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W.P.(MD)NO.8140 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

W.P.(MD)No.8140 of 2020

M/s.NLC India Limited,
Rep. by its General Manager Finance,
JN Salai, Neyveli, Tamil Nadu.

... Petitioner

Vs.

1.The Commissioner of GST & Central Excise,
1, Williams Road, Cantonment, Tiruchirappalli – 620 001.

2.Union of India,
Through its Revenue Secretary,
Department of Revenue, Ministry of Finance,
128-A/North Block, New Delhi.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that part of the notification No. 02/2010-CEC dated 22.06.2010 declaring application of Section 11A of the Central Excise Act, 1944 for recovery of Clean Environmental Cess, as ultra vires the powers conferred under Section 83(7) of the Finance Act, 2010.

For Petitioner

: Mr.Raghavan Ramabadran,
for M/s.Lakshmi Kumaran and Sridharan.



For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General,
assisted by Mr.K.Govindarajan,
Deputy Solicitor General for R-2.

Mr.N.Dilipkumar,
Standing counsel for R-1.

* * *

ORDER

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioner is a Central Government undertaking. It is one of the Navaratnas. It is a producer of lignite and peat. Section 83 of the Finance Act, 2010 provided for levy of "Clean Environment Cess" (CEC) on certain goods for the purpose of financing and promoting clean environment and energy initiatives, funding research in that area and for related purposes. Chapter VII of the said Act dealing with CEC is as follows :

"Clean Environment Cess

83. (1) This Chapter extends to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.



(3) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the [Clean Environment Cess], as duty of excise, on goods specified in the Tenth Schedule, being goods produced in India, at the rates set forth in the said Schedule 1[for the purposes of financing and promoting clean environment and energy initiatives, funding research in the area of clean environment or clean energy, or for any other purpose relating thereto].

(4) The proceeds of the cess levied under sub-section (3) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of the money of the cess for the purposes specified in sub-section (3), as it may consider necessary.

(5) The cess leviable under sub-section (3) shall be in addition to any cess or duty leviable on the goods specified in the Tenth Schedule under any other law for the time being in force.

(6) The cess leviable under sub-section (3) shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States and the manner of assessment, collection, utilization and any other matter relating to cess shall be such as may be prescribed by rules.



(7) The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Central Excise Act, 1944[1 of 1944.], relating to levy of and exemption from duty of excise, refund, offences and penalties, confiscation and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary, be applicable in respect of cess levied under sub-section (3).

Power of Central Government to make rules.

84. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for —

(a) the manner of assessment, collection and utilisation of the cess under sub-section (6) of section 82;

(b) any other matter relating to the cess under sub-section (6) of section 82.

(3) Every rule made and every notification issued under this Chapter 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



sessions aforesaid, both Houses agree in making any modification in the rule or notification, or both Houses agree that the rule or notification should not be made or issued, the rule or 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.”

The goods produced by the writ petitioner attracted Clean Environment Cess.

3.Pursuant to the rule-making power conferred under Section 84 of the Act, Clean Environment Cess Rules, 2010 were issued by the Central Government to deal with collection and assessment of CEC, the manner of its payment, maintenance of records and imposition of penalty. In terms of the power conferred under Section 83(7) of the Act, the impugned notification dated 22.06.2010 was issued. It reads as follows :

“In exercise of the powers conferred by sub section (7) of section 83 of the Finance Act, 2010 (14 of 2010), the Central Government hereby declares that the following provisions of the Central Excise Act, 1944 (1 of 1944) relating to the matters specified therein, shall be applicable in regard to like matters in respect of cess



imposed under section 83 of the said Finance Act, namely:-

Sections 5A, 6, 9, 9A, 9AA, 9C, 9D, 9E, 11, 11A, 11AA, 11AB, 11AC, 11B, 11BB, 11C, 11D, 11DD, 11DDA, 12A, 12B, 12C and 12D; Chapters III, VI, VIA and VIB.

[Notification No. 2/2010-Clean Energy Cess, dated 22-6-2010]"

4.The petitioner is particularly aggrieved by the application of Section 11A of the Central Excise Act, 1944 for recovery of Clean Environment Cess. The challenge raised in this writ petition has ceased to be relevant post introduction of GST regime. However, the issue is very much alive in respect of the pre-GST period in respect of goods excavated from the mine and for which gate passes had not been issued for despatch outside. The learned counsel for the petitioner took us through the statutory scheme. He developed his attack point by point on the impugned notification in the following manner :

- Section 84 of the Act specifically deals with assessment and collection of the Cess
- Section 83(6) of the Act states that the manner of assessment, collection or any other matter relating to Cess shall be such as may be prescribed by rules



- Central Environment Cess Rules, 2010 envisage only self assessment. The rules are silent on the consequences of the self assessment turning out to be incorrect leading to non-payment or short-payment of the Cess.
- Section 83(7) empowers the Central Government to notify the applicability of any of the provisions of the Central Excise Act, 1944 relating to levy of and exemption from excise duty, refund, offences and penalties, confiscation and procedure relating to offences and appeals to CEC with appropriate modifications and alterations.
- Section 11A of the Central Excise Act, 1944 deals with recovery of duties not levied or not paid or short-levied or short-paid
- Sub-section 6 of Section 83 is to the effect that the manner of assessment and collection shall be in accordance with the rules. Section 84(2)(a) confers power to make rules regarding the manner of collection of the Cess. Sub-section 7 of Section 83 which confers the power to issue notification is silent on assessment and collection of the Cess.
- Collection is nothing but recovery. Therefore, Section 11A can be made applicable to recovery of Cess only through rules issued under Section 84 of the Act and not by way of notification issued under sub-section 7 of Section 83.



In support of his contentions, the learned counsel relied on a catena of case-laws.

5.Per contra, the learned Additional Solicitor General pointed out that the rule-making power as well as the power to notify have both been conferred only on the Central Government. He submitted that the tracing of the power to Section 83(7) or 84 of the Act amounts to making distinction without difference. He called upon us to read Section 83(3) of the Act which is the charging Section, Section 83(6) & (7) of the Act together. He pressed for adoption of the rule of harmonious construction.

6.We carefully considered the rival contentions and went through the entire statutory scheme. It is true that Section 84(3) of the Finance Act, 2010 obliges the Central Government to place the Notifications issued under Section 83(7) as well as the rules made under Section 84 before both the Houses of Parliament. In other words, the laying procedure has to be adopted in both cases. But, on that score, we cannot treat the rule making power under Section 84 and the power to notify under Section 83(7) on the same footing. This is because while Section 84 deals with rule making power, Section 83(7) embodies the



well known legislative device of incorporation by reference. The manner of exercising the power under Section 83(7) is different from the scope of the power under Section 84 of the Act. The fact that it is the Central Government that has the power to notify as well as the power to make rules would not by itself immunize the impugned notification from challenge. The impugned notification has been issued under Section 83(7) and not under Section 84 of the Act. The respondents have to justify that the Central Government had the power to issue the impugned notification under Section 83(7) of the Act.

7.The question that calls for consideration is whether by virtue of Section 83(7) of the Finance Act, 2010, certain provisions of the Central Excise Act, 1944 could have been made applicable to assessment and recovery of CEC. It is true that the expression "assessment and collection" are mentioned in Section 83(6) and Section 84(2)(a) of the Act but they are conspicuously absent in Section 83(7) of the Act. Section 83(7) talks about "levy" alone. According to the writ petitioner's counsel, the expression "levy" occurring in Section 83(7) of the Finance Act, 2010 would not encompass the manner of assessment and collection and therefore, Section 11A of the Central Excise Act, 1944 cannot be made applicable to collection of CEC by invoking Section



83(7). The Hon'ble Supreme Court in ***CCE v. National Tobacco Company (1972) 2 SCC 560*** held that the expression "levy" has a wider connotation. However, following the earlier decision in ***N. B. Sanjana v. Elphinstone Spg. & Wvg. Mills Co. Ltd., (1971) 1 SCC 337***, it held that the term "levy" did not extend to "collection". ***CCE v. Hindustan National Glass & Industries Ltd., (2005) 3 SCC 489*** also held that levy and collection are two distinct and separate concepts. ***Gokak Patel Volkart Ltd. v. CCE, (1987) 2 SCC 93***, ***SEBI v. Alliance Finstoc Ltd (2015) 16 SCC 731*** and ***Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519*** are also on the same lines.

8.The expression "levied" is found not only in Article 265 of the Constitution of India but also in several subsequent articles. Article 277 also employs the expression "levied". This article was considered by the Five Judges Bench of the Hon'ble Supreme Court in ***Town Municipal Committee v. Ramchandra Vasudeo Chimote, (1964) 53 ITR 444***. It was held therein that the Constitution-makers obviously intended the word "levy" to be understood as including the collection of the tax, for it is only when a tax is collected that any question of its application to a particular purpose would arise. The court proceeded on



the premise that the word "levied" in its denotation definitely included the actual collection of the tax. The debate was more on whether the term would include the imposition of the tax in the sense of creation of the charge by the statute. In ***Mehtab Singh v. State of U.P., (1979) 4 SCC 597***, Section 70 of IPC, 1860, in which the expression "levied" is employed came up for consideration. A three Judges bench of the Hon'ble Supreme Court held that to levy is to realize or to collect.

9. In ***Karnani Properties Ltd. v. Corporation of Calcutta (AIR 1973 Cal 488)***, Section 200 of the Calcutta Municipal Act, 1951 was considered. The Hon'ble Calcutta High Court speaking through Mr. Justice Sabyasachi Mukharji (As His Lordship Then Was), observed that the expression 'levy' is a common expression in taxing and fiscal statutes and has various shades of meaning depending upon the different contexts in which it is used. It was held that levy sometimes signifies the process of assessment or determination of the liability and in others the realization or collection. In ***Dialdas Parmanand vs P.S. Talwalkar (AIR 1957 BOMBAY 71)***, the Hon'ble Division Bench of the Bombay High Court held that "levy" in the said context must mean any step taken or any proceeding initiated for the ultimate purpose of determining the liability of the assessee and finally collecting the tax.



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10. The Hon'ble Rajasthan High Court in the decision reported in ***AIR 1963 Rajasthan 190 (Narain vs Cantonment Board, Nasirabad)***, while interpreting Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951, held that the term "levy" has to be construed widely so as to prohibit even the collection of any other tax on motor vehicles. It was observed that the term "levy" could be used in a wider sense to include all three stages in taxation process, namely, fixation of liability, assessment of liability and collection of tax and the context in which the expressions are used must be the guiding factor. In ***Sir Byramjee Jejeebhoy vs Province of Bombay***, reported in ***AIR 1940 Bombay 65***, the Hon'ble Full Bench interpreted the term "levy" in Section 24 of the Bombay Finance Act and held that it must be construed as meaning "taking necessary steps to collect". In ***Firm Hazari Mal Kuthiala v. ITO, (1956) 30 ITR 500***, the Hon'ble Division Bench of the Punjab and Haryana High Court noted that the levy of taxes is generally a legislative function; assessment is a quasi-judicial function and collection an executive function. To "levy" a tax means "to impose or assess" or "to impose, assess or collect under the authority of law".



11. Words are the basic units of any language. They can be spoken or written. A mere sound is not a word. A word must have meaning. Kalidasa in Raghuvamsam compares the inseparable unity of Shiva and Parvathi to that of a word and its meaning. No word can be without meaning. But words are not rigid like stones. They may have an elastic character. They can be like balloons. Their meanings can contract and expand depending on the context. A word can contract and have a constricted meaning. If the word "levy" is used along with the word "collect", levy may not include collection. But if the word "levy" alone is used, it can encompass all the three components of the taxing process and acquire an all inclusive character. It all depends on the context.

12. ***Black's Law Dictionary*** defines "levy" as follows :

"Levy, v. To assess; raise; execute; exact; tax; **collect**; gather; take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy (raise or set up) a nuisance; to levy (acknowledge) a fine; to levy (inaugurate) war; to levy an execution, i.e., to levy or collect a sum of money on an execution."

The above definition was approvingly cited in ***Ashok Singh v. Asstt. Controller of Estate Duty, (1992) 3 SCC 169.*** P.Ramanatha



Aiyar's Advanced Law Lexicon says that "levy" is a term frequently used in more than one sense. As applied to taxation, as a noun, it means assessment, computation and the taking and seizure of property on a warrant. In other words, assessment, collection and imposition of tax fall within the meaning of term "levy". It is used both as noun and as a verb.

13.The word levy can be used to denote impose as well as collect depending upon the context in which the expression is used (per Chagla C.J. in ***C.I.T, Bombay City v. Zorastrian Building Society Ltd.,***). Applying the principles and precedents catalogued above, we hold that the expression "levy" occurring in Section 83(7) of the Finance Act, 2010, would include within its ambit the process of assessment and collection also.

14.It is true that Section 84 is widely worded. It is also residuary in character as the Central Government is empowered to lay down rules in respect of any other matters relating to Section 82(6) of the Act. On the other hand, Section 83(7) talks only about levy and exemption. Section 83(6) states that the manner of assessment, collection and any other matter relating to Cess shall be such as may be prescribed by



rules. Rules belong to the realm of subordinate legislation and do not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on the ground that it does not conform to the statute under which it is made. Whenever a rule is challenged as ultra vires, courts enquire if the impugned rule is within the scope of the authority conferred on the rule-maker by the parent statute (**M.P.Jain and S.N.Jain on the Principles of Administrative Law**). Therefore, the lawmakers invariably couch the empowering provision in rather wide terms. Otherwise, the rule may be assailed on the ground that it is beyond the scope of the rule makers' authority. On the other hand, if the legislature had decided to employ the device of incorporation by reference, there is no need for elaboration. In **Raja Ram Pal v. Lok Sabha (2007) 3 SCC 184**, it was observed that the legislative device of incorporation by reference is a well known device where the legislature, instead of repeating the provisions of a particular statute in another statute, incorporates such provisions in the latter statute by reference to the earlier statute. It is adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier statute into the latter. Unlike Rules which must lay down a detailed scheme, when an existing regime is extended as such, their



applicability will simply have to be notified and nothing more requires to be done.

15. Chapter VII of the Finance Act, 2010 enabled the Central Government to adopt the notification route under Section 83(7) or the rule making route under Section 84 of the Act to deal with cases of non-payment or short-payment of CEC. The Central Government thus had the option of making detailed rules relating to assessment and collection of Clean Environment Cess. The other option was to extend the applicability of already existing statutory provisions of the Central Excise Act to assessment and recovery of CEC. Dealing this subject matter through the medium of rules would have entailed laying down an elaborate procedure. But instead the Central Government chose to borrow wholesale the procedure already laid down in the Central Excise Act. It is not for the writ court to question the wisdom of the Central Government. What we have to see is whether the impugned notification will fall within the sweep of Section 83(7) of the Act. Once we hold that the expression "levy" would include assessment and collection also, the conclusion can only be that the impugned notification is intra vires the parent Act.



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16.For the foregoing reasons, this writ petition stands dismissed.

WEB COPY No costs.

(G.R.S, J.) & (R.K.M, J.)
16th February 2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note : Re-uploaded vide order dated 19.02.2026.

To

- 1.The Commissioner of GST & Central Excise,
1, Williams Road, Cantonment, Tiruchirappalli – 620 001.
- 2.The Revenue Secretary, Union of India,
Department of Revenue, Ministry of Finance,
128-A/North Block, New Delhi.



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W.P.(MD)NO.8140 OF 2020

G.R.SWAMINATHAN, J.

AND

R.KALAIMATHI, J.

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