

Kalyani Stores

Vs

The State of Orissa and Others

Civil Appeal No. 20 of 1964

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

21.09.1965

JUDGMENT

SHAH. J. –

The appellants-Kalyani Stores - deal in liquor at Rourkela, District of Sundergarh in the State of Orissa. The appellants held a licence as retail vendors for " all types of foreign liquor" under the Bihar and Orissa Excise Act, 1915. The expression foreign liquor apparently includes Ale, Beer, Port, Cider and other fermented Liquors, cordials, mixtures and other preparations containing spirit, perfumed spirit and all sorts of wines whether manufactured in India or aboard. Under the Bihar and Orissa Excise Act, 1915 by a notification issued in 1937 under s. 27 a duty of Rs. 40/- per L. P. Gallon was imposed and realised by the State of Orissa on foreign liquor of Indian manufacture imported into state of Orissa from other parts of India. For the year April 1. 1960 to March 31, 1961 duty was levied on foreign liquor imported by the appellants at the rate fixed in the notification issued in 1937. On March 31, 1961 in exercise of the powers conferred by s. 90 of the Bihar and Orissa Excise Act 2 of 1

The Bihar and Orissa Excise Act 2 of 1915 was enacted with the object, amongst others, to control the import, export, transports, manufacture, possession and sale of certain kinds of liquor and intoxicating drugs. Section 27 of the Act as amended by the Adaptation Order, 1950, Provides:

" An excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area, on -

[a] any excisable article imported or.....

Explanation :-

The appellants submit that the levy of duty at the rate of Rs. 70/- per L. P. Gallon under the notification dated March 31, 1961, is without authority of law, in that it contravenes Entry 51 List II, Sch. VII of the Constitution. The argument presented in this laconic form is founded on what is contended is the true character of countervailing duties. We may observe that the challenge was restricted to the raising of the duty by the notification dated March 31, 1961 : the appellants did not challenge before the High Court the notifications issued in 1937. The validity of the levy at the rate of Rs. 40/- per L. P. Gallon before the constitution is therefore not under consideration in this appeal. Power of the legislature to legislate for imposition

of duties on excisable articles manufactured within the state and to impose countervailing duties upon excisable articles imported into the state is not denied. It is said however that the expression countervailing duty means a Duty levied on similar articles impor

The High Court has observed in its judgment that it was admitted that the rate of duty on liquor produced on Orissa levied by the State Government was identical with the Countervailing duty required to be paid on imported foreign liquor. Counsel for the appellants says that it was not admitted by the appellants that at the material time foreign liquor was manufactured or produced within the State of Orissa. The High Court has apparently not stated that Foreign Liquor was manufactured within the state of Orissa at the material time. From the affidavits filed in this Court by the parties it is clear that no foreign liquor was being produced in the state at the material time nor was any such liquor produced at any time after the Constitution was brought into force. Counsel for the state has, therefor, very fairly not supported this part of the reasoning of the High Court.

This brings us to the consideration of the meaning of the expression countervailing duties used in Entry 51, list II of the Seventh Schedule to the constitution. The expression countervailing duties has not been defined in the Constitution or the Bihar and Orissa Act 2 of 1915. We have, therefore, to depend upon its etymological sense and the context in which it has been used in Entry 51. In its etymological sense, it means to counter balance; to avail against with equal force or virtue; to compensate for something or serve as an equivalent of or substitute for see Black's Law Dictionary, 4th Edn. 421. This would suggest that a countervailing duty is imposed for the purpose of counterbalancing or to avail against something with equal force or to compensate for something as an equivalent. Entry 51 in list II of the Seventh Schedule to the Constitution gives power to the State Legislature to impose duties of excise on alcoholic liquors for human consumption where the goods are manufactured or produced in the s

But the Bihar and Orissa Act 2 of 1915 was enacted by the appropriate legislature in 1915 and by virtue of Art. 372 of the Constitution it was a law in force and continues to remain in force until altered, repealed, or amended by a competent legislature or by a competent authority, and therefore countervailing duty on imported foreign liquor could be levied by the State Government as it was levied before the Constitution, unless there is something to the contrary to be found therein. It is admitted that the Government of Orissa continued to levy a duty of Rs. 40 per L. P. Gallon under Act 2 of 1915 even after constitution came into force. By the notifications of 1961 the duty was enhanced from Rs. 40/- per L. P. Gallon or Rs. 70/- per L. P. Gallon levy at the rate prescribed under the notification of 1937 in operation immediately before the Constitution remind affective until it was lawfully altered. The only contention raised in the High Court in support of the plea of invalidity of the levy in its entirety

Whether the enhancement of the levy by notification dated March 31, 1961 insofar as it enhanced the levy from Rs. 40/- to Rs. 70/- per L. P. Gallon infringes any constitutional prohibitions may be considered. By s. 27 of Act 1915 the state Government is given the power to impose a countervailing duty at the rate or rates as the state Government may direct. Before the Constitution, duty was imposed at the rate of Rs. 40/- per L. P. Gallon on foreign liquors. The imposition remained in operation till the date on which the Constitution was brought into force, and has not been challenged in the petition. The Act merely authorised the levy of duty as may be fixed by the Government. To effectuate the power to levy the duty authorised, the rate of duty must be fixed by notification by the state Government. In 1937 the power was exercised by issuing a notification under s. 27 authorising the levy of duty at the rate of Rs. 40/- per L. P. Gallon. Section 27 of the Act

authorised the imposition of excise and counterva

The validity of the imposition of the new rate of Rs. 70/- per L. P. Gallon may be examined in the light of the restrictions imposed by the constitution on the legislative power. By Art. 301 of the Constitution, subject to the other provisions of part XIII, trade, commerce, and intercourse throughout the territory of India is to be free. By Art. 303 no power is conferred upon the State Legislature to make any law giving, or to authorise the giving of, any preference to one State over another, or to make, or authorise the making of, any discrimination between one state and another, by virtue of any entry relating to trade and commerce in any of the List in the Seventh Schedule. The material part of Art. 304 is as follows:

"Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law:

[a] impose on goods imported from other states or the Union territories any tax to which similar goods manufactured or produced in that State are subjects, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

[b] impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interests:

Provided that.....

Articles 305, insofar as it is material, provides :

"Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct;.....

Article 304 is in terms prospective : it authorises the State Government to legislate notwithstanding anything in article 301 or 303 to impose on goods imported from other states any tax to which impose on goods manufactured or produced in that state are subject, so, however, as not to discriminate between goods imported and goods manufactured or produced or to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that state as may be required in the public interest. The notification levying duty at the enhanced rate is purely a fiscal measure and cannot be said to be a reasonable restriction on the freedom of trade in the public interest. Article 301 has declared freedom of trade commerce and intercourse throughout the territory of India and restriction on that freedom may only be justified if it falls with Art. 304. Reasonableness of the restriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is as may be req

Mr. Bindra appearing on behalf of the State of Orissa contended that the legislature having empowered the state Government by s. 27 to levy duty at a rate which may be prescribed, the notification dated March 31, 1961, enhancing the tax derived its validity from the Act itself and did not amount to any law modifying the existing law. Therefore, it was said, the levy of duty at the enhanced rate was supported by the power conferred by s. 27 which was existing law. This argument cannot, in our view, be sustained. By Art. 366 [10] unless the context otherwise requires, the expression existing law means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of the constitution by any legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule of regulation. Existing law within the

meaning of Art. 305 was therefore the provision contained in s. 27 of the Bihar and Orissa act 2 of 1915 authorising the State Government to issue a notificat

The decision in *The Bangalore Woollen, Cotton and Silk Mills Company Ltd., Bangalore and another v. The Corporation of the City of Bangalore*, on which reliance was placed by Mr. Bindra does not assist his contention. In that case by resolution dated March 31, 1954, the Municipal Corporation of Bangalore purporting to act under the authority conferred by s. 98 of the City of Bangalore Municipal Corporation Act 69 of 1949 resolved to levy octroi duty on cotton and wool. The authority of the Municipal Corporation to levy the tax was challenged. It was held by a Division Bench of this court in *Bangalore Woollen, Cotton and Silk Mills. v. Bangalore Corporation* that the legislature had down the powers of the Municipal Corporation to tax animals and goods, brought within the Octroi limits and had enumerated certain articles and animals in Part V of Sch. III and by class VIII read with s. 97 had authorised the Corporation to impose a tax on other article or goods. This power in the view of the court was granted by c

In the present case, it is clear that under the existing law duty had been imposed in exercise of the power contained in ss. 27, 28 and 90 of the Act and the notifications issued from time to time before the constitution was enacted, and that law was altered by the notification dated March 31, 1961. It is not the case of the state that in exercise of any pre-existing conditional legislation, duty at enhanced rate was made livable on foreign liquor. The sole authority for the levy of the duty at the enhanced rate is the notification of the state Government dated March 31, 1961. That notification infringes the guarantee of freedom under Art. 301, and may be saved only if it falls within the exceptions contained in Arts. 302, 303 and 304. Articles 302 and 303 are apparently not attracted and have not been relied upon, and the notification does not comply with the requirement of the Constitution contained in Art. 304 Cls. [a] and [b]. The notification dated March 31, 1961, enhancing the levy by Rs. 30 per L. P. n must, therefore, be regarded as invalid. That however does not affect the validity and the enforceability of the earlier notification issued in 1937 which must remain operative in view of Art 305. That Article specifically protects existing law and as the levy of countervailing duty at Rs. 40/- per L. P. Gallon was an existing law it is protected under Art. 305. In fact this position was not challenged by the appellants in their writ petition.

The appeal is, therefore, partially allowed, and it is declared that the notification dated March 31, 1961, enhancing duty on foreign liquor at the rate of Rs. 30 per L. P. Gallon is invalid as offending Art. 304 of the Constitution and is therefore unenforceable. The right of the State to enforce the liability against the appellant to pay duty at the rate prescribed in the earlier notification which held the filed, remains however unaffected. In view of the divided success of the parties, there will be no order as to costs in this court and the High Court.

HIDAYATULLAH. J. –

The appellant is a firm which deals in liquor at Rourkela in the Orissa State. It challenges in toto the imposition of a duty of excise on foreign liquor levied at first at Rs. 40/- per London proof gallon and from April 1, 1961, at Rs. 70/- under s. 27 of the Bihar and Orissa Excise Act, 1915. The original duty at Rs. 40 was fixed by a notification issued in 1937 and it was enhanced by a notification issued on March 31, 1961. The appellant on being asked to pay the difference in respect of stocks held in its shop filed a petition under Art. 226 of the Constitution challenging the enhancement of the duty as well as the duty at the original rate.

Section 27 of the Bihar and Orissa Act [Act II of 1915], for out purpose, reads as follows:

"27. Power to impose duty on import, export, transport and manufacture-

[1] An excise duty or a countervailing duty, as the case may be at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area, on -

[a] any excisable article imported, or [b] any excisable article exported, or [c] any excisable article transported, or [d] any excisable article [other than tari] manufactured under any license granted in respect of clause [a] of section 13, or [e]..... [f] any excisable article manufactured in any distillery or brewery licensed, established, authorised, or continued under this act.

Explanation :

[1]..... [2]..... [3] Notwithstanding anything contained in sub-section [1] - [i] duty shall not be imposed thereunder on any article which has been imported into [India] and was liable, on such importation, to duty under the Indian Tariff Act, 1894 or the Sea Customs act, 1878, if -

[a] the duty as aforesaid has been already paid, or [b] a bond has been executed for the payment of such duty.

The argument is that since foreign liquor is not manufactured in the State of Orissa and no duty of excise as such can be levied on locally manufactured foreign liquor, a countervailing duty cannot be charged on foreign liquor brought from an extra-state point in India. It is also contended that this impost offends Arts. 301, 303, and 304 of the Constitution and is a colourable piece of legislation because countervailing duties of excise can only be levied when corresponding products can be subjects to an equal or more excise duty. It is submitted that the whole of the duty must fail as contrary to the intendment of the Constitution. It is also argued that even if the original countervailing duty at the rate of Rs. 40/- London proof gallon could be said to be leviable by virtue of Arts 305 and 372 of the Constitution which preserve existing laws or the laws in force, the enhancement of the existing be made if there is no possibility of the levy of corresponding duty on locally manufactured goods of the same

The Constitution divides the subject of duties of excise between the Union and the States. What the division is, may be seen by comparing Entry 84 of List 1 with Entry 51 of list II.

#----- ENTRY 84 OF LIST I
ENTRY 51 OF LIST II-----
Duties of excises on tobacco and Duties of excise on the following goods other goods manufactured or pro- manufactured or produced in the State in India except. and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. [a] alcoholic liquors for human consumption. [a] alcoholic liquors for human consumption. [b] opium Indian hemp and other [b] opium Indian hemp other narcotic narcotic drugs and narcotics, drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in any substance included in sub- paragraph [b] of this entry. paragraph [b] of this entry.-----##

It is to be noticed that the power to levy duties of excise on alcoholic liquors for human consumption, with which we are presently concerned, is given to the States. Entry 51 goes a little further and allows the levy of countervailing duties at the same or at lower rates on similar goods manufactured or produced elsewhere India. A duty of excise is a tax on production and as the legislatures of the states are not authorized to legislate beyond the states such duty can only be levied in respect of goods produced within the State. The Entry, however, allows the state to levy a countervailing duty at the same or a lower rate on goods produced or manufactured in India and brought into the state from outside, Three question arise. First there is the general articles when articles similar to those are produced or manufactured within the state on which excise duty is levied? If the answer to this question is in the negative there is an end to all dispute for then the old law, the old notification and new notificat

A countervailing duty is not defined in the Act. In the Concise Oxford Dictionary " Countervailing duty " is stated to be:

" a countervailing duty - one put on import that are bounty - fed to give home goods an equal change"

This brings out the true character of a countervailing duty. It is imposed to make incidence of excise duty equal. How these countervailing duties came to exist in India is a matter on which something may be said before the challenge to the legality of the imposition may be considered.

The Bihar and Orissa Excise Act was passed on January 19, 1916, It was thus passed under the Government of India Act, 1951. Section 27 as originally passed opened with the words " A duty at such rate or rates..... " instead of the words. An excise duty or a countervailing duty as the case may be at such rate or rates..... which are now to be found there. The Clauses of s. 27 which have retained their original form and which have been quoted by me above, when read with the former opening words clearly indicate this. In the Devolution Rules [part II dealing with the Provincial subjects] under the Government of India Act, Item 16 read as follows:

" 16. Excise, that is to say, the control of production, manufacture, possessions, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export."

This may be compared with preamble to the Bihar and Orissa Excise Act, 1915, as it originally stood:

" Whereas it is expedient to amend and re-enact the law in the province of Bihar and Orissa relating to the import, export, transport, manufacture, possession, and sale of certain kinds of liquor and intoxicating drugs;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act; It is hereby enacted as follows:

The word excise was also given the same wide meaning in entry 16. It included not only the control of production but also the control of purchase and sale of alcoholic liquor and the levying of excise duty in relation to the articles without indicting the

place of their manufactures, that is to say, that they should be manufactured within the Province.

When the government of India Act, 1935, was in the process of being drafted the White paper proposals introduced a new scheme for division of resources available under the head of excise duties. It was recommended that the federating units should be allotted a share of the yield of excise duty on goods produced, other than those specifically assigned to the Provinces. This was given effect to by including in the Government of India Act 1935 two entries which were Entry No. 45 of List I [which corresponded to Entry 84 of List I of the present Constitution] and Entry 40 in list II [which corresponded to Entry 51 of List II of the present Constitution]. When the Government of India Act 1935 was passed it was possible for the first time to impose countervailing duties. The intention was that taxation in the matter of excisable goods should be uniform in India and one Province should not try to take advantage of another Province by exporting excise free goods, thus making them bounty-fed. By this means duties of

" 293 Adaptation of existing Indian laws and c.

His Majesty may by Orders in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India, or in any part of British India., shall, until repealed or amended, by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Province:

Provided that no such law as aforesaid shall be made applicable to any Federated state by an order in Council made under this section.

In the section the expression Law does not include an Act of parliament, but includes any ordinance, order, bye-law, rule or regulation having in British India the force of law."

Thus by an order in council, which was called the Government of India [Adaptation of Indian Laws] Order, 1937 s. 27 of the Bihar and Orissa Excise Act was adapted to read as we find it today. The opening words were altered to mention countervailing duties also. This adaptation was made not only in the Bihar and Orissa Act but every excise and Abkari Act into rest of India and was intended to bring all Excise acts into accord with the distribution of legislative powers as indicated in s. 293.

In all those Acts, previously a duty was leviable not only on excisable goods produced in the Province but also imported from outside. The duties could be at different rates. After the Adaptation of laws order the duty was leviable on excisable goods but a countervailing duty at the same or lower rates was leviable on goods imported from outside. The duties of excise on imported goods became countervailing duties. The adaptation was effective as a valid law beyond the challenge of courts by virtue of cl. [3] of the order which reads:

" 3 The Indian laws mentioned in the Schedule to this order shall, until repealed or amended by a competent legislature or other competent by a competent authority,

have effect subject to the adaptations and modifications directed by those schedules to be made therein or, if it is so directed, shall cease to have effects."

Where, therefore, the rate of duty on imported goods was more than the rate of duty on the locally produced goods the duty was protanto cut down. The Adaptation of Laws Order came into force on April 1, 1937 when part II of the Government of India Act, 1935 commenced and the notification imposing uniform excise and countervailing duties was then issued. The same act has continued till today and although the Government of India Act, 1935, is repealed, the scheme of division of excise duties is today the same as it was under that Act.

Now the argument is that the Bihar and Orissa act is affected by the Entries and by the fact that there is no foreign liquor manufactured in the State. Historically the Bihar and Orissa Act continued to have force and effect by the authority of the Government of India Act, 1935, the order in Council and the Adaptation of laws Order. The existence of countervailing duty was not made dependent upon the manufacture of foreign liquor in the State. The Bihar and Orissa Act which provided for countervailing duty in anticipation of the production in the state was valid because it had force and effect by the combined operation of these provisions.

The Constitution today permits the levy of excise duty on locally produced excisable goods as well as countervailing duties on excisable goods produced outside the State and brought into the State. Existing laws are preserved by Art. 372 which reads:

" 372. Continuance in force of existing laws and their adaptation.

[1] Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

[2] For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this constitution, the president may be order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and is provided that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

[3] Nothing in clause [2] shall be deemed-

[a] " to empower the president to make any adaptation or modification of any law after the expiration of three years from the commencement of this constitution; or

[b] to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the president under the said clause".

As the Bihar and Orissa Act continues to be valid it authorise that excisable goods produced in the State will bear countervailing duty. The two duties are not the same and countervailing duties are not conditioned by the manufacture of the good of the same kind in the state. It is not stated that duties on foreign liquor brought into the states cannot be placed under the present Act simply

because goods of the same kind are not produced in the state.

The history of legislation shows that adaptation was sufficient to bring the Bihar and Orissa Act in line with the requirements of the Constitution Act of 1935. The adaptation made the Act valid vis-a-vis the Government of India Act 1935. When the act was valid, the notification issued in 1937 was valid. The Excise Acts, as adapted continued to be law under the Government of India Act 1935. The present constitution has made no change either in the distribution of legislative power or the entries and has further said in Art. 372 that all existing laws continue to be of full force and effect. The imposition of countervailing duty Rs. 40 per London proof gallon continued to be valid.

The next question is whether the original duty alone would be sustained or also the enhanced duty which was introduced in 1961. In my judgment, if the old duty at the old rate is sustainable there is no reason why the absence of production of foreign liquor in the State would make any difference to the enhancement of the duty to Rs. 70 per London proof gallon. So long as the Act is valid, and that is beyond doubt, the notifications can be changed. The duty could always be made less and there is no reason why it could always be made less and there is no reason why it could not be made more provided the imposition of duty on locally produced goods was not made lower. If production of foreign liquor is not a condition precedent to the validity of the Act because of historical reasons there is no bar to the validity of the notification which takes its force from the valid Act. The constitution preserved certain taxes by Art 276. There the rate or incidence of the tax could not be changed from very changed for ever

I have attempted to show that the act was valid under the Government of India Act, 1935, because the Adaptation of laws order could not be questioned in a court of law and by reason of Art. 372 the Act must be deemed to be valid even today. The absence of manufacture of foreign liquor in the state thus makes no difference to the validity of the duty imposed and it can make no difference to the duty if reduced or increased by notification so long as it is not more than duty on locally produced goods. I do not, therefore, find it necessary to say whether countervailing duties can only be imposed on imported articles when articles similar to those are produced or manufactured within the State on which ordinary excise duty is levied. That question I leave open because the act being valid for other reasons, it is hardly necessary to decide the larger issue.

Finally, I find it sufficient to say that Art 301 or 304 [a] cannot come into play. These articles read:

" 301. Freedom of trade, commerce and intercourse.

Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free"

" 304 Restrictions on trade, commerce and intercourse among states.

Notwithstanding anything in article 301 or article 303, the legislature of a state may be law:-

[a] impose on goods imported from other states any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

[b].....

I fail to see what Art. 304 [a] has to do with this matter, Article 304 [a] imposes no ban but lifts the ban imposed by Arts. 301 and 303 subject to one condition. That article is enabling and prospective. It is available in respect of other taxes such as Sales tax etc. imposed by the State legislature has competence even apart from art. 304 [1] because the power to impose duties of excise on alcoholic liquors for human consumption produced in the state and countervailing duties on similar liquor produced outside the State in India is already conferred by the legislature list. The Bihar and Orissa Excise Act does not stand in need of support from Art. 304 [a]. If Art. 301 stands in the way there is Art. 305 which read previously:

" 305. Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the president may by order otherwise provide."

The amendment of Art. 305 by the Constitution [4th Amendment] Act 1955 does not alter the net position. The president has not made any order and so Arts. 301 and 303 do not apply. Article 304 [a] is an exception to Arts. 301 and 303 and is not needed here in view of the power in the State Legislature by Entry 51 of list II. The Bihar and Orissa Act is therefore, sustained by Arts. 305 and 372 independently of Art. 304 [a].

I am, therefore, of opinion that s. 27 of the Bihar and Orissa Excise Act, 1915, was and is a valid enactment. At no time since it was enacted, could it be challenged and it cannot be challenged today. I do not think that the law which is saved is a combination of the act and the notification. Existing law is defined to include a law and each law viewed separately is saved by itself. What was done under its authority in the past and what is being done today is equally valid. The notification of 1961 derives its force from s. 27, which is a valid enactment, even as the notification of 1937 did before from the same section, and the new notification cannot be said to run against any constitutional provision. If the duty at Rs. 40 can be sustained the duty at Rs. 70 must also be valid, for the same reasons apply. I would, therefore, dismiss the appeal with costs.

BY THE COURT

In accordance with the opinion of the majority, this appeal is partially allowed. There will be no order as to costs in this court and the High Court.

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