

PETITIONER:
SOUTH EASTERN COALFIELDS LIMITED ETC. ETC.

Vs.

RESPONDENT:
CENTURY TEXTILES AND INDUSTRY LTD. AND ORS.

DATE OF JUDGMENT 04/04/1991

BENCH:
RANGNATHAN, S.
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RANGNATHAN, S.
KASLIWAL, N.M. (J)

CITATION:
1991 AIR 1593 1991 SCR (2) 188
1992 SCC Supl. (1) 460 JT 1991 (2) 595
1991 SCALE (1) 660

ACT:

Constitution of India, 1950; Schedule VII List I Entry 54 and List II Entries 23, 49, 50 and 66-Mineral areas development-Cess imposition of-Competency of state Legislature of legislate.

Article 142, 246 and 265 - Statute declaration of invalidity Refund-Whether automatic and inevitable consequence.

Madhya Pradesh Karadhan Adhiniyam 1982 |Madhya Pradesh Areas Development Cess Rules 1982-Ss.8,9| Rule 10-Mineral Areas development-Cess-Imposition of.

HEADNOTE:

The levy of cess under the Madhya Pradesh Karadhan Adhiniyam 1982 is not a valid levy has been held by the Madhya Pradesh High Court in Hiralal v. State of M.P., 1986 MPL J/514 and this has been confirmed by this Court in its judgement dated April 4, 1991 in the appeal preferred by the State of Madhya Pradesh.

Despite the judgement of High Court the amounts collected from various assesseees had not be refunded. The State was continuing to collect the cess on the strength of interim orders in an appeal filed in this Court.

The State Government and the Coalfields concerned preferred petitions for leave to appeal to this Court.

Disposing of the appeals, this Court,

Held (1) The collection of any cess under the Madhya Pradesh Karadhan Adhiniyam 1982 subsequent to the date of the judgement of the Madhya Pradesh High Court in Hiralal's case 1986 MPLJ514 cannot be upheld.[190D]

(2) The respondents will not be entitled to the refund of any cess paid or collected prior to the date of said judgment. They would however, be entitled to the refund of the amounts collected subsequent to

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that date from the Coalfields or the State, as the case may be, along with the interest in cases where there is an interim direction or undertaking to pay such interest at the dates specified in such direction or undertaking.[190E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5501 of 1990 etc. etc.

From the Judgment and Order dated 22.8.1990 of the Madhya Pradesh High Court in Misc P.N. 845 of 1990.

R.B. Datar, Satish Agnihotri, P.S. Nair, T.G.N. Nair and Shri Narain for the Appellant.

R.F. Nariman, Abhay Sapre, Sandeep Narain and S.K. Agnihotri for the Respondents.

The Judgement of the Court was delivered by

RANGANATHAN, J. These Civil Appeals and SLPs raise the same issues as have been dealt by us in our judgement of even date in Civil Appeal No. 1640 to 1662 of 1986 and connected cases. They arise in the following circumstances.

In the connected judgment referred to above we have held that the levy of cess under the Madhya Pradesh Karadhan Adhiniyam, 1982 (Act 15 of 1982) is not a valid levy. In fact it had been so held by the Madhya Pradesh High Court in *Hiralal v. State of M.P.*, [1986] MPLJ 514. The appeal preferred by the State of Madhya Pradesh has been disposed of by us in the connected batch of cases above referred to.

Despite the judgment of the High Court the amounts collected from various assessees had not been refunded; on the contrary, the State appears to have continued collecting the cess apparently on the strength of the interim orders obtained in one of the above appeals viz. C.A. No. 1649/86 though, as pointed out by us in the connected judgement no such modification seems to have been ordered by this Court of the initial order of 2.5.86.

In April/May, 1990, some of the assessees filed writ petitions in the High Court challenging the continued recovery of the cess and asking for the refund of amounts already collected. The respondents brought to the notice of the Court the orders of this Court in the

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earlier matter and pleaded that since the collections were being made in pursuance of the orders of this Court the writ petitions could not be entertained. The High Court rejected the respondent's plea and allowed the writ petitions. The Coalfields concerned and the State Government have preferred petitions for leave to appeal from the order dated 28.7.90 and 22.8.90 in these cases. In one set of these appeals leave has been granted by us earlier: C.A. Nos. 5501 and 5502 of 1990. The other SLPs had been listed before us subsequent to our hearing the main appeals and it was agreed that suitable orders may be passed thereon in the light of the conclusion we reach in the main batch of appeals. We grant leave to appeal in all the Special Leave Petitions and proceed to dispose of all the appeals by this judgment.

These appeals have to be disposed of in the light of our judgment in the connected batch of cases referred to above. We have held there that the collection of any cess under Act 15 of 1982 subsequent to the date of the judgement of the Madhya Pradesh High Court in *Hiralal's* case [1986] MPLJ 514 cannot be upheld. For the reasons set out in the judgment in the connected cases, we hold that the appellant will not be entitled to the refund of any cess paid or collected prior to the date of the said judgment. They would, however, be entitled to the refund of the amounts collected subsequent to that date from the coalfields or the State, as the case may be alongwith interest in cases where there is an interim direction or undertaking to pay such interest at the rates specified in such direction or undertaking.

With these observations these appeals are disposed of.
V.P.R. Appeals disposed of.

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JUDIS