factory or workshop for the first time on the occasion of its sale. But that method of collecting the tax it; an accident of administration; it is not of the essence of the duty of, excise, which is attracted by the manufacture itself.

With great respect, we accept the principles laid down by the said three decisions in the matter of levy of an excise duty and the machinery for collection thereof. Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It in' 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.

In this case, a perusal of the provisions of the Ordinance clearly, demonstrates that the duty imposed is in essence an excise duty and there is a rational connection between the said tax and the person on whom it-is imposed. Section 2 of Ordinance 39 of 1944 clearly shows that the tax is an excise duty on the manufacture or production, of coal or coke. Section 5(2) thereof confers in express terms a power on the Central Government to make rules, Inter alia, to provide for the manner in which the duties imposed by the Ordinance shall be collected and the persons who shall be. liable to pay the duty. Rule 3 of the Rules made by the Central Government provides for the recovery of excise duty on the coal produced; under the said rule it would be collected by the Railway Administration by means of a surcharge on freight and such duty of excise shall be recovered from the consignor, if the freight charges are being prepaid, at the time of consignment or from the consignee, if the freight charges are collected at the destination of the consignment. The machinery provided for the collection of the tax is, in our view, a reasonable one. Having regard to the nature of the tax, that is, the tax being an indirect one to be borne ultimately by the consumer, it cannot be said that there is no rational connection between the tax and the consign. When the consignor pays., it cannot be denied that it is the most convenient stage for the collection of the tax, for it is the first time the coal leaves the possession of the consignor. The fact that the consignee is made to pay, in the contingency contemplated by r.3(b) of the rules cannot affect the essence of the tax, for the consignor, if he had paid the freight, would have passed it on to the consignee and instead the consignee himself pays it. The Central Government was legally competent to evolve a suitable machinery for collection without disturbing the essence of the tax or ignoring the rational connection between the tax and the person on whom it is imposed. We hold that the machinery evolved under the Rules for collection of the duty satisfies the said conditions and therefore the

exigibility of the tax at the destination point in the hands of the consignee cannot legitimately be questioned. Another facet of the contention of Mr. Sastri is that the purpose of the Ordinance had worked itself out and, therefore, the Central Government could no Ionizer levy or collect the tax. The purpose of the Ordinance was to constituted a fund for the financing of activities for the improvement of production, marketing and distribution of coal. Section 3 of the repealing Ordinance provided that the unexpended balance, if any, at, the credit of the Coal Production Fund constituted under the aforesaid Ordinance shall be applied to such purposes connected with the coal industry, as the Central Government may direct. The validity of this Ordinance has not been questioned. It, therefore, follows that the purpose of the Ordinance has not been exhausted, for under s.3 of the repealing Ordinance, the Central Government is authorized to apply the Coal Production Fund to such purposes connected with the coal industry. There is, therefore, no force in this argument. The last contention is raised by the appellant in Civil Appeal No. 184 of 1959. The High Court held him also liable for the payment of the cess on the ground that he was the person who entered into contract with the Railway Administration for the carriage of the goods and that the collection of freight was in respect of his goods and that he was the main contracting party. The was given against him on the basin that he was under a contractual obligation to pay the amount. Mr. Son, appearing for this appellant, contends that the consignments were on F.O.R. basis and that under the statutory rules only the consignee is liable and that the High Court was wrong in giving, a decree against him As we have already pointed out earlier, under r.3 of the Coal Production Fund Rules, 1914, the Railway Administration is empowered only to collect the cess by means of a surcharge on freight from, (a) the consignor, if the freight charges are being prepaid at the time of consignment, and

(b) from the consignee, if the freight charges are collected at the destination of the consignment. In the present case, r.3(a) has no application, for the freight charges were not prepaid at the time of consignment, and therefore the only rule applicable where under the Railway Administration earn seek to recover the cess is r.3(b) i.e., the consignee. has to pay it. The rule does not empower the Railway Administration to recover the tax, in the circumstance of the cast,, from the consignor. Learned Solicitor General seeks to sustain the decree of the High Court on the basis of r.6, which reads :

> "Refunds and Recoveries :-(1) Where the amount of excise duty due under these rules has not been collected either wholly or in part or where the amount collected is in excess of the amount due, the Railway Administration shall deal with the under charges or overcharges, as the case may be, on the same principles as apply to undercharges and overcharges in regard to Railway freight charges."

It is suggested that, under this rule in the case of an undercharge, the Railway Administration can collect the deficit either from the consignor on consignee. The rule does not say that if the consignee does not pay the consignor is,, liable to pay. The rule does not purport to enlarge the statutory liability of the consignor of the consignee, as the case may be and, therefore, it must be understood to provide only for the recovery of undercharges from persons statutorily' liable to pay in accordance with the principles governing the railway freight charges ca. In the result, Civil Appeal No. 183 of 1959 is dismissed with costs of the first respondent, and Civil Appeal No. 184 of 1959 is allowed with

costs to be paid by the first respondent.

C. A. 183 of 1959 dismissed.

C. A. 184 of 1.959 allowed.