

PETITIONER:
THE STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:
NARAJAN DASS DOOMRA RICE & GEN. MILLS

DATE OF JUDGMENT: 25/11/1997

BENCH:
S.P. BHARUCHA, S.C. SEN

ACT:

HEADNOTE:

JUDGMENT:

THE 25TH DAY OF NOVEMBER, 1997

President:

Hon'ble Mr. Justice S.P. Bharucha
Hon'ble Mr. Justice S.C. Sen

M.R. Sharma, Sr.Adv., (Ms. Puja Anand) Adv. for G.K. Bansal, Adv. with him for the appellant for the State of Punjab). Jayant Dass, Sr.Adv. and B.P. Singh, Adv. with him for the appellant.

M.S.Ganesh and Yogeshwar Prasad, Sr.Advs., Mrs. Urmila Sirur, P.N.Puri, (M.K. Dua) Adv. (NP), Mrs. Sheela Goel, Advs. with them for the Respondents.

J U D G E M E N T

The following Judgment of the Court Court was delivered:

WITH

CIVIL APPEAL NOS. 1226-43 OF 1992, 7498 OF 1993 AND 4540 OF 1991

Bharucha, J.

On 30th November/3rd December, 1990, when the State of Punjab (the appellant) was under President's Rule, an order was issued under the provisions of section 71(1) of the Punjab Municipal Act, 1911, by the President of India exempting kapas (raw cotton), narma and oil seeds from the payment of octroi with immediate effect. On the same day, in exercise of powers conferred by Section 62-A of the said Act, the President was "pleased to direct all the Municipal Committees in the state of Punjab to impose Urban Development Cess on the sales/purchase of kapas (raw cotton), Narma and oil seeds made within the respective Municipal Areas at the rate of 0.24 per cent ad valorem with immediate effect". Pursuant thereto, a Memo was issued on 5th December, 1990 by the appellant to Municipal Corporations, Municipal Committees and Notified Area Committees. It noted that the appellant had issued the notification for imposition of the cess on sales and purchases of kapas, narma and oil seeds to compensate for the loss likely to be suffered on account of the abolition of octroi. The Memo gave directions in regard to the manner in which the cess was to be collected. It appears that, without more, the cess was sought to be levied and

recovered. Writ petitions were, therefore, filed in the High Court of Punjab & Haryana challenging the levy and collection. By the judgment and orders under appeal, the writ petitions were allowed and the appellant was directed to refund the cess that had been collected by it with interest at the date of 12 per cent per annum. These appeals by special leave arise out of the judgment and orders. At the stage at which special leave was granted, the judgment and orders under appeal were stayed subject to the condition that, in the event of it being held that the respondents were entitled to refund, the amounts collected from them would be refunded with interest at the rate of 12 per cent per annum.

Section 62A(1) and (3) of the said Act are relevant, and read thus:

"62A. Power of Government in taxation. (1) The State Government may, by special or general order notified in the official Gazette, require a Committee to impose any tax mentioned in section 61 not already imposed at a such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

xxx xxx xxx
(3) If the Committee fails to carry out any order passed under sub-section (1) or (2) the State Government may by a suitable order notified in the official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee as if the proposal was sanctioned in accordance with the procedure contained in section 62".

Section 62, sub-sections (1), (10) and (12) read thus:

"62. Procedure to impose taxes. -
(1) A Committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 61.

xxx xxx xxx
(10) (a) When a copy of order under sub-section (6) and (7) has been received, or
(b) When a proposal has been sanctioned under sub-section (8) the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of notification, on which the tax shall come into force.

xxx xxx xxx
(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of

the Act."

Learned counsel for the appellant submitted that the cess had been imposed in lieu of octroi and that, by virtue of Section 62(12), the notification of the imposition of the cess was conclusive evidence that the cess had been imposed in accordance with the provisions of the said Act.

The argument proceeds upon a misconception. In the first place, the order dated 30th November/3rd December, 1990 does not impose the cess. Its language is clear: it directs the Municipal Committees to impose the cess. This is in accord with the terms of Section 62A(1) under which the order is issued. That there is no imposition of a tax by reason of an order issued under the provisions of sub-section (1) of Section 62A is clear from the provisions of sub-section (3) thereof. Sub-section (3) states that if the Municipal Committee has failed to carry out an order that has been passed under sub-section (1), the State Government may itself notify the imposition of the tax, such imposition operates as if it were a resolution duly passed by a Municipal Committee under the provisions of Section 62. Section 62(12) comes into operation when a Municipal Committee has imposed a tax after following the procedure laid down in section 62. It is then that the notification of the tax is conclusive evidence that it has been imposed. Alternatively, if the Municipal Committee has failed to act as required by an order under sub-section (1) of Section 62A and the State Government has imposed the tax under sub-section (3) thereof, the provisions of Section 62(12) would then operate because an order passed by the State Government under Section 62A(3) operates as if it were a resolution duly passed by a Municipal Committee.

In the instant case, the order dated 30th November/3rd December, 1990 was passed under section 62A(1). The Municipal Committees failed to impose the cess in pursuance thereof. The State Government, thereafter, did not impose the cess under the provisions of Section 62A(3)). There was, therefore, no imposition of the cess, and its recovery was without the authority of law.

Learned counsel for the appellant drew our attention to the judgment of this Court in *Atlas Cycle Industries Ltd. v. State of Haryana & Anr.*, (1972) 1 SCR 127. The paragraph that was relied upon reads thus:

"Section 62(10) of the Act indicates that there is imposition of tax only when the State Government shall notify the imposition of the tax and shall in the notification specify a date on which the tax shall come into force. In the absence of imposition of tax by a notification under section 62(10) of the Act the municipality is not competent to impose, levy or collect tax. Section 62(12) of the Act enacts that a notification of the imposition of tax shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. It is the notification under the statute which is conclusive evidence of the imposition of tax"

(at page 133)

What is said does not advance the case of the

appellant. It is, in fact, consistent with the view that has been taken by the High Court and which we are inclined to take.

Reliance is also placed by learned counsel for the appellant on the decision of a Division Bench of the Punjab & Haryana High Court in *Shri Krishan Kumar Sanan and Others v. The Punjab State and another*, 74 P.L.R. (1972) page 149. The High Court has referred this decision in the judgment under appeal and has pointed out that it is inapposite because it was given in relation to an order that had been issued in exercise of the powers conferred by Section 62A(3) of the said Act.

The appeals must, therefore, fail and are dismissed.

The appellant shall refund to the respondents the amounts collected from them as and by way of the cess with interests at the rate of 12 per cent per annum from the dates of collection till the dates of payment.

No order as to costs.