

COMMISSIONER OF CENTRAL EXCISE, MEERUT

A

v.

M/S. KISAN SAHKARI CHINNI MILLS LTD.

AUGUST 21, 2001

[S. RAJENDRA BABU AND SYED SHAH MOHAMMED QUADRI, JJ.]

B

Excise

Central Excise Act, 1944—Section 4(4) (d) (ii)—Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964—Section 8(4) and (5)—Sugar Factories—Administrative charges on molasses sold or supplied—Levy of—Held, not to be included in the assessable value of molasses—Administrative charges would come within the purview of "other taxes" and, therefore, excluded from assessable value.

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Words & Phrases :

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"Tax"; "other taxes"—Meaning of in the context of section 4(4) (d) (ii) of the Central Excise Act, 1944.

State of Uttar Pradesh levied administrative charges under Section 8(4) of the Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964 on molasses sold or supplied by occupier of Sugar Factories. Assistant Commissioner of Central Excise held that the said administrative charges should be included in the assessable value of molasses cleared by the respondents. However, on appeal, the Commissioner (Appeals) held that administrative charges collected by the State Government was a type of impost which was in the nature of a 'tax' and thus not liable to be included in the assessable value under Section 4(4) (d) (ii) of the Central Excise Act, 1944, which was also affirmed by Central Excise & Gold (Control) Appellate Tribunal. Hence the present appeal.

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On behalf of the appellant-Revenue it was contended that Section 4(4) (d) (ii) of the Act clearly stipulates that only "taxes" and no other charges which are not taxes can be excluded from the assessable value and administrative charges being not a tax is liable to be included for the purpose of ascertaining the assessable value.

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Dismissing the appeals, the Court

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A HELD : Under Section 4(4) (d) (ii) of the Central Excise Act, 1944 what is to be excluded from the assessable value is the amount of duty of excise, sales tax and "other taxes". Taxes, as such, are not defined in the 1944 Act. If the expression "tax" is to be understood in the absence of any definition, it would certainly cover any levy. In such an event, administrative charges would be covered under Section 4(4) (d) (ii) as "other taxes" because it is a compulsory exaction made under an enactment and, therefore, a duty or impost and such impost must be held to be in the nature of a 'tax' covered by the aforesaid provisions. [10-H; 11-A]

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C *D.G. Ghose & Co. (Agents) Pvt. Ltd. v. State of Kerala and Anr.*, [1980] 2 SCC 410, relied on.

Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4942-4943 of 1999.

D From the Judgment and Order dated 19.3.99 of the Customs Excise and Gold (Control) Appellate Tribunal passed in Appeal Nos. E/1581/96-A and E/1628/95-A.

WITH

E CIVIL APPEAL NOS. 4900-4902/99, 5639/99, 5149/99, 5642/99, 5071/99, 5398-5402/99, 5422/99, 5949/99, 5943-5945/99, 6304-6308/99, 6309-6316/99, 5857/99, 6297/99, 6309/99, 6486-6491/99, 6438-6455/99, 6808-6819/99, 160-161/2000.

F Soli J. Sorabjee, Attorney General, Shanti Bhushan, B.D. Agarwal, D.A. Dave, Nisha Bagchi, K. Swami, P. Parmeswaran, Vinay Garg, Ms. Meera Mathur, Shri Narain, Sandeep Narain, Ms. Anjali, Rajesh Kumar, Ramesh Singh, V. Lakshmikumaran and V. Balachandran for the appearing parties.

G The Judgment of the Court was delivered by

H **RAJENDRA BABU, J.** In these appeals the Revenue is the appellant. In the State of Uttar Pradesh the Uttar Pradesh Sheera Niyamtran Adhiniyam, 1964 (for short 'the Act') (U.P. Act No. XXIV of 1964), as amended by U.P. Act No. 15 of 1974 and No. 5 of 1986, is in force. The Act provides for the control of storage, gradation and price of molasses produced by sugar factories

and the regulation of supply and distribution thereof in Uttar Pradesh. Section 8(4) of the Act provides that the occupier of a sugar factory shall be liable to pay to the State Government administrative charges at such rate, not exceeding five rupees per quintal as the State may from time to time notify, on the molasses sold or supplied by him. Section 5 of the Act enables the occupier to recover from the person to whom the molasses is sold or supplied an amount equivalent to the amount of administrative charges in addition to the price of molasses.

The Assistant Commissioner of Central Excise by his order held that the administrative charges collected by the State Government under Section 8(4) of the Act is to be included in the assessable value of molasses cleared by the respondents. An appeal was carried against that order. The Commissioner (Appeals) held that the administrative charges collected by the State Government under the provisions of Section 8(4) of the Act is a type of impost and such impost is in the nature of a 'tax' as defined under Article 366 of the Constitution and, on that basis, he held that the administrative charges paid by the respondents is not liable to be included in the assessable value as defined under Section 4(4)(d)(ii) of the Central Excise Act, 1944. The Revenue filed an appeal before the Central Excise & Gold (Control) Appellate Tribunal (for short 'the Tribunal') wherein it is contended, as has been done before us now, that under Section 4(4)(d)(ii) of the Central Excise Act only duties on excise, sales tax and "other taxes", if any payable, are to be excluded from the assessable value and administrative charges levied under the Act cannot be equated with "other taxes". The Tribunal held that in terms of Section 4(4)(d)(ii) of the Central Excise Act assessable value in relation to excisable goods will not include the amount of duty of excise, sales tax and "other taxes" payable on such goods. If the expression "tax" is understood in the widest sense it would include all money raised by taxation including taxes levied by the Union and State Legislatures and rates and other charged levied by local authorities under statutory powers. It is not disputed before the Tribunal that the administrative charges at the rate of Rupees 5 per quintal on molasses sold or supplied by the respondents to the State Government is a levy made under the statute passed by the State Legislature. In view of the wide interpretation to be given to the expression "tax", the Tribunal found no reason to interfere with the order made by the Commissioner (Appeals) and dismissed the appeal. Following this decision several cases have been disposed of and they are all in appeal before us.

In *Cape Brandy Syndicate v. IRC*, (1921) 1 KB 64, it is observed :

A “In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equality about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

B The learned Attorney General projecting the aforesaid view submitted that fiscal measures are built upon theory of taxation; that the clear effect of the expression in Section 4(4)(d)(ii) is to exclude only taxes and no other matters; that what is enumerated in the said provisions are only “taxes” and no other charges which are not taxes; that the administrative charges are not taxes and are not payable on goods but recovered from the occupier and this position becomes clear if we look at provisions of Section 8(5) of the Act which makes it clear that the occupier will recover from the person to whom the molasses is sold or supplied in addition to the price of molasses, that is, by way of additional price and not by way of taxes; that the administrative charges is not a sales tax levied on the molasses sold or supplied.

D The learned Attorney General, while elaborating his arguments, further drew our attention to Section 4 of the Central Excise Act and submitted that the duty of excise is chargeable on any excisable goods with reference to the value, that such value is subject to other provisions of this Section should be deemed to be the normal price thereof, that is to say, the price at which the goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale. He submitted that the normal price will include the administrative charges and, therefore, will have to be included for the purpose of ascertaining the assessable value and Section 4(4)(d)(ii) of the Act is not attracted at all.

E Shri Shanti Bhushan and Shri D.A. Dave, the learned Senior Advocates appearing for the respondents, supported the view taken by the Tribunal and contended that the administrative charge is in the nature of a “tax” and, therefore, stands excluded from the definition of “assessable value” as provided under Section 4(4)(d)(ii) and commended to us that we should affirm the order made by the Tribunal.

G Under Section 4(4)(d)(ii) of the Central Excise Act what is to be excluded from the assessable value is the amount of duty of excise, sales tax and “other taxes”. Taxes, as such, are not defined in the Central Excise Act. If the expression “tax” is to be understood in the absence of any definition, it would certainly cover any levy. In *D.G. Ghose & Co. (Agents) Pvt. Ltd. v.*

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State of Kerala and Anr., [1980] 2 SCC 410, broad meaning had been given to the expression "tax". In such an event, administrative charges would be covered under Section 4(4)(d)(ii) as "other taxes" because it is a compulsory exaction made under an enactment and, therefore, a duty or impost and such impost must be held to be in the nature of a 'tax' covered by the aforesaid provisions. A

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In that view of the matter, we find no infirmity in the order made by the Tribunal and, therefore, we affirm the order of the Tribunal and dismiss the appeals with costs to the respondents a sum of Rs. 5,000 each.

S.V.K.

Appeals dismissed.