A. B. Abdulkadir and Others

Vs

The State of Kerala and Another

Civil Appeals Nos. 89, 90 and 126 to 128/61.

(CJI B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, J. C. Shah JJ)

24.01.1962

JUDGMENT

WANCHOO, J. -

These five appeal on certificates granted by the High Court of Kerala raise a common question of law and will be dealt with together. Two of them (appeals 89 and 90) are from what was formerly the Cochin area and the other three are from what was the Travancore area. They relate to a tax on tobacco in these areas. As the facts, laws and rules in the two areas are similar we propose to deal in detail with the appeals from the Cochin area.

In 1909, Act VII of 1084 was passed by the Maharaja of Cochin to consolidate and amend the law relating to tobacco and was called the Cochin Tobacco Act, VII of 1084 (hereinafter called the Cochin Act). Section 4 of the Cochin Act prohibited the possession for sale, transport, import or export, sale and cultivation of tobacco except as permitted under the Act or the Rules framed thereunder. Section 5 of the Act gave power to the Diwan to make rules from time to time consistent with the Act to permit absolutely or subject to any conditions, and also to regulate the possession for sale, transport, import or export, sale and cultivation of tobacco as well as the form of duty leviable on the sale of tobacco by retail. The remaining provisions of the Act deal with offences, prosecutions, punishment, confiscation and other ancillary matters such as arrest and seizure, with which we are not concerned in the present appeals. Reference may however be made to s. 18 which provided that "no action shall lie against the Sirkar or against any officer of the Excise department for damages in any civil court for any act bona fide done or ordered to be done in pursuance of this Act, or of any law for the time being in force relating to tobacco revenue."

Rules were framed under the Cochin Act called the Tobacco Cultivation Rules, which, by the first rule provided that "the cultivation to tobacco plant is prohibited except under a licence and shall be restricted to such parts or localities of the State, as may, from time to time, be fixed by the Diwan....." Rule 3 provided for drying, curing, manufacturing and storing of the tobacco, cultivated in the State, to be done under the supervision of an officer of the Excise Department in licenced manufacturing yards and storehouses. Rule 4 provided for licences for manufacturing yards and store-houses. Rule 5 laid down that the licences would be in force for one official year and were to be issued on payment of a fee of Rs. 50/- for each licence. Under r. 6, the tobacco crop could only be harvested after permission obtained from the Inspector of Excise and under r. 7 the harvesting was to be done by the licensed cultivator under the general superintendence of the Sub-Inspector of the locality in which the area cultivated lay and the harvested crop was to be transported only under permits granted by him from such area to the manufacturing yard where alone manufacture was to be undertaken. Rule 8 provided for the maintenance of a stock book by a licensee of a storehouse or a manufacturing yard. Rule 13 provided that the licensed manufacturer and the storehouse keeper

would sell or otherwise dispose of his stock only to licensed dealers and there was prohibition against the disposal or sale of tobacco to any person who had not the required license to possess the same. Rule 15 made it an offence for any on to cultivate, dry, cure, manufacture, store, transport, sell or otherwise dispose of tobacco in contravention of the Rules.

In addition to these Rules, there were further Rules also framed under the Cochin Act with respect to import of tobacco into the State, and all import was prohibited except under the provisions of the Diwan's notification prescribing the sale of tobacco shops and licences. Possession of tobacco for the purpose of sale was also prohibited except under the provisions for the sale of tobacco shops and licences. Export of tobacco was also prohibited except with the special sanction of the Commissioner of Excise.

It further appears that the system in force for the collection of tobacco revenue up to August 1950 was to auction what were called A class and B class shops and the last of such auction was held under the notification dated May 30, 1949. In addition there were C class shops, the licence for which was granted either on the recommendation or in consultation with B class licensees at the discretion of the Excise Commissioner or any other officer authorised by him on payment of the prescribed fee. This system along with the Rules already referred to was in force on April 1, 1950.

On April 1, 1950, after the Constitution and come into force and Travancore-Cochin had become a Part B State thereunder, the Finance Act, No. XXV of 1950, extended the Central Excises and Salt Act, No. 1 of 1944 (hereinafter called the Central Act), to the Part B State of Travancore-Cochin by s. 11 thereof. Section 13(2) of the Finance Act, further provided that "if immediately before the 1st day of April, 1950, there is in force in any State other than Jammu and Kashmir a law corresponding to, but other then, an Act referred to in sub-s. (1) or (2) of s. 11, such law is hereby repealed with effect from the said date....." It seems that in consequence of this provision in the Finance Act, 1950, the Rules which were in force on April 1, 1950, were changed in the Cochin area by a notification dated August 3, 1950, and the system of auction sales of A class and B class shops was done away with and instead graded licence fees were introduced for various classes of licensees, including C class licensees. Similar change was made for the Travancore area by notification dated January 25, 1951. These Rules introduced by these two notifications also did away with the control of cultivation, drying, curing, manufacturing and ware-housing which were in force under the earlier Rules, so that these new Rules were only concerned with licensing of A, B and C class shops. A class licensees under the new Rules were called stockists, B class licensees were wholesale sellers and C class licensees were retailers. The system for A class licensees was that they were to pay a minimum annual fee for a maximum quantity of tobacco or tobacco goods possessed by them and additional fee for further additional quantity. Thus, for example, in the case of Jaffra tobacco it was provided that maximum annual fee would be Rs. 1,500/- for a minimum of 100 candies and further fee of Rs. 1,000/- for additional quantity of 100 candies or part thereof.

The appellants of Cochin area were tobacco dealers and holders at the time they filed their petitions in 1956 of A class licences. The main contention raised on their behalf in their petitions was that the Cochin act stood repealed by the Finance Act, 1950, on the introduction of the Central Act in the Part B State of Travancore-Cochin from April 1, 1950; in consequence, the notification which was issued on August 3, 1950, or on January 25, 1951, framing new Rules for the issue of licences and prescribing rules therefor under the powers conferred under the Cochin Act or the similar Travancore act were ab initio void, because the Acts under which the notifications were purported to be issued stood repealed from April 1, 1950. In addition various other grounds were raised challenging the validity of the new Rules which, however, we do not think it necessary for the

purposes of these appeals to set out here.

The petitions were opposed on behalf of the State and it was contended that the Cochin Act or the similar Travancore Act did not stand repealed from April 1, 1950. In consequence it was urged that the State was competent to frame new Rules which it did under the Cochin Act or the similar Travancore Act. Further the case of the State was that the graded licence fee introduced after April 1, 1950, was a tax which was sustainable under item 60 or 62 of List II of the Seventh Schedule to the Constitution.

The High Court dismissed the petitions holding that the laws under which the new Rules were framed were in force and were justifiable under item 62 of List II of the Seventh Schedule. Unfortunately, though the judgment of the High Court mentions the contention of the appellants that on the extension of the Central Act with effect from April 1, 1950, by the Finance Act, 1950, the Cochin Act as well as the similar Travancore Act ceased to be operative from that date, there is no discussion in the judgment with regard to this contention, and the High Court did not consider whether in view of s. 13(2) of the Finance Act, 1950, the Cochin Act as well as the similar Travancore Act stood repealed from April 1, 1950. If the effect of s. 13(2) of the Finance Act, 1950, was to repeal the Cochin Act as well as the similar Travancore Act, from April 1, 1950, there will be no law in operation which would justify the framing of the new Rules either in August 1950 or in January 1951 and it would then be unnecessary to consider whether a law containing provisions similar to those contained in the notification would be within the competence of the State legislature under item 62 of List II of the Seventh Schedule. The question would only arise if the Cochin Act or the similar Travancore Act survived the repeal effected by s. 13(2) of the Finance Act.

We have therefore to see what the provisions of the Finance Act are in this connection. As already indicated, s. 11(1) of the Finance Act extends the Central Act and the Rules and Orders made thereunder which were in force immediately after the commencement of the Finance Act to all Part B State, except the State of Jammu and Kashmir. Consequently, the Central Act as well as the Rules and Orders made thereunder became applicable to the Part B State of Travancore-Cochin from April 1, 1950. Further s. 13(2) of the Finance Act specifically provides that from April 1, 1950, any law corresponding to the Central Act will be repealed from that date. The contention on behalf of the appellants is that the Cochin Act as well as the similar Travancore Act was a law corresponding to the Central Act and therefore stood repealed as from April 1, 1950, under s. 13(2) of the Act and it is this contention that we have to examine.

It was pointed out by this Court in The Custodian of Evacuee Property v. Khan Saheb Abdul Shakoor, etc. [A.I.R. 1961 S.C. 1087], that where the Act repealed provides substantially for all matters contained in the Act effecting the repeal there is correspondence between the two Acts and the earlier Act would thus stand repealed; it is not necessary that there should be complete identity between the repealing Act and the Act repealed in every respect. Therefore, when s. 13(2) of the Finance Act provides that on the extension of the Central Act from April 1, 1950, to the Part B State of Travancore-Cochin, any law corresponding to the Central Act is repealed with effect from that date, all that we have to see is whether the law repealed substantially provided for the same matters as the Central Act, even though it may not be identical in all respects.

Let us therefore turn to be Cochin Act and the rules framed thereunder to see if it substantially provides for the same matters with which the Central Act and the Rules and Orders made thereunder deal. The main contention on behalf of the respondent in this connection is that the Central Act is an Act imposing a duty of excise on tobacco under item 45 of List I of the Seventh Schedule to the

Government of India Act, 1935 (now corresponding to item 84 of List I of the Seventh Schedule to the Constitution), and such duty of excise is a duty on goods manufactured or produced in India. Thus according to the respondent, the main feature of the Central Act is the imposition of a tax on goods produced or manufactured in India and unless the Cochin Act or the similar Travancore Act also imposed a tax on goods produced or manufactured in what was formerly Cochin or Travancore State there would be no question of correspondence between the Central Act and the Cochin Act or the similar Travancore Act. Reference was also made to In Re the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (Central Provinces and Berar Act XIV of 1938) [[1939] F.C.R. 18], The Province of Madras v. Messrs. Boddu Paidanna and Son [[1942] F.C.R. 90], and Governor-General in Council v. Province of Madras [[1945] L.R. 72 I.A. 91], where the nature of a duty of excise was considered. In the first case it was held that the primary meaning of "excise duty" was of a tax on articles produced or manufactured in the taxing country (see p. 40). It was also observed in that case that it could not be denied that laws were to be found which impose a duty of excise at stages subsequent to the manufacture or production. In the second case it was held that duties of excise were duties levied on the manufacture or producer of the commodity taxed. In the third case, the Privy Council approved of the view of the Federal Court as to the nature of the duty of excise. It may therefore be accepted that a duty of excise is a tax on goods produced or manufactured in the taxing country. It may also be accepted that generally speaking the tax is on the manufacturer or the producer, though it cannot be denied that laws are to be found which impose a duty of excise at stages subsequent to the manufacture or production. We cannot however, forget that the Cochin Act or the similar Travancore Act was passed by States in which there were no such constitutional provisions as are to be found in the Government of India Act and it legislative Lists and this aspect will have to be borne in mind when judging the question of correspondence between the Central Act and the Cochin Act or the similar Travancore Act.

Now the Central Act provides by s. 3 for the levy and collection of duties of excise on all excisable goods other than salt which are produced or manufactured in India and also a duty on salt manufactured in or imported by land into any part of India. Further s. 6 of the Central Act gives power to the Central Government to issue licences and prohibits and person from engaging in the wholesale purchase or sale whether on his own account or as a broker or commission agent or the storage of any excisable goods except under the authority and in accordance with the terms and conditions of a licence granted under the Central Act. In Chaturbhai M. Patel v. The Union of India [[1960] 2 S.C.R. 362] where the various provisions of the Central Act (including s. 6) and the Rules framed thereunder were attacked on the ground that they had nothing to do with the levy and collection of duties of excise, this Court held that the various provisions of the Central Act and the Rules made thereunder were essentially connected with levying and collection of excise duty and in its true nature and character the Central Act remained one under item 45 of List I and that the incidental trenching upon the provincial field would not affect its constitutionality. The nature of the Rules there considered will appear from the following observations at p. 371 :-

> "It (the Central Act) is a fiscal measure to levy and realise duty on tobacco. The method of realising duty must be left to the wisdom of the legislature taking each individual trade and its peculiarities and difficulties which arise in that matter. Various provisions of the Act and the Rules show that the authorities are on the track of the movement of tobacco from the time it is grown to the time it is manufactured and sold in the market and the various provisions of the Act and the Rules made thereunder have been considered necessary for effectuating the purpose of the Act."

It is true that the Central Act provides for the levy of excise duty under s. 3 but in order to carry out

that purpose it has provided for licences under s. 6. The Rules also provide in Chap. III for levy and refund of duty, in Chap. V for manufactured goods other than salt, in Chap. VII for warehousing, in Chap. VIII for licensing. Thus in order to levy excise duty under the Central Act, there are provisions in the Rules which start in the case of tobacco from the stage of cultivation and continue right up to the time the finished product reaches the hand of the retailer and thus becomes a part of the common stock for purposes of sale to the consumers. We have also seen that the Cochin act similarly provides for control on tobacco from the stage at which it is grown to the stage till it reaches C class licensees who sell it in retail to the consumers. The Cochin Rules may not be so detailed as the Rules under the Central Act but their main object and purpose is the same, namely, to keep a check on tobacco from the time it is grown to the time it reaches the C class licensee who eventually sells it to the consumer. Further if one looks at the Rules under the similar Travancore Act in vol. II of the Travancore Excise Manual which were in force on April 1, 1950, in relation to tobacco it will be found that there are elaborate rules in Part III from pp. 257 to 325 dealing with all aspects of control relating to tobacco. Chap. IV deals with bonding and issue; Chap. V with licences for sales, Chap. VI with transport and possession. Further there are rules at p. 296 for cultivation, curing and warehousing. Then at p. 314 are rules for the manufacture of cigars, cheroots and snuff in bond. It will thus be clear that the Cochin as well as the Travancore Rules provided for similar control of tobacco as under the Central Act and show that the authorities in Travancore and Cochin were also on the track of the movement of tobacco from the time it was grown and manufactured to the time it was sold in the market. It would therefore follow that the Cochin Act as well as the similar Travancore Act along with the Rules corresponded to the Central Act substantially and would thus be repealed by s. 13(2) of the Finance Act, 1950.

But it is urged on behalf of the State that there is no provision for charging duty in the Cochin Act or the similar Travancore Act and therefore all these provisions in the Rules for control from the time of cultivation to the time of the final stage of sale to the consumer, even though they are similar to the Rules under the Central Act, would not make the Cochin Act or the similar Travancore Act a corresponding Act to the Central Act. There is no doubt that there is no provision corresponding to s. 3 of the Central Act in the Cochin Act or in the similar Travancore Act. Under the Cochin Act the tax was levied by virtue of the power conferred on the Diwan under s. 5 to make rules for the purpose. Under the similar Travancore Act, the provision is contained in s. 31 which provides that the Diwan may with the sanction of the Ruler make rules permitting absolutely or subject to the payment of any duty or fee or to any other conditions, and regulating within the whole or any specified part of Travancore, the cultivation, manufacture, possession, transport, import and sale of tobacco. So in both the former States, the Act did not contain a charging section and the duty was levied by the Rules framed by the Diwan under the powers conferred on him by the Act. In essence, therefore, the provision for charging the tax was made in the Rules. Further it is true that the method by which the tobacco revenue was realised was through auction sales of the right to possess and sell tobacco. But we must not forget that the Cochin Act as well as the similar Travancore Act was passed by a Ruler who was no trammelled by a Constitution like the Government of India Act, 1935, and its Legislative Lists. The method evolved for realising tobacco revenue was to auction the right to possess and sell tobacco and the amounts received at such auctions would cover what would be duty under s. 3 of the Central Act and licence fee under s. 6 thereof. It is urged however that this does not amount to duty on goods produced, nor is the duty in such a case paid by the manufacturer or producer of the goods. We have already indicted that the essence of the duty of excise as held by the Federal Court and the Privy Council is that it is a duty on the goods manufactured or produced in the taxing country. Further as generally the duty is on the goods produced or manufactured it is paid by the producer or manufacturer, though as in the case of

all indirect taxes it is passed on eventually to the consumer in the shape of being included in the price and is thus really borne by the consumer. Further the cases on which reliance has been placed on behalf of the State also show that laws are to be found which impose duty of excise at stages subsequent to manufacture or production. As a matter of fact, even in British India before 1935 there used to be public auctions of the right to possess and sell excisable goods like country liquor, ganja and bhang and the amount realised was excise revenue. It is also obvious that this system of auction is not a system of levying sales tax because it has nothing to do with the levy on each sale, which is the essence of a sales tax. It seems that in the former States of Travancore and Cochin, auction system continued right up to the time the Constitution came into force and even for sometime thereafter. It seems under the circumstances that the auction system which was in force was only a method of realising duty through the grant of licences to those who made the highest bid at the auctions. The fact therefore that this system was used instead of the system of charging of duty as provided in s. 3 of the Central Act would not in our opinion make any difference to the nature of the impost which was in force on the relevant date, namely, April 1, 1950. It was however urged that under this system even tobacco which was not produced or manufactured in the State but was imported from outside was included for the purpose of licences granted under it. That is undoubtedly so. But from the Rules which were in force regarding cultivation, curing, manufacturing and so on of tobacco within the State it would not be unreasonable to infer that the substantial part of the income from auctions was still in the nature of excise duty. Even in the case of imported tobacco, only with respect to that part of it which was eventually sold to the consumer as it was imported without any processing or treatment in the State, it can be said that the impost which fell on it was not in the nature of excise duty. However, there is no way of differentiating this part of the revenue from the rest and considering the elaborate provisos as to the control of tobacco trade from the grower right up to the time that the goods were sold to the public in retail sale it would in our opinion be not unreasonable to hold that the Cochin Act as well as the Travancore Act was in substance an Act corresponding to the Central Act. Therefore when the Central Act was extended to the Part B State of Travancore-Cochin by s. 11(1) of the Finance Act and the Finance Act specifically provided by s. 13(2) for the repeal of corresponding law, the result was that the Cochin Act as well as the similar Travancore Act stood repealed. There would be no power in the State Government thereafter to frame new Rules either in August 1950 or in January 1951 for there would be no law to support the new Rules and without such law the new Rules could not impose a tax as that would clearly offend Art. 265 of the Constitution. Further as soon as the Cochin Act as well as the similar Travancore Act stood repealed on April 1, 1950, by virtue of s. 13(2) of the Finance Act there could be no question of their being sustained under item 62 of List II of the Seventh Schedule for that would only arise if these were not repealed as corresponding law by s. 13(2).

Turning now to the three Travancore appeals it is enough to say that they stand on the same footing as the two Cochin appeals. If anything the Travancore Act as well as the Travancore Rules which were in force on April 1, 1950 are more elaborate than the Cochin Act and the Cochin Rules. Further the Travancore Act by s. 31 actually refers to manufacture also. The Cochin Act did not refer to manufacture in the Act itself though there was provision for manufacture in the Rules framed under the Act. What applies therefore to the Cochin Act and the Rules framed thereunder applies in force to the Travancore Act and the Rules framed thereunder and there is no doubt that the Travancore Act and the Rules framed thereunder were also a law corresponding to the Central Act and the Rules framed thereunder. The Travancore Act therefore also stood repealed from April 1, 1950. There would thus be no law to support the Rules framed by the State Government in January 1951 and therefore the Rules must fall.

It appears that these new Rules have been abrogated as from January 1958. So it was urged on behalf of the State that this Court should not grant a mere declaration as to the invalidity of the Rules, when they are no longer in existence. This argument in our opinion has no force because we must look to the situation as it was when the petitions were presented. The Cochin petitions were presented in 1956 and the Travancore petitions were presented in 1955 and at that time the Rules were in force and they continued in force till December 1957. Therefore the petitioners would be entitled to a declaration that the Rules were invalid because at any rate that would give them relief so far as the period after their petitions is concerned while the Rules remained in force.

We therefore allow the appeals and set aside the order of the High Court. The petitions are allowed and it is hereby declared that the new Rules purporting to be framed either under the Cochin Act or under the Travancore Act in August 1950 and thereafter in January 1951 were invalid ab initio and have no force and effect. The appellants will get their costs from the State - one set of hearing costs.

SHAH, J. -

In this group of five appeals the principal question which falls to be determined is whether within the meaning of s. 13(2) of the Finance Act, 1950 (which by s. 11 thereof extended the Central Excises & Salt Act, I of 1944, to the Part B States), there was, immediately before the 1st of April 1950, in force in Part B State of Travancore-Cochin, a law corresponding to the Central Excise & Salt Act, 1944. It is common ground that if there was such a law in force, by virtue of s. 13(2) of the Finance Act of 1950, that law stood repealed.

The appellants in Civil Appeals Nos. 89 and 90 of 1961 were carrying on business in tobacco within the territory of the former State of Cochin. Appellants in Civil Appeals 126 to 128 of 1961 were residents of and carried on business in tobacco within territory of the former State of Travancore. On July 1, 1949, the States of Travancore and Cochin formed themselves into a Union under a common administration, but by the virtue of the Travancore-Cochin Administration Law, 6 of 1125 (M.E.), the Acts which were in operation in the two States continued to remain in force in the territories in which they were previously in force. In the territory of the former State of Travancore, there was in force the Travancore Tobacco Regulation, I of 1087 (M.E.) which was enacted by the Ruler of Travancore in 1911. By s. 3 of the Act, "Tobacco" was defined as including "snuff, cigars, cigarettes, beedies, tobacco powder and other preparations or admixtures of tobacco". Section 4 of the Act imposed, except as permitted by the Act or by any other enactment relating to tobacco, for the time being in force by the Rules published under the Act or any other such enactment prohibitions against cultivation, manufacture, possessions, transport, importation, exportation or sale of tobacco. By Chapter III of the Act power was conferred upon the officers of the Excise Department to search houses suspected to contain tobacco and to seize tobacco and provision was made for incidental matters. Chapter IV dealt with offences and punishment and by s. 31 the Diwan of the State was authorised, with the sanction of the Ruler, from time to time, by Notification in the Gazette, to make rules consistent with the Act amongst other subjects permitting absolutely or subject to the payment of any duty or fee or to any other conditions, and regulating within the whole or any specified part of the State of Travancore, cultivation, manufacture, possession, transportation, import and sale of tobacco; authorising the establishment of warehouses or bankshalls for storing tobacco legally cultivated or imported into the territory fixing the mode, tome and place of levy of duty, regulating the specials custody of tobacco warehoused and the levy of fees for warehousing and transport, and generally to carry out the provisions of the Act. Rules were framed in 1913 in exercise of the powers under s. 31 of the Tobacco Act whereby restrictions were imposed upon the import and export of tobacco and provision was made for bonding tobacco in warehouses and for

the issue of licences for bonding tobacco. Provision was also made for licensing retail sale for tobacco and for transport and possession thereof. Certain other rules regulating cultivation, curing and warehousing tobacco and for the issue of licences for those purposes were promulgated in 1937. Rules were also framed regulating the manufacture of cigars, cigarettes and cheroots in bonds under licences. It is unnecessary to set out these rules in detail, it may suffice to observe that cultivation, curing, manufacture, possession, transport, importation and exportation and sale of tobacco was controlled by a system of licensing. Certain licences were issued free of charge and in respect of certain other licences, especially storage and sale, fee had to be paid to the State.

Similarly, in the State of Cochin there was enacted by the Ruler of Cochin the Cochin Tobacco Act of 1084 (M.E.) on May 3, 1909. By s. 3(d) of that Act, tobacco was defined as inclusive of "snuff, cigars and preparations of which tobacco forms a part." By s. 4, except as permitted by the Act or by the Rules made thereunder, possession for the purposes of sale, transport, import, export, sale and cultivation of tobacco were prohibited. By s. 5, the Diwan of the State was authorised from time to time after previous publication, to make rules consistent with the Act to permit absolutely or subject to any conditions regulating the possession, transportation, importation or exportation and sale and cultivation of tobacco. Contravention of the Act and the Rules or orders made under the Act were penalised by s. 6. Rules were framed in 1923 under the Cochin Tobacco Act providing for a system of licensing for cultivation, manufacture and storage of tobacco and for incidental matters. Control was maintained over harvesting, weighment, storage, stock taking and transport of tobacco, and also on the export and import of tobacco. The authorities administering the provisions of the Tobacco Act and the Rules framed thereunder were the Commissioner of Excise and officers subordinate to him in the Excise Department. Licences for storage were to be annual licences and to be issued on payment of licence fee. Under the Cochin Act and the Rules framed thereunder control was maintained on tobacco at all the stages of its production, manufacture and disposal.

From a resume', of the provisions of these two Acts and rules and notifications issued thereunder, it is manifest that on the production, manufacture storage and sale of tobacco control was imposed and the administration of this control was left in the hands of the Excise Departments of the two States. As stated hereinbefore, by virtue of Act VI of 1125 (M.E.), the two Acts in operation within the territories of the two States were continued even after the Union of Travancore and Cochin was formed, and by Art. 372 of the Constitution the provisions of the two Acts remained in operation in the respect area of the former States even after the Part B State of Travancore-Cochin came into being on January 26, 1950. By s. 11 of Finance Act 25 of 1950 certain Acts including the Central Excises & Salt Act, 1 of 1944, and all Rules and orders made thereunder in force from time to time before the commencement of the Finance Act were extended with effect from April 1, 1950, to the part B States (except the State of Jammu & Kashmir). It was provided by s. 13(2) "that if immediately before the 1st of April, 1950, there was in force in any State other than Jammu & Kashmir a law corresponding to but other than the Act referred to in sub-s. (1) s. 11 such law" shall stand repealed with effect from the said date. Presumably, on account of the application of the Central Excises & Salt Act, I of 1944, by s. 11 of the Finance Act, 1950, the Part B State of Travancore-Cochin published fresh sets of Tobacco Rules. These Rules we issued on January 25, 1951, in purported exercise of the powers conferred by the Travancore Regulation I of 1087 (M.E.) and the Cochin Tobacco Act of 1084 (M.E.). Rule 14 (which is common to both the sets of Rules) provides that "the vend of tobacco of all kinds is prohibited throughout the state, except under a licence". Rule 15 provides that the "licence for the vend of tobacco shall be of the following descriptions :-

(i) Stockist or 'A' Class licence;

(ii) Wholesale or 'B' Class licence; and

(iii) Retail or 'C' Class licence."

Rule 16(i) and (ii) provides :

"(i) Holders of Stockist or 'A' Class licences shall be entitled to purchase tobacco from any dealer within or without the State without any quantitative restriction. This class of licensees or to 'B' Class licensees,

(ii) The annual fees for these licences shall be as follows :-

(Then follows a table which sets out minimum fee prescribed for varieties of tobacco stocked upto the maximum prescribed quantity and the additional fee payable for stocking additional quantities.)"

The appellants in all these appeals were 'A' Class stockists and were called upon to pay licence fee prescribed by these Rules. They claimed that they were not liable to pay licence fee under the Rules framed in 1951 because there was absolute delegation of legislative power by the Rules, that the levy infringed their fundamental rights under Arts. 14 and 19(1)(g) of the Constitution, that the duty levied was in any event an excise duty, and because the fee represented a tax on trade, calling or employment and on that account was subject to the constitutional restriction imposed by Art. 276(2) of the Constitution. They also contended that the Tobacco Acts of the Travancore State and the Cochin State, which had been kept alive by Act 6 of 1125 (M.E.) and by Article 372 of the Constitution were superseded by the application of the Central Excises and Salt Act, 1944, by s. 11 of the Finance Act, 1950.

The High Court of Travancore-Cochin in the petitions for writs of mandamus and other writs negatived the contentions raised by the appellants that the Acts and the Rules amounted absolute delegation of legislative power or that the fundamental rights under Arts. 14 and 19(1)(g) and the restrictions imposed by Art. 276(2) of the Constitution were infringed thereby. The High Court also held that the duty levied was not an excise duty and presumably on that account declined to consider the question whether the Tobacco Acts of the States of Travancore and Cochin had been superseded either wholly or partially by the application of the Central Excises and Salt Act of 1944.

The Travancore and the Cochin Acts do not directly levy any duty on production or manufacture of tobacco. Restrictions, it is true, are imposed on the growing, curing, manufacture, storage, import and export by requiring that licences shall be obtained for those purposes and prescribing penalties for violating the provisions of the Acts and the Rules. It also appears that the trade in tobacco was regulated before the formation of the B State of Travancore-Cochin, by holding auctions for the rights to sell tobacco. These auctions were held by Excise Commissioners and the highest bidder in the auction got the rights to deal in tobacco, and the two Acts were enacted for regulating and controlling the sale of tobacco, but the State did not levy any duty on the manufacture or production of tobacco. The licence fee for the issue of a licence for growing, curing, manufacturing, exporting, importing or storing is not in itself an excise duty on the manufacture or production.

The Federal Court In the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 [[1939] F.C.R. 18, 54-55] observed :

"..... at the date of the Constitution Act (Government of India Act 1935) though it

> seems that the word 'excise' was not infrequently for the administration of a particular indirect tax (as salt excise or opium excise), the only kind of excise duties which were known in India by that name were duties collect from manufacturers or producers, and usually payable on the issue of the excisable articles from the place of manufacture or production. This also may not be conclusive in itself, but it seems a not unreasonable inference that Parliament intended the expression 'duties of excise' in the Constitution Act to be under-stood in the sense in which upto that time it had always in fact been used in India, where indeed excise dirties of any other kind were unknown. Nor indeed are excise duties properly so-called often to be found at the present day which are not collected at the stage of production or manufacture, whatever may have been the case in Blackstone's time and whatever may have been the reasons for Johnson's definition of 'Excise' in the first edition of his Dictionary (1755)....." (Per Gwyer C.J.)

This view was approved by the Judicial Committee in The Governor-General in Council v. The Province of Madras [[1945] L.R. 72 I.A. 91].

An excise duty is according to the Indian Statute, a duty on the manufacture or production of goods and the duty which was levied in the States of Travancore and Cochin on the storage of tobacco cannot be regarded as a duty of excise. But that conclusion is not decisive of the problem under consideration. The question has still to be considered whether the Travancore and Cochin Acts and the Rules framed thereunder were law "corresponding" to the Central Excises and Salt Act, 1944, extended under the Finance Act, 1950. The expression "corresponding" does not postulate identity of the State Law and the statute extended by s. 11 of the Finance Act : if there was in force at the material time law in the Part B State dealing with a particular subject-matter and the law extended by s. 11 of the Finance Act, 1950, dealt with the same subject-matter and the two lays though not identical still were such that if they stood together there would have been legislative duplication or overlapping, the law in force in Part B State would be regarded as corresponding to the law extended by the Indian Finance Act and hence repealed by the operation of s. 13(2).

Let us examine the scheme of the Central Excises and Salt Act of 1944 for the purpose of ascertaining whether the Travancore and the Cochin Tobacco Acts and Rules frame thereunder are law corresponding to the Central Excises and Salt Act, 1944, wholly or partially. The Central Excises and Salt Act, 1944, was enacted to consolidate and amend the law relating to Central duties of excise on goods manufactured or produced in certain parts of India and to salt. The expression "excisable goods" is defined in s. 2(d) as meaning "goods specified in the First Schedule as being subject to a duty of excise and includes salt". By s. 2(f) the expression "manufacture" is defined as inclusive of "any process incidental or ancillary to the completion of a manufactured product, and (i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, birds, cigarette or pipe or hookah tobacco, chewing tobacco, or snuff x x x". By s. 3 it is provided that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India x x x and at the rates set forth in the First Schedule. By s. 6, certain incidental operations are made subject to licence and it is provided : The Central Government may, by notification in Official Gazette, provide that, from such date as may be specified in the notification, no person shall, except under the authority and in accordance with the terms and conditions of a licence granted under this Act, engage in (a) the production or manufacture of any specified goods included in the First Schedule or of saltpetre or of any specified component parts or ingredients of such goods or of specified containers of any specified excisable goods, or (b) the wholesale purchase or sale (whether on his own account or as a broker or

commission agent or the storage of any excisable goods specified in this behalf in Part A of the Second Schedule". By virtue of these provisions power is conferred upon the Central Government to impose restrictions upon the rights to produce, manufacture and to engage in any process of production or manufacture of the excisable goods or in the wholesale purchase or sale for excisable goods; this power is conferred indisputably as ancillary to enforcing the law enacted for the levy and collection of excise duty. By s. 9 contraventions of the provisions of the Act and notifications thereunder are penalised. Power to forfeit goods is conferred by s. 10. By Chapter III, power to arrest and to summon persons to give evidence or produce documents in inquiries under the Act, to search and the procedure to be followed by officers in-charge of police-stations, inquiries to be made by Central Excise Officers against arrested persons forwarded to them are made. Chapter VI deals with adjudication of confiscations and penalties, and Chapter VII enacts certain supplementary provisions. The Schedule to this Act sets out the descriptions of various goods and the rates of duty chargeable in respect thereof.

The primary purpose of the Act is to levy and collect excise duty in respect of goods specified in the First Schedule and with that object in view, diverse provisions are enacted. Tobacco is under the Act an excisable commodity, and duty at rates specified in the Schedule is leviable in respect of different forms of tobacco. By s. 6(b) wholesale purchase or sale, or storage of excisable articles is prohibited.

By Rule 7 of the Central Excise Rules, 1944, duty is made payable by every person, who produces, cures, manufactures or who stores in any warehouse any excisable goods. Rule 174 which occurs in Chapter VIII deals with licensing. It provides, in so far as it is material, that

> "Every manufacture, trade or person hereinafter mentioned, shall be required to take out a licence and shall not conduct his business in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer in the proper From :-
>
> (1) Matches x x x x
>
> (2) Unmanufactured products. - Curers, brokers, Commission agents and wholesale dealers who purchase such products from curers, all brokers, commission agents and wholesale dealers doing business in unmanufactured tobacco : all holders of private bonded store-rooms or warehouses;
>
> (3) Other excisable goods except salt -
>
> (a) Manufacturers; and
>
> #(b) x x x"##

Rule 175 deals with the procedure for obtaining a licence. By the 1st clause it provides that every person designing to engage in operations requiring the possession of a licence aforesaid shall apply in writing every year for a licence or renewal thereof to the licensing authority who shall be such officer as the Central Board of Revenue may authorise in this behalf. Rule 176 prescribes Forms application for licences and cl. (2) provides that every such application for licence shall, where a fee is prescribed in the subjoined Table, be accompanied by a Central Excise Revenue Stamped showing payment of such fee under item No. 2 in the Table "a wholesale dealer in unmanufactured tobacco who purchases for the purpose of trade or manufacture" has to pay granted fee set out in the

second and the third columns. Item 6 deals with the duty payable by the holder of the private bonded store-room or warehouse. Rule 178 provides for the Forms of licence. The appropriate forms of licence in respect of storage of tobacco for sale are Form L-2 (application for licence to carry on wholesale trade in unmanufactured products liable to a central duty of excise), Form L-3 (application for licence as broker or commission agent in respect of unmanufactured products liable to a central duty of excise), and Form L-5 (application for licence for a private bonded warehouse-storeroom for the storage of excisable goods). It is manifest that under the Rules so framed duty is imposed to obtain a licence on payment of fee for storage of tobacco for sale. It is not disputed that the appellants in all the appeals took out licences under rules 174 and 178 of the Central Excises and Salt Act and paid the licence fee in that behalf to the Central Government. The appellants were also required to pay licence fee for the storage of tobacco for sale under the provisions of the Travancore and the Cochin Tobacco Acts and the Rules framed thereunder on January 25, 1951.

It is true that under the Central Excises and Salt Act, 1944, the provision for obtaining licences for storage is a provision ancillary to the recovery of excise duty, whereas under the Travancore and the Cochin Acts, the levy of licence fee was imposed in pursuance of a scheme for maintaining control on the sale of tobacco without expressly levying any excise duty. But on that account, it cannot be said that the provisions relating to the requirement of licences and the payment of licence fees for storage of tobacco for sale under the Travancore and the Cochin Acts were not provision corresponding to the provisions of s. 6(b) under the Central Excises and Salt Act, 1944 and the rules framed under the Act requiring that licences shall be taken out for storage of tobacco for sale and fee shall be paid in respect thereof. In my judgment the relevant rules made under the Travancore and the Cochin Tobacco Acts requiring licences to be taken for storage of tobacco and in force on April, 1, 1950, were law corresponding to the provisions of the Central Excise and Salt Act, 1944, and the rules framed thereunder which required licences to be taken out for storage of tobacco and for payment of licence fee in respect thereof and to that extent the provisions imposing an obligation to take out licences and to pay licence fees under the Tobacco Acts of Travancore and the Cochin States were superseded and the State of Travancore-Cochin had no authority to promulgate rules 14, 15 and 16 under the Notification issued in the Travancore-Cochin Government Gazette dated January 25, 1951, and to levy licence fee for storage of tobacco.

It is unnecessary to consider whether the remaining provisions of the Travancore and the Cochin Tobacco Acts and the Rules framed thereunder were law corresponding with the Central Excises and Salt Act, 1944.

For these reasons I agree that the appeals be allowed, and the order passed by the High Court be set aside. In each petition a writ will issue declaring that the levy of licence fee under the Notification dated January 25, 1951, is without authority of law, and that the State of Travancore-Cochin do forbear from levying and collecting the licence fee.

Appeals allowed.

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