

(1978) 07 CAL CK 0037

Calcutta High Court

Case No: Criminal Revision 5479-89 (W) of 1977

The Fort William Co. Ltd.

APPELLANT

Vs

Inspector, Central Excise and
OthersRESPONDENT

Date of Decision: July 19, 1978**Acts Referred:**

- Central Excise Rules, 1944 - Rule 8
- Constitution of India, 1950 - Article 14, 226
- Industries (Development and Regulation) Act, 1951 - Section 10, 2, 9, 9(1)
- Jute Manufactures Cess Rules, 1976 - Rule 3

Citation: (1979) CENCUS 1 : (1979) 4 ELT 23**Hon'ble Judges:** Amiya Kumar Mookerji, J**Bench:** Single Bench

Judgement

Amiya Kumar Mookerji, J.

Common questions of law are involved in these Rules, accordingly, these Rules are heard together and my judgment in Civil Rule No. 5479(W) of 1977 shall govern all other Rules.

2. Petitioner is a public limited company. Its business consists, inter alia, of manufacture of jute products consisting of carpet backing, hessian sacking, bagging cloth including jute yarn and jute twine for the purpose of jute textiles manufacturing business.

3. By an Order No. S.O. 149(A) dated 25th February, 1976 issued in pursuance of the powers conferred by Section 9(1) of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as the Act), the Central Government specified the classes of goods manufactured or produced wholly or in part of jute in the scheduled industry of Textiles as mentioned in column (2) of the table set out in the said order on which a duty of excise was to be levied and collected as a cess for the

purpose of the said Act for a period of one year commencing from 1st March, 1976 at the rates specified in the corresponding entry in column No. 3 of the said table. Column No. (3) 6f the said table provides that Rs. 3.75 p. is the rate of duty of excise per tone payable on sacking, jute twines and yarns. The operation of the said notification has been extended for one year commencing from March, 1977 by an Order No. S.O. 162(E), dated February 4, 1977. Petitioner is one of the members of the Indian Jute Mills Association. By a circular dated 6th May, 1977 the Secretary of the Indian Jute Mills Association informed the petitioner about the clarification made by the Collector of Central Excise and Customs, West Bengal, by its Trade Notice dated 28th April, 1977. The said clarification is set out hereinbelow:

"A doubt has been raised whether jute twines and jute yarns when consumed within the factory of production for conversion into jute manufacture falling under the Tariff Item No. 22A are subjected to levy of cess. It has been decided that the jute twine and jute yarn consumed within the factory for manufacture of jute goods, though exempted from payment of Central Excise Duty, are liable for levy of cess under the Jute Manufactures Cess Rules, 1976."

4. By a letter dated 5th October, 1977 the respondent No. 2 required the petitioner to pay cess on jute twine and yarn for captive consumption from March 1, 1976. Another letter was also received by the petitioner dated 8-6-77 from the respondent No. 1 asking the petitioner, under instruction from respondent No. 4 to pay cess on jute yarn for captive consumption with immediate effect. It is also stated in the said letter that there are clear instructions issued by the respondent No. 6 after consulting with the Ministry of Commerce that cess on jute yarn is leviable @ Rs. 3.75 per M/T. which is used for captive consumption. It is the case of the petitioner that the cess may be levied u/s 9 of the Act on the articles or goods referred to in the First Schedule to the Act. Item No. 23 of the First Schedule to the Act makes it clear that unless the articles or goods which are manufactured or produced are "textiles, such articles or goods do not come within the said Item No. 23 at all. Jute twine, jute yarn or rope are articles or goods distinct and different from textile. The petitioner being aggrieved by the said notification as well as the demands made by the respondents for payment of cess on jute twines and yarns moved this Court under Article 226 of the Constitution of India on October 11, 1977 and obtained a Rule and conditional interim order to the effect that the impugned notification shall not be given effect to with respect to the petitioner's products upon an undertaking given by the petitioner that they shall not dispose of or encumber their fixed plant and machineries until disposal of the Rule, without any prior permission from the Court.

5. Dr Pal, appearing on behalf of the petitioner contends that the Central Government under the power conferred upon it u/s 9(1) of the Act has no competence or authority to levy cess on jute twines, thread, rope or yarn inasmuch as the said articles are not "textiles" within the meaning of Item No. 23 of the First Schedule to the Act. According to Dr. Pal, the notification dated 25th February, 1976

in so far as it purports to levy cess on jute twine and yarn is illegal, invalid and beyond the scope or authority conferred upon Section 9(1) of the Act. It is further contended that these articles are not even included in the Explanations to the First Schedule either as components or intermediates required for manufacture of Item No. 23.

6. Mr. Roychowdhury, appearing on behalf of the respondents, contended that u/s 9(1) of the Act the Central Government has the power to levy cess for the purposes of the Act on all goods manufactured or produced in any scheduled industry.

7. Section 2 of the Act declares that it is expedient, in the public interest that the Union should take under its control the industries specified in the First Schedule. In the First Schedule it is stated "any industry engaged in the manufacture or production or any of the articles mentioned under each of the following headings or sub-headings Textile is Item No. 23". In Clause (2) of the said Item, provided it is made wholly or in part of jute, including jute twine and rope.

8. Section 9(1) of the Act lays down "there may be levy and collected as a cess for the purposes of this Act on all goods manufactured or produced in such scheduled industry, as may be specified in this behalf by the Central Government by notified order, a duty of excise at such rate as may be specified in the notified order, and different rates may be specified for different goods or different classes of goods:

Provided that no such rate shall in any case exceed two annas per cent of the value of the goods".

9. It is not disputed that jute twine and rope are not textiles. The levy of cess u/s 9(1) of the Act is not restricted only to textiles, but on all goods manufactured or produced in the textile industry which is a scheduled industry. It is not disputed that jute twine and rope are manufactured or produced in the petitioner's mill. That being so, in my opinion it cannot be said that in exercise of powers conferred u/s 9(1) of the Act, the Central Government is not competent to impose cess on jute twine, yarn and rope. Explanations to the First Schedule referred to excise control by the Government u/s 2 of the Act over the industries which manufacture the components and intermediates. Those explanations are not relevant regarding levy of cess u/s 10 of the Act.

10. It is next contended by Dr. Pal that under Rule 3 of the Jute Manufacture Cess Rules, 1976, the Central Excises and Salt Act and the rules made thereunder are made applicable in relation to the levy and collection of the cess. In terms of a notification dated 17-3-72, the Central Government has exempted jute twine, yarn thread ropes and twine all sorts falling under Item No. 18D of the First Schedule to the Central Excises and Salt Act, 1944 and consumed within the factory in which it is produced for the manufacture of jute falling under Item No. 22A of the said Schedule from the whole of the duty of excise leviable thereon, provided that such goods are manufactured and consumed by the petitioner within the same factory

for captive purpose in the manufacture of jute textiles and jute manufactures. According to Dr. Pal the impugned notification u/s 9 of the Act is contrary to and inconsistent with the above notification dated March 17, 1972 and as such the said notification is invalid and inoperative.

11. Powers have been conferred upon the Central Government under Rule 8 of the Central Excise Rules to grant exemption. In exercise of the powers a notification was issued on March 17, 1972 by which the exemptions were granted on production of the twine, thread rope and yarn when the said goods are consumed by the petitioner within its factory for captive purpose. The excise duty levied under the Central Excises and Salt Act and cess levied u/s 9(1) of the Industries (Development and Regulation) Act are quite different and they do not constitute the same thing. It is not disputed that for captive purpose in the manufacture of jute textiles and jute manufactures the petitioner has enjoyed the exemption of Central Excise Duty in terms of the 1972 notification. Simply because certain exemptions have been granted with respect to excise duty under the Central Excises and Salt Act, it cannot be said that no cess can be levied with respect to those identical good under a decedent Act. In my opinion, the impugned notification neither inconsistent nor contrary to Rule 3 of the Jute Rules.

12. It is next contended that in view of the proviso to Section 9(1) of the Act and Explanation to the said section, the imposition of cess thereunder would only be levied with reference to the value of the goods i.e. on ad valorem and in so far as the said impugned notification purports to levy cess by reference to the weight of the goods and not on the ad valorem basis, the impugned notification is ultra vires and invalid.

13. The main part of Section 9(1) of the Act nowhere lays down that the rates shall be specified on the value of the goods. The proviso and Explanation only fix the maximum limit of rate of such cess and the said limit has been expressed in terms of the value of the goods. In the instant case it appears that the excise duty of these goods have been levied on the basis of weight.

14. It is contended by Mr. Roychowdhury, appearing on behalf of the respondents that the rate has been fixed taking into account the average value of the goods per metric tonne in terms of the proviso and the rate that has been fixed does not exceed 2 annas per cent of the value of the goods.

15. In my opinion, the fixation of the rate on the value of the goods on weight is not in conflict with the proviso inasmuch as the proviso cannot control the main part of the section in absence of any such restriction.

16. Lastly, it is contended that all jute twines, rope and thread are not of the same kind and quality. Different yarns of different kind made from different quality of jute for different purposes cannot be treated equally and are not similarly situated and circumstances. It is contended that in equals have been treated equals and

therefore, the imposition of uniform rate of cess on all jute twines, thread, ropes and yams is ultra vires of Article 14 of the Constitution.

17. The Industries (Development and Regulation) Act, 1951 has been placed in the 9th Schedule. In view of above, the petitioner cannot urge any discrimination under Article 14 of the Constitution.

18. As all the points raised by the petitioner fail, this Rule is discharged. There will be no order for costs.

19. I make it clear that all other points taken in the petition are left open and the petitioner shall be at liberty to urge these points before the appropriate authorities.