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R. C. JAL & ANR.

v.

UNION OF INDIA

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February 23, 1972

[S. M. SIKRI, C.J., A. N. GROVER, A. N. RAY, D. G. PALEKAR AND M. H. BEG, *JJ.*]

Coal Production Fund Ordinance (39 *of* 1944)—*Coal despatched from colliery in British India to consignee in Princely State—Liability of consignee to pay the cess.*

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Coal was despatched from collieries within British India in December 1946 and January and February 1947, to the appellant in Indore. The respondent filed a suit in 1953 for recovery of coal production cess levied under the Coal Production Fund Ordinance, 1944, and r. 3(1) of the Coal Production Fund Rules, 1944.

On the question whether the Ordinance had no territorial operation to
D reach the appellant, because, he was a resident of a Princely State at the time of despatch of the coal.

HELD : In *R. C. Jall* v. *Union of India*, [1962] Supp. 3 S.C.R. 436, it was held that the cess was an excise duty on the manufacture or production of coal and that the method of collection did not affect the essence of the duty. The coal production cess was on the production of coal and was levied on coal despatched from collieries in the then British India,
E that is, the taxable event happened within the then British India. Under the Rules, the duty was to be collected by the railway administration as a surcharge on freight and was to be recovered from the consignee if the freight charges were to be collected at the destination. The appellant was the consignee and the freight charges were to be collected from him at the destination, namely, Indore. The cess thus became a part of the freight for purposes of collection but in essence remained a tax on goods. Once the duty attaches to the goods they became impressed
F with the liability and the consignee was liable to pay. The suit was filed in 1953 when Indore was within India and the right of the Union to claim, as well the liability of the appellant to pay, the cess, was valid and subsisting. It was not a case of the Union sueing or enforcing any revenue law in a foreign court. Therefore, the Union was entitled to a decree against the appellant. [565D-H; 566B-D]

G *Govt. of India, Ministry of Finance* v. *Taylor*, [1955] A.C. 491; 27 I.T.R. 356, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1920 of 1968.

Appeal from the judgment and decree dated April 15, 1968 of the Madhya Pradesh High Court in Letters Patent Appeal No. 21
H of 1962.

M. C. Chagla, A. K. Verma, B. Datta, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellants.

Jagdish Swarup, Solicitor-General of India, S. N. Prasad and *B. D. Sharma,* for the respondent. A

The Judgment of the Court was delivered by

Ray, J. This is an appeal by certificate from the judgment dated 15 April, 1968 of the High Court of Madhya Pradesh upholding the judgment and decree passed by Nevaskar, J. of that High Court. B

The Union filed a suit against the appellant in the Court of Small Causes Judge at Indore in the year 1953 and claimed a decree for Rs. 83-12-0. The claim in the suit represented coal production cess levied under Ordinance No. XXXIX of 1944 on coal and coke despatched from collieries in the then British India to the appellant. C

The only question which falls for consideration in this appeal is whether the Union could make a valid claim for the amount. Counsel on behalf of the appellant contended that the appellant was at the material time a resident at Indore in the then Holkar State and the Ordinance passed in the then British India would have no territorial operation to reach him. D

The Ordinance was called the Coal Production Fund Ordinance of 1944. It extended to the whole of the then British India. Section 2 of the Ordinance provided *inter alia* as follows :— E

> (1) With effect from such date as the Central Government may, by notification in 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 for ton, as may from time to time be fixed by the Central Government by notification in the official gazette; F
>
> Provided that the Central Government may, by notification in the official Gazette, exempt from liability to the duty of excise any specified class or classes of coal or coke. G
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> (2) * * * *
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> (3) A duty levied under this section shall be in addition to any other duty of excise or customs for the time being leviable under any other law. H

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(4) The duties imposed by this section shall, subject to and in accordance with the rules made under this Ordinance in this behalf, be collected on behalf of the Central Government by such agencies and in such manner as may be prescribed by the rules."

B Section 5 of the Ordinance conferred power on the Central Government to make rules and to provide for *inter alia* the manner in which the duties imposed by this Ordinance shall be collected, the persons who shall be liable to make the payments, the making of refunds, remissions and recoveries, the deduction of collections agencies of a percentage of the realisations to cover the cost of collection, and the procedure to be followed in remitting C the proceeds to the credit of the Central Government.

The Coal Production Fund Rules, 1944 were made by the Central Government in exercise of powers conferred by section 5 of the Coal Production Fund Ordinance 1944. Rule 3 related to recovery of excise duty. Rule 3(1) was as follows :—

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"*Recovery of excise duty* : (1) The duty of excise imposed under sub-section (1) of section 2 of the Ordinance on coal and coke shall, when such coal or coke is despatched by rail from collieries or coke plants, be collected by the Ralway Administrations by means of a surcharge on freight, and such duty of excise shall be E recovered :—

(a) from the consigner if the freight charges are being prepaid at the destination of the consignment;

(b) from the consignee if the freight charges are F collected at the destination of the consignment;

(c) from the party paying freight if the consignment is booked on the "Weight Only" system".

The Coal Production Fund Ordinance 1944 was repealed by the Coal Production Fund (Repealing) Ordinance, 1947. The G Repealing Ordinance of 1947 for the avoidance of doubts declared that the provisions of section 6 of the General Clauses Act, 1887 applied in respect of such repeal. Therefore the repeal of the 1944 Ordinance did not affect the right of the railway to recover the surcharge on freight or the liability of the appellant to pay and the remedy in respect of the right and H liability.

The claim of the Union related to coal production cess on three several consignments of coal despatched in the months of

December, 1946, January 1947 and February, 1947 from three different collieries at Mohuda, Umaria and Burhar respectively in the then British India to the appellant the consignee at Indore. Each consignment was under a railway invoice and a railway receipt. Freight was payable on each consignment. Coal production cess was under the 1944 Rules to be collected by means of a surcharge on freight. Freight and the coal production cess as a surcharge thereon were payable at the destination at Indore by the consignee. The appellant paid freight but did not pay the coal production cess by way of surcharge. The Union therefore sued the appellant for the sums of Rs. 27-8-0, Rs. 27-8-0 and Rs. 28-12-0 aggregating Rs. 83-12-0 in respect of the aforesaid surcharge on the three several consignments.

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The validity of the Ordinance came up for consideration by this Court in *R. C. Jall v. Union of India*(1). In that case suit was filed in the year 1953 at Chhindwara for recovery of coal cess on 3 consignments of coal despatched from collieries in the then British India in the months of January/February, 1947 to the consignee at Indore. This Court held that coal cess was levied and collected with the authority of law. This Court however did not decide two contentions sought to be raised in that case. These were first, that coal cess is a fee and not a tax or duty and secondly, that the consignee was a non-resident and therefore the Ordinance not having extra-territorial operation could not reach him.

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Counsel on behalf of the appellant contended that the appellant was at the material time a resident of Indore and was therefore not bound by the revenue law of the then British India and no suit could be filed for enforcing recovery of revenue dues against the appellant. Reliance was placed in support of the contention on the decision of the House of Lords in *Government of India, Ministry of Finance* v. *Taylor and Anr.*(2). In *Taylor's*(2) case the Government of India sought to prove in the voluntary liquidation of a company registered in the United Kingdom but trading in India for a sum due in respect of Indian income-tax including capital gains tax, which arose on the sale of the company's undertaking in India. It was held by the majority opinion that although under section 302 of the English Companies Act, 1948 a liquidator was required to provide in the liquidation of the company for liabilities of the company the tax claims would not be a liability within the meaning of section 302 of the English Companies Act. The unanimous opinion was that the revenue claims would not be enforceable in relation to assets in England. The ratio of the decision in *Taylor's*(2) case is that India being a foreign Government could not sue the liquidator

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(1) [1962] Supp. 3 S.C.R. 436. (2) [1955] A.C. 491; 27 I.T.R. 356.

A Taylor in England for income tax levied and declared to be payable under the Indian law. A foreign State cannot enforce a claim for revenues against a foreigner in his home country. The reason is that a foreign court will not be an agency for tax gathering.

B The decision in *Taylor's*(1) case is of no aid to the appellant in the present case. The Union in the present case did not either sue or enforce any revenue law in a foreign court.

The Coal Production Cess was levied on coal despatched from collieries in the then British India. Under the Rules the excise duty was to be collected by the railway administration as C a surcharge on freight and was to be recovered from the consignee if the freight charges were to be collected at the destination. The fact found in the present case was that the coal was despatched from the collieries within the then British India. The appellant was the consignee. Freight charges were to be collected at the station of destination, namely, Indore. The appellant also paid D the freight charges on the consignments.

The levy of cess which is the taxable event happened within the then British India. The duty of excise is determined by reference to goods despatched from collieries. The tax is on the production of coal. The liability to pay cess is on the goods. E The cess is a tax on goods and not on the sale of goods. This Court examined the true character of the cess in *Jall's*(2) case and Subba Rao, J. speaking for the Court said at page 451 of the Report : "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 F will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authoriy, 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 G convenience. .....A perusal of the provisions of the Ordinance clearly demonstrates that the duty imposed is in essence excise duty and there is a rational connection between the said tax and the person on whom it is imposed". The ruling in Jall's(2) case establishes two propositions. First, that the cess is a duty on the manufacture or production of coal and secondly, the method of collection does not affect the essence of the excise H duty.

(1) [1955] A.C 491

(2) [1962] Supp. 3 S.C.R. 436.

The transaction of sale is a composite transaction consisting of agreement of sale, passing of title, delivery of goods and payment of price and costs charges of transportation. The cess formed surcharge on the freight. The appellant being the consignee was liable for the same. The cess became a part of the freight for purposes of collection but in essence the cess remained a tax on goods. The machinery for collection of the duty is not to be confused with the duty itself. Once the duty attaches to the goods these became impressed with the liability and the purchaser, namely, the consignee in the present case was affixed with the liability to pay. The liability arose at the colliery. The collection was to be at Indore. The appellant became liable to pay the cess along with the payment of the freight charges.

The suit was filed in the year 1953 when Indore was within India and the right of the Union to claim as well as the liability of the appellant to pay the cess was valid and subsisting. The Union was therefore entitled to a decree against the appellant.

Counsel on behalf of the appellant sought to raise an additional ground that there was no cause of action against appellant No. 2. Notice of the application for urging additional ground was given on 22 January, 1972. We did not allow this additional ground to be raised at this late stage. If the appellant had raised this question at the trial of the suit the respondent would have dealt with the same. We therefore thought that it would not be fair and proper to allow this ground to be raised.

For these reasons the judgment of the High Court is affirmed. The appeal is dismissed with costs.

V.P.S. *Appeal dismissed.*