

Engineering Systems (P) Ltd. Vs. Union of India

Engineering Systems (P) Ltd. Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/378150

Court : Karnataka

Decided On : Nov-29-1990

Reported in : 1991(33)ECC160; 1992(57)ELT12(Kar)

Judge : K.B. Navadgi and ;M.P. Chandrakantaraj Urs, JJ.

Acts : Central Excises Act, 1944 - Sections 33 and 35F; Central Excises Rules, 1944 - Rules 4 and 5

Appeal No. : Writ Petition Nos. 3113, 3079, 6448 and 6498/1986

Appellant : Engineering Systems (P) Ltd.

Respondent : Union of India

Advocate for Def. : Shri Shylendra Kumar, Central Govt. Standing Counsel

Advocate for Pet/Ap. : Shri G. Chander Kumar, Sr. Standing Counsel, ;Shri S.R. Shivaprakash and ;Shri R. Narayana, Advs.

Judgement :

ORDER

1. In W.P. No. 3113/1986 : Petitioner is M/s. Engineering Systems (P) Ltd. The petitioner has challenged the validity and legality of the original order passed by the Additional Collector of Central Excise, Bangalore, bearing No. C. No. V/68/15/16/84 C. 1 dated 15-11-1985 issued on 10-2-1986 of which the petitioner

has been called upon to pay duty of excise of Rs. 66,800/- in terms of the provisions of Section 11A of Central Excises and Salt Act, 1944 in respect of the value of the goods manufactured by M/s. Press and Punch, Bangalore, and M/s. Mech and Gear Technical Services, Bangalore, to whom raw material was supplied by the petitioner and who in turn manufacture certain items which form necessary part of a conveyor system paying the labour charges to the said 3 manufacturers and the manufacturing process having been supervised by the persons appointed by the petitioner, namely the Engineering Systems (P) Ltd. The petitioner itself has a manufacturing unit outside the State of Karnataka close to Bangalore City where it manufactures the very same part to be used in the conveyor system. Therefore, in Bangalore, it styled itself as a mere trader in the goods and traded the goods without paying any excise duty on the same. When the premises of the 3 manufacturers as well as the godowns of the petitioner company were raided by the Excise staff at Bangalore, they discovered the finished products lying in the godowns of the petitioner as well as in the factory premises of some other factories and after seizing the same, issued notice under Section 11A of the Central Excises and Salt Act calling upon the petitioner-company to show cause why the goods manufactured by the 3 units to made use of by them should not be charged to excise levy falling under Tariff Item No. 68 of Schedule I to the Act. Similarly, notices were issued to the 3 manufacturing companies who had been employed on payment of labour charges to produce and manufacture the goods for the petitioner in regard to proceedings which may result in the imposition of penalty on them and other provisions of the Act. Pursuant to such a notice, the petitioner showed cause inter alia that he was only a trader; that the manufacturing units not being liable to pay excise duty, regard being had to their production turnover, the petitioner was not the manufacturer and as such he was not exigible to the levy of excise duty on the goods produced by some one else notwithstanding the fact that he had supplied the raw material specifications of the manufactured articles and expert supervision during manufacture. That contention was rejected by the Additional Collector by the order impugned and having regard to the totality of circumstances and the manner in which the petitioner got manufactured the excisable items brought the manufactured goods to levy of excise duty under the Act. Therefore, the present petition by-passing the

availability of an effective alternative remedy under the provisions of the Central Excises and Salt Act, 1944 (hereinafter referred to as the 'Act') inter alia on the ground that the Additional Collector who came to pass the impugned order lacked jurisdiction to issue any notice much less pass an order of adjudication under sub-section (2) of Section 11A of the Act read with Section 33 of the Act.

2. Similarly, in W.P. No. 3079/1986, Forbin Polyglass, a Proprietary concern represented by its Proprietor, is the petitioner. Admittedly, he runs a small scale industry and manufactures several articles from fibre reinforced plastics popularly referred to as F.R.P. He is aggrieved by the order passed by the Additional Collector of Central Excise at Bangalore on 6-11-1985 and issued on 15-1-1986 whereby he has been subjected to an order of confiscation of fibre glass filament pipes measuring 47.17 L.ms. under Rule 173Q(1) of Central Excise Rules, 1944, giving option under Section 24 of the Act to redeem the confiscated goods on payment of fine of Rs. 2,000/- within the specified time in the order. By the same order, he has demanded excise duty leviable on the confiscated goods in the sum of Rs. 91,536.17 ps. from the petitioner under Rule 92 of the Central Excise Rules in terms of the provisions contained in Section 11A of the Act on the excisable goods valued at Rs. 5,54,764.65 ps. imposing a personal penalty of Rs. 5,000/- under Rule 173Q(1) of the Central Excise Rules, 1944. Aggrieved by that order, the petitioner has approached this Court for relief under Articles 226 and 227 of the Constitution of India inter alia by-passing the statutory remedies provided under the Act, inter alia contending that the Additional Collector lacked jurisdiction to make an order of adjudication and consequently an order of confiscation and imposition of penalty.

3. In the third petition, i.e. W.P. No. 6448/1986, the petitioner is Elmech Moulding, a partnership concern having its works at Bangalore and is manufacturer of Trailors. The petitioner is also aggrieved by the order passed by the respondent - Additional Collector of Central Excise, Bangalore, as at Annexure-A to the petition passed on 3-9-1985 and issued on 23-12-1985 after notice under sub-section (1) of Section 11A of the Act. By the impugned order, the petitioner Elmech Moulding, was subjected to duty liability under Tariff Item 15A(2) of the Central Excise Tariff and eligible for exemption claimed under Notification No. 150/82 and the petitioner

was called upon to pay the Central Excise duty of Rs. 38,572.68 under Rule 9(2) of the Central Excise Rules read with Section 11A of the Act on 899.13 Kgs. of fibre glass reinforced epoxy laminated sheets valued at Rs. 2,33,773.80 ps. manufactured between 21-6-1983 and 28-8-1984. In addition to the levy of duty as above, personal penalty of Rs. 35,000/- was levied on the petitioner and further he has confiscated 8 Nos. of fibre glass epoxy laminated sheets valued at Rs. 8,000/- seized from the petitioner with an option to redeem the same in terms of Section 24 of the Act on payment of fine of Rs. 4,000/- within 90 days from the date of receipt of the order. In the same order, further confiscation of 8 Nos. of fibre glass epoxy laminated sheets valued at Rs. 4,734/- seized from the petitioner under Rule 173Q(1) also came to be redeemed on payment of fine of Rs. 2,000/-. Therefore, the petitioner being aggrieved by the same, has questioned the legality and correctness of that order of the Additional Collector inter alia on the ground that the Additional Collector lacked jurisdiction. He has also challenged that the reinforced fibre glass sheets are not excisable goods under Tariff Item 15A(2) and not 22F(4) as ultimately held by the respondent - Additional Collector. There is a prayer also to declare that Section 35F of the Central Excises and Salt Act as unconstitutional as well as Rules 4 and 5 of the Central Excise Rules as ultra vires Section 33 of the Central Excises and Salt Act and further also for a declaration that Rule 5 of the Rules as unconstitutional and violative of Article 14 of the Constitution of India.

4. In W.P. No. 6498/1986, petitioner is Pramod Amberkar, an individual entrepreneur and Proprietor of M/s. Shivaprakash Trailors. He manufactures Trailors of various specifications and supplies the same to his customers with such additional fittings as the customers may desire while placing an order with him and such fittings having been secured from outside and it is not part of the Trailors manufactured by him before delivery. He was issued with a show cause notice under sub-section (1) of Section 11A of the Act calling upon him to show cause why the additional fittings should not be included in the total cost of the trailer, whether such additional fittings were manufactured by him or not as they constituted integral part of the trailer when delivered to the customer. Therefore, a short levy made while clearing the trailers was sought to be recovered by the notice.

5. The petitioner resisted the same by pleading that the mere securing of additional fittings from the open market and attaching the same to the trailer did not constitute any integral part of manufacturing the trailer and therefore such additional fittings delivered at the request of the customers could not form part of the cost of the trailer which should be exigible to excise duty. That came to be negatived and therefore aggrieved by the order of the respondent - Additional Collector of Central Excise, Club Road, Belgaum. He has approached this Court by-passing the statutory remedy inter alia on the ground that the Additional Collector had no jurisdiction to proceed and adjudicate under sub-section (2) of Section 11A of the Act read with Section 33 of the Act. He has also challenged the validity of Rules 4 and 5 of the Central Excise Rules, 1944, inter alia on the ground that they are arbitrary and ultra vires of the provisions of the Act.

6. Before us, Mr. Chander Kumar appearing for the petitioners in the last mentioned two petitions has submitted, both on questions of fact regarding the exigibility to tax as well as lack of jurisdiction by the Additional Collector to pass the impugned orders. The other Counsel in addition to their own arguments in support of the contentions on facts as to the exigibility to tax have adopted the arguments of Mr. Chander Kumar in regard to the validity of the provisions as well as on the question of jurisdiction of the Additional Collector to pass the impugned orders.

7. Mr. Shylendra Kumar, Counsel for the respondent has submitted the arguments and produced the necessary records only in one case which in our view should not detain us in proceeding to dispose of these writ petitions.

8. Much has been said about, whether a particular item or items of extra fittings would or would not constitute part of a trailer as understood in common parlance and therefore that should not be treated as items, the cost of which should be added to the cost of trailer for the purpose of exigibility to excise duty. Similarly, in the case of the first petitioner, much has been said about the petitioner not being a manufacturer despite supplying the raw material and having the same supervised. In fact a large number of cases have been cited in support of the proposition that such supply of raw material or payment of labour charges and supervision of the

manufacturing process could not render person who places the orders for such manufacture a manufacturer.

9. Similarly, Mr. Narayana has argued that reinforced fibre glass sheet is not entitled to be taxed and is not exigible to Excise duty at all under Tariff Item 22F(4).

10. We do not propose to go into the question as they relate to questions of disputed facts in regard to exigibility or inclusion of the fittings to the total cost of the manufacture of trailer. Therefore, it is unnecessary for us to refer to the decisions cited before us. We propose to dispose of these petitions on the other legal issues raised in the view we propose to take. Whatever survives shall be considered if necessary by the appropriate Appellate Authority.

11. For convenience, we will first take up the challenge made to the constitutional validity of Section 33 and 35F of the Act and Rules 4 and 5 of the Central Excise Rules. Mr. Narayana at the time of arguing his case did not press the constitutional validity of Section 35F. So far as Section 33 of the Act is concerned, this Court has already held that there is no infirmity which renders it un-constitutional, in W.P. No. 5892/1986, disposed of on 29/30-8-1990. What remains for consideration is only the validity of Rules 4 and 5 of the Central Excise Rules. Rule 4 of the Central Excise Rules reads as follows :-

'4. Appointment of Officers. - The Central Board of Excise and Customs may appoint such persons as it thinks fit to be Central Excise Officers or to exercise all or any of the powers conferred by these Rules, on such Officers.'

Rule 5 of the Central Excise Rules reads as follows :-

'5. Delegation of powers by the Collector. - Unless the Central Government in any case otherwise directs, the Collector may authorise any officer subordinate to him to exercise throughout his jurisdiction, or in any specified area therein, all or any of the powers of a Collector under these Rules.'

From the language employed in the Rules which is simple and straightforward, we have no difficulty in holding that Rule 4 is for the purpose of conferment of power

on the Board to make appointment of Excise Officers and also confer on such Officers such powers as the Board may deem fit. Similarly, in Rule 5, the Collector may authorise any officer subordinate to him to perform the duties of all or any of the duties which he is required to perform. We are unable to see any excess of delegation of authority to render the rules ultra vires the provisions of the Act.

12. Mr. Chander Kumar however contends that having regard to the scheme of the Act, it will not be open to the Board under Rule 4 to call upon any Central Excise Officer to perform the duties which the Act specifically confers on a particular Officer in a particular manner. Therefore, it is unguided and arbitrary resulting in excessive delegation of authority not permissible in terms of Section 37 of the Act. We find ourselves in some difficulty to accede to that contention. Rule 4 does no more than provide for the Authority that shall make appointments of Central Excise Officers. The term 'Central Excise Officer' is a defined term. Under Clause (b) of Section 2 of the Act, 'Central Excise Officer' means any officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 with any of the powers of a Central Excise Officer under that Act, does not make any provision for the mode and manner of appointment of the Central Excise Officers. Therefore, in order to bring to effect the provisions of the Act, some one must be vested with the power to make the appointment of various officers who are required to perform different and distinct functions giving effect to the provisions of the Act. It is in the light of that legal necessity, Legislature delegates in its wisdom to the executive power. Therefore, legislature enactments provision empowering the executive to make rules to give effect is common knowledge. In the case of the Act under consideration, similar provision is made is not disputed.

13. Section 38 of the Act reads as follows :-

'S. 38. Publication of rules and notifications and laying of rules before Parliament :-
(1) All rules made and notifications issued under this Act shall be published in the Official Gazette.

(2) Every rule made under this Act and every notification issued under sub-section (1) of Section 5A and Section 11C shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued [',the rule or' - Ed] [would be] notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.'

Therefore, when the rules are framed by the Central Government and in terms of sub-section (2) of Section 38, they are laid before each house of Parliament while it is in session to satisfy the other requirements of that sub-section. The rule shall become effective after it is published in the Official Gazette in accordance with the requirement of sub-section (2) of Section 38. In other words, the Legislature would be fully aware of the extent of power conferred on the Board under Rule 4 when it does not make any modification to the Rule as laid before the Legislature. As pointed out by the learned Standing Counsel for the Central Government, Sri Shylendra Kumar, Rule 4 does no more than appoint the Central Excise Officers as well as confer powers to be exercised by such officers in terms of the powers conferred by the Rules or the Act for such Officers. In this connection, we must not lose sight of the fact of conferment of power which relates not only to the officers appointed by them but also persons who are not appointed by the Board, but nevertheless confer powers of the Central Excise Officers in terms of the latter half of the definition of Central Excise Officer under Section 2(b) of the Act. It is well settled that when a higher authority is entrusted with certain power to be exercised such higher authority is expected to act reasonably while exercising the conferred power. In the event of unreasonable exercise of such power or arbitrary exercise of such power, the resultant act is liable to be struck down by the Courts. Therefore, we have no hesitation to come to the conclusion that having regard to the complicated functions which various Officers must perform in order to give

effect to the provisions of the Act and the Rules made thereunder, that some one must be vested with power to appoint the officers to discharge the obligations to give effect to the law in accordance with the Act. Any other construction of the rule would render the act ineffective and unworkable. Therefore, mere assertion that it will result in arbitrary exercise of power as contended by Mr. Chander Kumar, must be rejected. In order to prove excessive delegation only when instances are pointed out that there is excessive delegation, then we shall deal with it in terms of the extent of delegation.

14. Similarly, Rule 5 does no more than authorise a Collector to ask any of his subordinate officer to perform such of the duties and functions which he is asked to perform under the Act or the Rules. Therefore, when such authorisation is required to be made in writing, it cannot be held such a delegation is excessive delegation. It is possible that in a given case due to the pressure of work, a Collector may not be able to discharge any of his functions and some of the functions may be required to be performed by others. In which event, he must be free in order to see that the provisions of the Act and the Rules are given effect to, to discharge the functions if not by himself but by others authorised by him. Therefore, even in Rule 5, we do not see any scope for excessive delegation and on that ground we cannot strike it down as unconstitutional or ultra vires of the Act.

15. An attempt was made by Mr. Chander Kumar to contend with reference to some Notifications that the Central Board of Revenue had done something which was not consistent with the provisions of the rules. He made a particular reference to a Notification by which the Board had authorised the Additional Collector to impose penalty and adjudicate in regard to matters involving excisable goods the value of which was only up to Rs. 1,00,000/- which according to him would be impermissible. In the view the Court may take as to the jurisdiction of the Additional Collector, we will make a reference to this aspect of the argument a little later.

16. In the guise of the challenge to the rules or their validity, question of jurisdiction is raised in these petitions. We have no hesitation in giving a finding that the challenge made to the Rules as ultra vires the provisions of the Act are futile and

frivolous and are bound to be rejected and they are accordingly rejected.

17. The only question that remains for us to answer is the question of jurisdiction. Mr. Chander Kumar submits that the Collector is a defined term under Rule 2(ii) and therefore an Additional Collector cannot be a Collector. This argument is founded on account of the manner of the text of the Act and the Rules in which some of the publications have reproduced including the Government of India publication, particularly Rule 2(ii)(A) and (B) as they stood at different points of time. We may illustrate the same by pointing out that prior to 1981, Rule 2(ii) read as follows :-

'2(ii) 'Collector' means -

(A) in relation to excisable goods other than salt, -

(a) x x x x x x x x x x x x x x

(b) x x x x x x x x x x x x x x

(c) x x x x x x x x x x x x x x

(d) x x x x x x x x x x x x x x

(e) in the State of Karnataka, the Collector of Central Excise, Mysore;

(f) x x x x x x x x x x x x x x

(g) x x x x x x x x x x x x x x

(h) x x x x x x x x x x x x x x

(i) x x x x x x x x x x x x x x

(j) x x x x x x x x x x x x x x

(k) x x x x x x x x x x x x x x

(l) x x x x x x x x x x x x x x

(m) x x x x x x x x x x x x x x

(n) x x x x x x x x x x x x x x

(o) x x x x x x x x x x x x x x

(p) x x x x x x x x x x x x x x

(q) x x x x x x x x x x x x x x

(qq) x x x x x x x x x x x x x x

(r) x x x x x x x x x x x x x x

(s) x x x x x x x x x x x x x x

(t) x x x x x x x x x x x x x x

(u) x x x x x x x x x x x x x x

(v) x x x x x x x x x x x x x x

(w) x x x x x x x x x x x x x x

(x) x x x x x x x x x x x x x x

(y) x x x x x x x x x x x x x x

(B) in relation to salt, the Salt Commissioner; and includes any officer specially authorized under Rule 4 or 5 to exercise throughout any State or any specified area therein or any of the powers of a Collector under these rules; '(ii-a) 'Appellate Collector means -

(a) x x x x x x x x x x x x x x

(b) x x x x x x x x x x x x x x

(c) x x x x x x x x x x x x x x

(d) in relation to an order or decision of an officer of Central Excise subordinate to the Collector of Central Excise, Madras, the Collector of Central Excise, Mysore; Collector of Central Excise, Madurai and Collector of Customs and Central Excise, Cochin, the Appellate Collector of Central Excise, Madras;'

In yet another publication of the Government of India Notification reads Rule 2(ii)(A) in relation to excisable goods other than salt : '(B) in relation to salt the Salt Commissioner, and includes an Additional Collector and any officer specially authorised under Rule 4 or 5 to exercise throughout any State or any specified area therein all or any of the powers of a Collector under these rules;'

On the basis of this different manner employed in setting out Rule 2(ii)(A) & (B), the argument is constructed that the Salt Commissioner applies only to the Salt Commissioner and not an Additional Collector and therefore the Additional Collector is not a Collector within the meaning as defined under Rule 2 and therefore the Addl. Collector, Central Excise, Bangalore, was not competent to pass an order of adjudication in terms of sub-section (2) of Section 11A(2) of the Act where only a Collector is mentioned.

18. We have carefully considered the submissions made in this behalf and we have tried to see whether such a construction is possible not merely on the Golden rule of construction to read the statute as it is but also to see whether it would lead to any absurdity if the construction suggested by Mr. Chander Kumar is accepted by us. First we must say that in some publications, the inclusion of Rule 2(ii)(A) in between Rule 2(ii)(A) and (B) is undoubtedly a printer's devil and no more. Even if the official text provided for the same, we would have construed it to be a mistake in printing and give Rule 2(iia) a ranking below 2(ii) as is normally done. Therefore, that may not help and assist the contentions of Mr. Chander Kumar.

19. Now in the scheme of the definition of Rule 2(ii), one sees a clear division between a Collector for excisable goods and a Salt Commissioner for salt. Therefore, there is dichotomy between excisable goods and salt. If we keep the dichotomy in mind, the need of 'A' & 'B' becomes obvious. Therefore, a Collector of Central Excise in relation to excisable goods shall be the designated Collector and in relation to salt, he shall be designated for the purposes of the Act as Salt

Commissioner. It is unnecessary for us to state that Salt Commissioner has somewhat different functions than a Collector under the Central Excises and Salt Act functioning as Collector of Excise. Similarly, the duties and functions of a Collector (Appeals) or Appellate Collector are distinctly different from that of a Collector. Therefore, he has been defined separately in the definition itself. It is indicated that his functions are to adjudicate in appeal decisions rendered by those who are subordinate to Collectors. Therefore, in the scheme of arrangement of the definition of the terms itself something emerges which assists the construction, then the Court must give due regard to that scheme. Once such regard is given, then it necessarily follows that the Court must see what will result if the last portion following the Salt Commissioner is read not to include Collector in relation to excisable goods. The effect is there will not be any Addl. Collectors at all to do any function with reference to the excisable goods and such Additional Collectors will be available only to deal with the work of the Salt Commissioner and not otherwise. That would make Rule 4 totally inconsistent with Rule 2 or repugnant to Rule 2. If what has been assigned to the Salt Commissioners by the legislature should be assigned by the Board under Rule 4 to Collectors, such construction cannot be accepted as attributable to any error of the draftsman.

20. If the portion following 'Salt Commissioner' is read giving meaning to the punctuation employed, and read in continuation or separately so far as the line is concerned, there is some meaning. Legislative intention is to include under Collector Additional Collectors and not Additional Salt Commissioners. If it wanted Additional Salt Commissioner, nothing would have prevented it to say so by using the expression of Salt Commissioner including Additional Salt Commissioner. In other words, if we read Additional Collector etc., to apply to both 'A' & 'B', it shall include Additional Collector who shall, with reference to the excisable goods as well as with reference to the duties and functions of the Salt Commissioner, which are different to that of the Collector of excisable goods, it will be meaningful and will neither be repugnant to Rule 4 nor lead to absurdity. This will also give the proper emphasis to the expression at the beginning of the definition in Rule 2(ii) where Central Excise goods have been dichotomised from salt. So on this Golden rule of construction construing the rule as it is and to give a proper meaning and give effect to the provisions of the Act and the Rules made thereunder see

harmony between Rule 2 and Rule 4, have no choice but to hold that an Additional Collector is a Collector under the Rules.

21. Therefore, the Additional Collector if he is deemed to be a Collector by virtue of the definition in the Rules, then he may exercise the powers of a Collector notwithstanding any specific conferment of power by the Board in terms of Section 11A of the Act or any other provisions of the Act the duties and functions required to be performed by the Additional Collector.

22. In the view we have taken, we must hold that the impugned orders were passed by an Authority who had competent jurisdiction and therefore they do not suffer from want of jurisdiction.

23. The view we have taken and the reasoning adopted by us is fully supported by the reasoning and the conclusions reached by a Division Bench of the Madras High Court in the case of Asia Tobacco Co. Ltd. v. Union of India and Another, [1988 (33) ELT 279]. We however add that we are in respectful agreement with the view and the reasoning expressed by the Division Bench of the Madras High Court.

24. However, Mr. Chander Kumar drew our attention to the decision of the High Court of Calcutta rendered by the learned single Judge of that Court in the case of Bansal Industrial Gases (Bihar) Ltd. v. Collector of C. Ex. [1988 (37) ELT 347]. In that case, what fell for consideration was the form of appeal against the order of Additional Collector. In that connection, the Court first held that an order made in adjudication by the Addl. Collector would lie only to the Appellate Tribunal because under Rule 2(ii) a Collector includes an Addl. Collector and it would not be convenient to refer to Salt Commissioner in the part of the rule which is wholly in line with the reasoning adopted by us. However, Mr. Chander Kumar drew our attention to a portion of the Judgment in paragraph-8 as reported in 1988 (37) ELT 347. That portion reads as follows :-

'8. Under Section 33 of the Central Excises and Salt Act, the power of adjudication have been conferred on two specified authorities, namely, (a) Collector, (b) Assistant Collector and any other categories of officers as may be vested with the

power by the Board either to discharge powers and functions of the Collector or the Assistant Collector. So Section 33 of the said Act made it abundantly clear that the Additional Collector for the purposes of adjudication can only exercise the powers of the Collector or the Assistant Collector. As it could not be said by any stretch of imagination that the post of Additional Collector is equal to or subordinate to the post of Assistant Collector, there is no scope one for the Additional Collector to exercise power of adjudication independently under the Act. Whatever the power the Additional Collector can exercise must be a power delegated by the Board in this behalf. If the contention of Mr. Banerjee learned Advocate appearing on behalf of the petitioner is accepted that the Collector can exercise power independently under the Act and the rules, in that event, the Court have to read in words contrary to a scheme of the Act. The Court may read word which is considered to be necessarily implied by word which is already in the statute and as limited power to add to, alter or ignore statutory word in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable or totally irreconcilable to the rest of the statute. The meaning is clear and the intention of the statute is also clear. Any other meaning to the provisions of Section 33 could be contrary to the machinery provided under the Act. Accordingly, it is made abundantly clear that the post of Additional Collector comes within the definition of the word 'Collector' and the Additional Collector had to discharge the power and function of a Collector and accordingly, appeal would lie to the Appellate Tribunal under Section 35B of the said Act. It is immaterial whether against the order of adjudication, there would be one appeal or two appeals. If the adjudication is made by the Assistant Collector, the Act provided for two appeals. On the contrary, if the adjudication is made by the Collector, in that event, there would be only one appeal. The adjudication is taken up by the Collector or Assistant Collector on the basis of valuation. This is nothing unusual and arbitrary. In the judicial hierarchy of this Country, if a suit for a lesser value is decided by the Munsif, there would be first appeal and second appeal against the order passed by the Munsif whereas if the suit is decided by the Additional District Judge or the subordinate Judge, in that event, there is only first appeal and that the classification of the case for the purpose of hearing by different authorities is determined on the basis of valuation and that there is rational nexus for making

such classification. Accordingly, I am unable to hold for loss of one right of appeal this Court have to hold that the adjudication made by the Additional Collector should be treated to have been made by the Assistant Collector, so that the petitioner can avail two appeals.'

25. We are in respectful agreement with the observation made by the learned single Judge that the post of Additional Collector is not equal to or subordinate to the post of Assistant Collector. He therefore contends that the Additional Collector does not amount to Collector. The post of Additional Collector is not equivalent to that of a Collector. We do not understand the observation in the context in which it is made. The learned Judge, a little later specifically points out that the Additional Collector is a Collector in terms of the definition under Rule 2(ii) and therefore an appeal lies only to the Appellate Tribunal as if it is an order passed by the Collector. That should be read as holding that the Additional Collector is equivalent to Collector for the purposes of adjudication under Section 33 read with Section 35B of the Act. We therefore are fortified by both the decisions in reaching our conclusions.

26. In the result, we pass the following order.

The petitions are dismissed insofar as the petitioners have raised the question of jurisdiction and Constitutional Validity of Sections 33, 35F and Rules 4 and 5 of the Rules framed under the Act. Rule in that behalf is discharged. So far as questions of facts are concerned, they must be left to be decided in appeal on the understanding of the law and approach of this Court for relief. This Court is unable to decide the questions of facts on the material placed before us. In that view of the matter, we think it just and proper that if an appeal is now filed by the petitioners before the Appellate Tribunal having jurisdiction, the Appellate Tribunal shall consider the same as if it is filed within time in which such an appeal is required to be filed if so filed within 60 (sixty) days from the date of this order and examine their contentions on questions of facts as to the exigibility of goods to tax in question as well as in regard to the quantum of penalty etc.

Petitions therefore dismissed subject to the observations.

Order accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com