CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

M/s. RUBBER CHAPPEL MANUFACTURERS ASSOCIATION,—*Petitioners.*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ No. 226-D of 1962.

1964

April, 29th.

Rubber Act (XXIV of 1947) as amended by Rubber (Amendment) Act (XXI of 1960)—S. 12—Levy and collection of excise duty from manufacturers using rubber — Whether valid—Constitution of India (1950)—*Schedule VII List 1 Entry 48—Whether covers such levy and collection.*

Held, that under section 12 of the Rubber Act, 1947, as amended by Rubber (Amendment) Act, 21 of 1960, the excise duty is to be levied on all rubber produced in India and is to be collected either from the owner of the estate on which the rubber is produced or from the manufacturers by whom such rubber is used. In order to facilitate and promote better collection of revenue it has been found expedient to collect excise duty on rubber from those who have taken it from the producers for manufacture of goods. The definition of 'manufacturer' in the Act cannot be regarded as an artificial one in derogation of the purpose and scope of entry 84 of the Union List in Schedule VII of the Constitution of India. There is no double taxation of any kind and the collection of the excise duty from the manufacturers who have indisputably used the rubber cannot be attacked as unconstitutional or invalid.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue to the respondents a direction or order or a writ in the nature of Mandamus or Prohibition requiring respondents to for-bear from demanding any amount from the petitioners and its various members, on account of the excise duty for the use of rubber, which they have made or will make in future, etc., etc.

J. P. AGGARWAL AND MR. HARDYAL HARDY, ADVOCATES, for the Petitioner.

S. N. SHANKER, ADVOCATE, for the respondent.

ORDER

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SHAMSHER BAHADUR, J.—This petition of Messrs Rubber Chappal Manufacturers Association along with nine other petitions raising similar questions of law would be disposed of by this judgment. The facts in each of the ten petitions differ only in the matter of details, but the question of principle which is involved is identical.

The petition under Articles 226 and 227 of the Constitution of India on behalf of Messrs Rubber Chappal Manufacturers Association, Shahzada Bagh, Rohtak Road, Delhi, asks this Court in substance to issue a writ of *mandamus* or prohibition to the Union of India, which is the first respondent, requiring it to forbear from demanding any excise duty on its manufactured products of rubber *chappals* in pursuance of the Rubber Act, 1947, as amended in 1960, and the notification (Exhibit R. 1), issued thereunder.

The petitioners in all the cases are manufacturers of rubber *Chappals* and briefly stated their contention is that on their products cannot be imposed "excise duty on rubber" as rubber is only an ingredient in the manufacture of *chappals*. According to the assertions of the petitioners, out of the entire material used in *chappals*, only 15 to 20 per cent constitutes rubber.

The charging provision of the Rubber Act, 1947, is section 12 which says that:—

> "(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied as a cess for the purposes of this Act, a duty of excise on all rubber produced in India at such rate, not exceeding fifty naye paise per kilogram of rubber so produced, as the Central Government may fix.
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> "(2) The duty of excise levied under sub-section (1) shall be collected by the Board in accordance

with rules made in this behalf either from the owner of the estate on which the rubber is produced or from the manufacturers by whom such rubber is used.

(3) The owner or, as the case may be, the manufacturer shall pay to the Board the amount of the duty within one month from the date on which he receives a notice of demand therefor from the Board and, if he fails to do so, the duty may be recovered from the owner or the manufacturer, as the case may be, as an arrear of land revenue.

(4) * * *

(5) * * *

(6) Any person aggrieved by an assessment made under this section may, within three months of the service of the notice under sub-section (3) apply to the District Judge for the cancellation or modification of the assessment, and the District Judge shall, after giving the Board an opportunity of being heard, pass such order (which shall be final) as he thinks proper.

"(7) The proceeds of the duty of excise collected under this section reduced by the cost of collection as determined by the Central Government shall first be credited to Consolidated Fund of India, and then be paid by the Central Government to the Board for being utilised for the purposes of this Act, if Parliament by appropriation made by law in this behalf so provides."

Section 2 of the Act says that "it is expedient to provide for the development under Control of the Union of the rubber industry". In clause (a) of section 3, 'Board' is defined to mean the "Rubber Board constituted under this Act." Clause (e) of section 3 defines 'manufacturer' to mean "any person engaged in the manufacture of any article in the making of which rubber is used." The constitution of the Board is set out in section 4; it is to consist of a Chairman to be appointed by the Central Government, two members to represent the State of Madras, eight members to represent the State of Kerala, ten members are to be nominated by the Central Government of whom two shall represent the manufacturers and four labour; and three members of Parliament and the Rubber Production Commissioner. The functions of the Board are set out in section 8.

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and the principal duty of the Board is to assist, encourage, train, give technical advice to the rubber industry and to advise the Central Government about the measures which should be adopted for this purpose.

The charging section which has been reproduced aforesaid before its amendment by Act, 21 of 1960, provided that the excise duty would be payable "by the owner of the estate on which the rubber is produced, and shall be paid by him to the Board within one month from the date on which he receives a notice of demand therefor from the Board." It would be observed that the Amending Act 21 of 1960, has provided the alternative method of collection from the manufacturer by whom such rubber is used. This amendment, according to the contention of the petitioners, is *ultra vires* and unenforceable. Soon after the Rubber (Amendment) Act, 1960, a notification (Exhibit R. 1) was issued by the Chairman of the Rubber Board on 28th of February, 1961, from Kottayam, informing all producers, dealers and manufacturers of the rubber that "with effect from 1st April, 1961, a cess of 30 nP., per kilogram will be levied on all rubber produced in India and collected from manufacturers except in respect of sole crepe on which the cess will continue to be levied and collected from the producer". Mention was made of the steps which were necessary to avoid double taxation and the producers and dealers were required to declare stocks of rubber at the close of the business on 28th February, 1961, and 31st of March, 1961. The prescribed Form M. had to be filled in by all manufacturers giving details of all rubber purchased or otherwise acquired by them and consumed during the six-monthly periods in respect of which returns have to be filed. Reference may also be made to the Press Note (Annexure R. 2) in which these matters are further elucidated. The petitioners and other manufacturers using rubber in the manufacture of "chappal" unsuccessfully represented against the amendments introduced in section 12 of the Act, and they have now invoked the jurisdiction of this Court for the redress of this grievance.

Mr. Chatterjee, in the aid of his argument for the petitioners, has invited my attention to item 84 of the Union List in the VII Schedule which is to this effect:—

"Duties of excise on tobacco and other goods manufactured or produced in India except .....".

It is argued by him that such duties can be levied only on a manufacturer or a producer of rubber. The petitioners not being manufacturers or producers of rubber there is a constitutional inhibition according to him against the duties which are proposed to be levied.

Before discussing the cases on which both sides have placed reliance, it would be well to set out the position on merits taken up on behalf of the first respondent. It is submitted that the amendment made in 1960 in section 12 of the Rubber Act, 1947, made a difference only in the mode of collection of the cess. In the principal Act, the cess was to be collected only from the producer under sub-section (2), while the amendment has permitted this collection alternatively from the manufacturers. The amendment was found necessary in the interests of better administration and efficiency. According to the statistics collected by the Board, the total number of rubber producers is about 58,000 out of whom only 500 producers hold more than 50 acres each and about 7,500 producers have between 5 acres to 50 acres each. The remaining 50,000 producers are very small holders and hold 5 acres or less each. Collection of cess from such a large number of "scattered producers", of whom the vast majority consists of very small-holders was found to be administratively difficult and unsatisfactory. The total number of manufacturers acquiring the rubber produced by the producers are less than 700 in number and most of them do business in cities and towns. Collection of cess from the manufacturers on the basis of rubber acquired by them from the producers was found to be more practicable and less expensive to the State besides being just and efficient. It was for this reason, according to the respondents, that the change in the mode of collection was made. According to sub-paragraph of paragraph 10 of the written statement, the "statutory price of rubber included the element of cess and the manufacturers who purchased rubber from the producers were paying this cess to the owners of the estates, i.e., the producers. After the amendment, the cess element was excluded from the control price of rubber and the manufacturers purchasing it from the producers paid them the price less the cess. The change in the mode of collection has not resulted in any additional financial burden to the manufacturers nor has it prejudiced their interests in any manner."

Mr. Chatterjee, for the petitioner, has placed reliance on a decision of the Federal Court which was given on a

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reference made to it by the Governor-General with regard to the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938. In this authority, which is *In the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act*, 1938 (1), Chief Justice Gwyer said that—

> "The power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of, or in connection with, manufacture or production, and it extends no further."

It was felt necessary by the Federal Court to give precise definition and scope to the spheres of the Federal and Provincial Legislatures with regard to excise duties. The Central Provinces had imposed the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, and it was held that this being a tax on sales and not an excise duty was within the competence of the Provincial Legislature. Mr. Chatterjee seeks to derive support from the observations of Chief Justice Gwyer that an excise duty is leviable on excisable articles in the hands of the manufacturer or producer. It is submitted that the excise duty being on rubber, the producers of rubber alone could be subjected to this imposition and not the manufacturers of *chappals*, who are only using rubber as an ingredient in the final product. The artificial definition of 'manufacturer', in his submission, cannot enlarge the scope of an excise duty and this having been imposed only on rubber in pursuance of the Rubber Act cannot apply to the manufacturers of *chappals*, who may be using rubber for manufacture of their products.

The next case relied upon by Mr. Chatterjee is also a Federal Court decision in *The Province of Madras* v. *Messrs Boddu Paidanna and Sons* (2), Chief Justice Gwyer, speeking for the Court, again said that the tax on the sale of goods which the Act assigns exclusively to the Provincial Legislature, is a tax levied on the occasion of the sale of the goods. It may well be that a manufacturer or producer

(1) A.I.R. 1939 F.C. 1.
(2) A.I.R. 1942 F.C. 33.

is sometimes doubly hit. If the taxpayer who pays sales tax is also a manufacturer or producer of commodities subject to a central duty of excise, there may no doubt be an overlapping in one sense; but there is no overlapping in law. The two taxes which he is called to pay are economically two separate and distinct imposts. 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, destroyed or given away. In the case of sales tax, the liability to tax arises on the occasion of a sale, and a sale has no necessary connection with manufacture or production. The manufacturer or producer cannot of course sell his commodity unless he has first manufactured or produced it; but he is liable, if at all, to a sales tax because he sells and not because he manufactures or produces; and he would be free from liability if he chose to give away everything which came from his factory. Thus, a duty of excise is leviable on the producer or manufacturer of excisable goods. As regards the application of the principle of this decision which is indisputable, Mr. Shankar, the learned counsel for the Union, contends that in the instant case it has been found inconvenient to levy the excise duty on rubber at the stage of its production and can certainly be recovered from the manufacturers, who use it as an ingredient in their products.

The third case on which reliance has been placed by the parties' counsel is a decision of their Lordships of the Privy Council in *Governor-General in Council*, v. *Province of Madras* (3). In repelling the fundamental contention raised on behalf of the Governor-General that the duty of excise is nothing else, but an imposition of a tax "on first sales of goods manufactured or produced in India", Lord Simonds, delivering the opinion of the Board, observed as follows at page 101 :—

> " Their Lordships are of opinion that a duty of excise is primarily a duty levied upon a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax upon goods not upon sales or the proceeds of sale of goods... their Lordships find themselves in complete

(3) A.I.R. 1945 P.C. 98.

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accord with the reasoning and conclusions of the Federal Court in the *Boddu Paidanna case* (2). The two taxes, the one levied upon a manufacture in respect of his goods, the other upon 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 excisable article leaves the factory or workshop for the first time upon the occasion of its sale. But that method of collecting the tax is an accident of administration; it is not of the essence of the duty of excise which is attracted by the manufacture itself. . . . So by parity of reasoning may the Federal Legislature impose a duty of excise upon the manufacture of excisable goods and the Provincial Legislature impose a tax upon the sale of the same goods when manufactured".

The principle of this authority is that an impost cannot be imposed as a duty of excise under the cloak of tax on sales.

In the trilogy of cases, to which reference has been made, both the Federal Court and the Privy Council made a distinction between a tax on sales which was a Provincial subject and an excise duty which as an impost could be levied only by the Federal Legislature. Those high authorities in deciding the issues before them laid down the true scope and definition of an excise duty. It is essentially an imposition on goods manufactured or produced in India and the emphasis is on production and manufacture. Now, under the Rubber Act, the Excise duty on rubber is to be levied for its manufacture or production. It has been explained in the written statement and likewise in the Press Note and the impugned Notification that to facilitate and promote better collection of revenue it has been found expedient to collect excise duty on rubber from those who have taken it from the producers for manufacture of goods. The definition of 'manufacturer' in the context cannot, therefore, be regarded as an artificial one in derogation of the

purpose and scope of entry 84 of the Union List in the VII Schedule of the Constitution. There is no double taxation of any kind and the collection of the excise duty in the hands of the manufacturers of chappals, who have indisputably used the rubber cannot, in my opinion, be attacked as unconstitutional.

The decisions of the Federal Court and the Privy Council again came up for review by their Lordships of the Supreme Court in *R.C. Jall Parsi* v. *Union of India* (4), and reference was made to the basic authority of *In the matter of the Central Province and Berar Sales of Motor Spirit and Lubricants Taxation Act*, 1938 (1), for the proposition that a duty on home-produced goods can be imposed at the stage which the authority finds to be the most convenient and the most lucrative, wherever it may be; and that is only a matter of the machinery of collection and does not affect the essential nature of the tax. Mr. Justice Subba Rao, speaking for the Court, observed at page 1287:—

> "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 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 . . . 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."

Mr. Shankar rightly submits that the impugned notification and the press note have only changed the method of

(4) A.I.R. 1962 S.C. 1281.

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collection which is in accord with the amended section 12 and the duty which would have been payable by the producer is now to be paid by the manufacturer, who uses it. The attack on the proposals made by the Government cannot be sustained on ground of unconstitutionality, and the petitions must, therefore, be dismissed with costs.

K.S.K.

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