M/s. J. K. Cotton Spinning and Weaving Mills Ltd. and Another

Vs

Union of India and Others

Civil Appeal No. 297 of 1983

(CJI R. S. Pathak, Ranganath Misra, M. M. Dutt JJ )

30.10.1987

JUDGMENT

DUTT, J. –

1. This appeal is directed against the judgment of the Delhi High Court allowing in part only the petition of the appellants under Article 226 of the Constitution of India.

2. Appellant 1, J.K. Cotton Spinning & Weaving Mills Limited, has a composite mill wherein it manufactures fabrics of different types. In order to manufacture the said fabrics, yarn is obtained at an intermediate stage. The yarn so obtained is further processed in an integrated process in the said composite mill of appellant 1 for weaving the same into fabrics. The appellants do not dispute that the different kinds of fabrics which are manufactured in the mill are liable to payment of excise duty on their removal from the factory. They also do not dispute their liability in respect of yarn which is also removed from the factory. It is the contention of the appellants that no duty of excise can be levied and collected in respect of yarn which is obtained at an intermediate stage and, thereafter, subjected to an integrated process for the manufacture of different fabrics. Indeed, on a writ petition of the appellants, the Delhi High Court by its judgment dated October 16, 1980 held that yarn obtained and further processed within the factory for the manufacture of fabrics could not be subjected to duty of excise. It is the case of the appellants that in spite of the said decision of the Delhi High Court, the Central Board of Excise has wrongly issued a circular dated September 24, 1980 purporting to interpret Rules 9 and 49 of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules') and directing the subordinate excise authorities to levy and collect duty of excise in accordance therewith. In the said circular, the Board has directed the subordinate excise authorities that "use of goods in manufacture of another commodity even within the place/premises that have been specified in this behalf by the Central Excise Officers in terms of the powers conferred under Rule 9 of the Rules, will attract duty". As the said circular was being implemented to the prejudice of the appellants, they filed a writ petition before the Delhi High Court, inter alia, challenging the validity of the circular.

3. During the pendency of the writ petition in the Delhi High Court, the Central Government by a Notification No. 20/82-C.E. dated February 20, 1982 amended Rules 9 and 49 of the Rules. Section 51 of the Finance Act, 1982 provides that the amendments in Rules 9 and 49 of the Rules shall be deemed to have, and to have always had the effect on and from the date on which the Rules came into force i.e. February 28, 1944. After the said amendments of the Rules with retrospective effect, the appellants amended the writ petition and challenged the constitutional validity of Section 51 of the Finance Act, 1982 and to the amendments to Rules 9 and 49 of the Rules.

4. The High Court came to the conclusion that Section 51 and Rules 9 and 49 of the Rules, as amended, were valid. It has, however, been held that the retrospective effect given by Section 51 will be subject to the provisions of Sections 11-A and 11-B of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). Further, it has been held that the yarn which is produced at an intermediate stage in the mill of the appellants and subjected to the integrated process of weaving the same into fabrics, will be liable to payment of excise duty in view of the amended provisions of Rules 9 and 49 of the Rules. But the sized yarn which is actually put into the integrated process will not again be subjected to payment of excised duty for, the unsized yarn, which is sized for the purpose, does not change the nature of the commodity as yarn. The writ petition was, accordingly, allowed in part. Hence this appeal by the appellants upon a certificate granted by the High Court.

5. At this stage, we may refer to Rules 9 and 49 before and after amendment of the same. The relevant portion of Rule 9 before the same was amended is as follows :

9. Time and manner of payment of duty. - (1) No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf whether for consumption, export, or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require, and except on presentation of an application in the proper form and on obtaining the permission of the proper officer on the form :

[The remaining provisions of Rule 9 which are not relevant for our purpose are omitted.]

6. By a Notification No. 20/82-C.E. dated February 20, 1982 of the Central Government, Rule 9 was amended by the addition of the following Explanation thereto :

> Explanation. - For the purposes of this rule excisable goods produced, cured or manufactured in any place and consumed or utilised -
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> (i) as such or after subjection to any process or processes; or
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> (ii) for the manufacture of any other commodity, whether in a continuous process or otherwise, in such place or any premises appurtenant thereto, specified by the Collector under sub-rule (1), shall be deemed to have been removed from such place or premises immediately before such consumption or utilisation.

7. Rule 49 before its amendment was as follows :

> 49. Duty chargeable only on removal of goods from the factory premises or from an approved place of storage. - (1) Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or permises specified under Rule 9 or are about to be removed from a storeroom or other place of storage approved by the Collector under Rule 47 :

[The remaining provisions of Rule 49 which are not relevant for our purpose are omitted.]

8. By the said notification Rule 49 was amended by the addition of an Explanation thereto as follows :

> Explanation. - For the purposes of this rule, excisable goods made in a factory and consumed or utilised -
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> (i) as such or after subjection to any process or processes; or
>
> (ii) for the manufacture of any other commodity,

whether in a continuous process or otherwise, in such factory or place or premises specified under Rule 9 or storeroom or other place of storage approved by the Collector under Rule 47, shall be deemed to have been issued out of, or removed from such factory, place, premises, storeroom or other place of storage, as the case may be, immediately before such consumption or utilisation.

9. It has been already noticed that by Section 51 of the Finance Act, 1982, amendments made to Rules 9 and 49 have been given retrospective effect from the date on which the Rules came into force, that is to say, from February 28, 1944.

10. It is not disputed before us that under Section 3(1) of the Act, the taxing event is the production or manufacture of the goods in question. Indeed, Section 3 provides 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 and at the rates set forth in the First Schedule. It is, therefore, clear that as soon as the goods in question are produced or manufactured, they will be liable to payment of excise duty. While Section 3 lays down the taxable event, Rules 9 and 49 provide for the collection of duty. There is a distinction between levy and collection of duty. In Province of Madras v. Boddu Paidanna & Sons [AIR 1942 FC 33], it has been observed by the Federal Court as follows :

> There is in theory nothing to prevent the Central legislature from imposing a duty of excise on a commodity as soon as it comes into existence, no matter what happens to it afterwards, whether it be sold, consumed, destroyed or given away. A taxing authority will not ordinarily impose such a duty, because it is mush more convenient administratively to collect the duty (as in the case of most of the Excise Acts) when the commodity leaves the factory for the first time, and also because the duty is intended to be an indirect duty which the manufacturer or producer is to pass on to the ultimate consumer, which he could not do if the commodity had, for example, been destroyed in the factory itself. It is the fact of manufacture which attracts the duty, even though it may be collected later;

11. Relying upon the aforesaid observation of the Federal Court, it has been urged by Mr. Soli J. Sorabjee, learned counsel appearing on behalf of the appellants, that although it is true that as soon as the commodity is manufactured or produced it is liable to the payment of excise duty, the duty will not, however, be collected unless the commodity leaves the factory. It is submitted by him that the commodity must be removed from one place to another either for the purpose of consumption in the factory or for sale outside it before excise duty can be claimed. Counsel submits that Rules 9 and 49, as they stood before they were amended, and even the main part of these two rules after amendment, indicate in clear terms that so long as the goods which are manufactured in the factory are not removed, there is no question of payment of excise duty on the goods.

12. Several decisions have been cited on behalf of the appellants to show that some High Courts also have taken the view that removal is the main criterion for the collection of excise duty on the

commodity produced or manufactured inside the factory or the place of manufacture. We shall presently refer to these decisions. It may, however, be noticed that the decisions are not also uniform on the interpretation of Rules 9 and 49, as they stood before amendment. We are, however, really concerned with the interpretation of these two rules after amendment, but as much submissions have been made by the parties in the light of the decisions of the High Courts on the interpretation of these two rules, we would like to refer to the same.

13. In Caltex Oil Refining (India) Ltd. v. Union of India [1979 ELT 581], it has been held by the Delhi High Court that there can be removal only if the product goes out of one stream of production into another stream of production or if the product is issued out of or taken out or consumed if no further processing of that product is to be done. Further, it has been observed that there can be no removal of a product within the plant itself so long as the product is in the process of manufacture. According to this decision, if the product, which is obtained at an intermediate stage of an integrated and uninterrupted process of manufacture, there is no removal of such product. But, if the intermediary product is transferred from one plant to another for the manufacture of another commodity, there will be removal for the purpose collection of duty.

14. In an earlier decision in Delhi Cloth & General Mills Co. Ltd. v. Joint Secretary, Government of India [1978 ELT 121], the Delhi High Court had taken a different view. In that case calcium carbide manufactured in the factory in one plant was used to generate acetylene gas by the transfer of the article from one plant to another in the same factory. The question that came up for consideration of the High Court was whether there was removal of calcium carbide for the purpose of levy and collection of excise duty. The High Court relied upon the definition of 'factory' under Section 2(e) of the Act and took the view that the definition was not restricted to only the part in which the excisable goods were manufactured. It was, accordingly, held that it could not, therefore, be said that calcium carbide made by the petitioner-Company was removed from the factory in which it was produced. This decision lays down that so long as a commodity is not removed from the factory premises, there is no removal within the meaning of Rules 9 and 49. A similar view has been taken by the Delhi High Court in later decision in Modi Carpets Ltd. v. Union of India [1980 ELT 320], where the High Court has expressed the view that no excise duty can be levied and recovered on 'sliver' obtained by the petitioners, if it is consumed within the very premises in which it is manufactured because in such cases there is no removal of silver from the place of manufacture as envisaged by Rules 9 and 49.

15. More or less a similar view has been taken by the Delhi High Court in another decision in Synthetics and Chemicals, Ltd., Bombay v. Government of India. [1980 ELT 675] In that case, the petitioner manufactured bentol, a mixture of benzene and tolunene, in the factory, which was again used for the manufacture of rubber. The High Court took the view that it was not a case of removal under Rules 9 and 49 and, as such, no excise duty was payable on bentol.

16. We may notice another decision of the Delhi High Court in Devi Dayal Electronics and Wires Ltd. v. Union of India [1982 ELT 33]. In that case it has been held that since the impugned resins (polyester or phenolic resins) are not removed from the place of manufacture but are used for the manufacture of end product (varnish) within the plant itself, there is no removal of goods within the meaning of Rule 9 read with Rule 49 of the Rules.

17. Thus it appears that there is a conflict of opinion in the decisions of the Delhi High Court as to what is meant by the word 'removal' for the purpose of payment of excise duty. Two views have been expressed by the Delhi High Court. One view is that so long as any product manufactured in

the factory is not actually removed from the factory premises, there is no removal and, accordingly, no excise duty is payable on the product, even if the product is used for the manufacture of another commodity inside the factory. The other view is that if at one stage a commodity known to the market is produced and is transferred within the factory for the manufacture of another commodity, there is removal within the meaning of Rules 9 and 49.

18. Apart from the above two views, there is a third view which has also been expressed by the Delhi High Court, namely, that if an intermediate product is obtained in an integrated process of manufacture of a commodity, there is no removal and, therefore, such intermediate product although known to the market and comes under a particular tariff item yet, as there is no removal, there will be no question of payment of excise duty on such intermediate product.

19. The Nagpur Bench of the Bombay High Court in Oudh Sugar Mills Ltd. v. Union of India [1980 ELT 327], has adopted the second and third views. It has been held that if the purpose of removal of excisable goods is consumption in the same place where the excisable goods are manufactured or cured or if such excisable goods are used in the manufacture of any other goods in the same place, this cannot be done without payment of excise duty at the place and in the manner prescribed. Further, it has been held that where the plant of production is treated as a composite plant and where the process of manufacture is an integrated, continuous and uninterrupted process, a transfer of a produce which is a component of the final produce from one part of the plant to another, does not amount to removal as contemplated by Rule 9. According to this decision, a process of onward movement of a component for being converted into a final product is not covered by the concept of removal contemplated by the provision of Rule 9 of the Rules.

20. In Oudh Sugar Mills Ltd. v. Union of India [1982 ELT 937], the Allahabad High Court has taken more or less the same view as that of the Bombay High Court. It has been observed that an intermediate product which by itself is goods known to the market and is used in captive consumption for bringing out altogether a new goods not by an integrated process, but by a distinct and separate process, is liable to excise duty before its removal.

21. So far as captive consumption is concerned, the Gujarat High Court has taken the same view as that of the Allahabad High Court in Maneklal Harilal Spg. & Mfg. Co. Ltd. v. Union of India [1978 ELT 618], where it has been held by the Allahabad High Court that excise duty is payable when yarn is removed from the spinning department to the weaving department for the manufacture of fabrics.

22. All the above decisions relate to Rules 9 and 49 before they were amended. Leaving aside the question of specification for the time being, Rule 9 before its amendment prohibits the removal of excisable goods whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid. It is manifestly clear from Rule 9 that it contemplates not only removal from the place where the excisable goods are produced, cured or manufactured or any premises appurtenant thereto, but also removal within such place or premises for captive consumption or 'home consumption', as it is called. Thus if a commodity which is manufactured in such place or premises and is used for the manufacture of another commodity, then it will be a case of removal for the purpose of payment of excise duty. This view which we taken clearly follows from the expression "whether for consumption, export or manufacture of any other commodity in or outside such place". Thus consumption of excisable goods may be within such place or outside such place. The decisions which have taken the view that if a commodity manufactured within the factory in one plant is transferred to another plant for the

purpose of production of another commodity will be removal for the purpose of payment of excise duty are, in our opinion, correct. It is not easily understandable why the definition of expression 'factory' under Section 2(e) of the Act has been taken resort to in some of the decisions for the purpose of interpretation of Rule 9. There can be no doubt that if a commodity is taken outside the factory it will be removal, but Rule 9 does not, in any manner, indicate that it is only when the goods are removed from the factory premises it will be removal and when the excisable goods manufactured within the factory is removed from one plant to another it will not be a case of removal. On the contrary, as noticed already, Rule 9 clearly embraces within it captive consumption of excisable goods, that is to say, when excisable goods manufactured in the factory are used for production of another commodity.

23. Now the question is whether Rule 9 before it was amended also envisaged a case of an intermediate product obtained in an integrated and continuous process of manufacture of another commodity, that is, the end product. It must be admitted that prima facie Rule 9 does not show that it also covers a case of integrated, continuous and uninterrupted process of manufacture producing a commodity at an intermediate stage which again is utilised in such continuous process for the manufacture of the end product. The learned Attorney General, appearing on behalf of the Union of India, submits that Rule 9 and Rule 49 also envisaged such a case of integrated process of manufacture of the end product using a product produced at an intermediate stage. In support of his contention he has placed reliance on an unreported decision in Nirlon Synthetic Fibres & Chemicals Ltd. v. R. K. Audim, Assistant Collector [Miscellaneous 491 of 1964, dated April 30, 1970 in the Bombay High Court]. The learned Single Judge of the Bombay High Court took the view that a continuous or integrated process of manufacture was not initially contemplated by Rule 9 or Rule 49, but after the addition of a new set of rules being Rules 173-A to 173-K to the Rules by the Notification dated May 11, 1968 a continuous and integrated process of manufacture came to be contemplated by the scheme of the Act and the Rules. Reliance has been placed by the learned judge on the Explanation to Rule 173-A as added by the said Notification dated May 11, 1968. The Explanation is as follows :

> Explanation. - The expression 'home use' means the consumption of such goods within India for any purpose and includes use of such goods in the place of production or manufacture or any other place or premises (whether by continuous process or not), for manufacture of any commodity.

24. Reliance has also been placed on Rule 173-G which provides for the procedure to be followed by an assessee who is a manufacturer of matches or cigarettes or cheroots. The relevant portion of Rule 173-G is a proviso thereto which is as follows :

> Provided that the duty due on the goods consumed within the factory in a continuous process may be so paid at the end of the factory day.

25. From the above provisions of the Explanation to Rule 173-A and the proviso to Rule 173-G, the learned judge has taken the view that a continuous or integrated process of manufacture has come to be contemplated by the scheme of the Act and the Rules framed thereunder for the first time only in May 1968, the scheme having been brought into force with effect from June 1, 1968 and prior thereto such a continuous or integrated manufacturing process was never contemplated by the Act or the Rules.

26. The learned Attorney General gets inspiration from the said unreported case of the Bombay

High Court [Miscellaneous 491 of 1964, dated April 30, 1970 in the Bombay High Court] and submits that at least since after May, 1968, Rule 9 and Rule 49 envisage the case of an integrated and continuous process of manufacture involving the use of utilisation of a commodity produced at an intermediate stage of such process for the manufacture of an end product or commodity. It is submitted by him that if the interpretation as given by the learned Single Judge of the Bombay High Court in the above unreported decision [Miscellaneous 491 of 1964, dated April 30, 1970 in the Bombay High Court] is accepted, in that case, it will not be necessary to consider the effect of amended Rule 9 or Rule 49, that is to say, the Explanations that have been added to these two rules.

27. It may be that the concept of continuous or integrated process of manufacture has been recognised in the Explanation to sub-rule (2) of Rule 173-A and in the proviso to Rule 173-G, but we do not think that Rule 9 or Rule 49 should be interpreted in the light of provisions of the Explanation to sub-rule (2) of Rule 173-A or the proviso to Rule 173-G. Moreover, we are not concerned with the interpretation of Rule 9 and Rule 49, as they stood before the amendment. In the instant case, the appellants have challenged Rule 9 and Rule 49 as amended by the Notification dated February 20, 1982. We are, therefore, concerned with the interpretation of these rules as amended, particularly the question of validity of these rules.

28. Before we proceed to consider the contentions made on behalf of the parties, it may be stated that in view of the divergence of judicial opinion as to the interpretation of Rules 9 and 49, before they were amended, the Explanations to Rules 9 and 49 have been added so as to obviate any doubt. The Explanations to Rule 9 and 49, inter alia, provide that commodity obtained at an intermediate stage of manufacture in a continuous process shall be deemed to have been removed from such place or premises as mentioned in sub-rule (1) of Rule 9. This deeming provision has been given retrospective effect by virtue of Section 51 of the Finance Act, 1982.

29. It is urged by Mr. Sorabjee, learned counsel for the appellants, that the amended Rule 9 and Rule 49 are arbitrary and unreasonable inasmuch as the goods which, in fact, are not removed from the factory and which are incapable of removal because of the nature and construction of the plant or the nature and character of the manufacturing process, are fictionally treated as having been removed. It is submitted that as a result of the amendment of these rules the appellants are exposed to excessive hardship for not complying with the statutory provisions. In view of the length of the retrospective operation of the amendments, namely, 38 years from the date of the commencement of the Act, that is, February 28, 1944, the appellants would be called upon to pay enormous amount of duty in respect of the entire quantity of goods which have come into existence and have been captively consumed within the factory premises. The appellants will not, however, be able to pass on this burden to consumers and will have to bear the same themselves. It is submitted that in view of the arbitrariness and unreasonableness of the amendments and the hardships that will be caused to the appellants and other manufacturers of excisable goods, the amendments should be struck down as violative of the provisions of Article 14 and Article 19(1)(g) of the Constitution of India.

30. It is not disputed that the legislature is competent to make laws both prospectively and retrospectively. But, as pointed out by this Court in Jwaharmal v. State of Rajasthan [(1966) 1 SCR 890] the cases may conceivably occur where the court may have to consider the question as to whether excessive retrospective operation prescribed by a taxing statute amounts to the contravention of the citizens' fundamental rights; and in dealing with such a question the court may have to take into account all the relevant and surrounding facts and circumstances in relation to the taxation. Again in Rai Ramkrishna v. State of Bihar [(1964) 1 SCR 897], this Court has pointed out that if the retrospective feature of a law is arbitrary and burdensome, the statute will not be

sustained and the reasonableness of each retrospective statute will depend on the circumstances of each case; and the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test.

31. The apprehension of the appellants is that the amendments to Rules 9 and 49 having been made retrospective from the date the rules were framed, that is, from February 28, 1944, the appellants and others similarly situated may be called upon to pay enormous amounts of duty in respect of intermediate goods which have come into existence and again consumed in the integrated process of manufacture of another commodity. There can be no doubt that if one has to pay duty with retrospective effect from 1944, it would really cause great hardship but, in our opinion, in view of Section 11-A of the Act, there is no cause for such apprehension. Section 11-A(1) of the Act provides as follows :

> 11-A(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :
>
> Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", The words "five years" were substituted.
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> Explanation. - Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.

32. Under Section 11-A(1) the excise authorities cannot recover duties not levied or not paid or short-levied or short-paid or erroneously refunded beyond the period of six months, the proviso to Section 11-A not being applicable in the present case. Thus although Section 51 of the Finance Act, 1982 has given retrospective effect to the amendments of Rules 9 and 49, yet it must be subject to the provision of Section 11-A of the Act. We are unable to accept the contention of the learned Attorney General that as Section 51 has made the amendments retrospective in operation since February 28, 1944, it should be held that it overrides the provision of Section 11-A. If the intention of the legislature was to nullify the effect of Section 11-A, in that case, the legislature would have specifically provided for the same. Section 51 does not contain any non-obstinate clause, nor does it refer to the provision of Section 11-A. In the circumstances, it is difficult to hold that Section 51 overrides the provision of Section 11-A.

33. It is, however, contended by the learned Attorney General that as the law was amended for the first time on February 20, 1982, the cause of action for the excise authorities to demand excise duty in terms of the amended provision, arose no that day, that is, on February 20, 1982 and, accordingly, the authorities are entitled to make such demand with retrospective effect beyond the period of six months. But such demand, though it may include within it demand for more than six months, must be made within a period of six months from the date of the amendment.

34. There is no provision in the Act or in the Rules enabling the excise authorities to make any demand beyond the periods mentioned in Section 11-A of the Act on the ground of the accrual of cause of action. The question that is really involved is whether in view of Section 51 of the Finance Act, 1982, Section 11-A should be ignored or not. In our view Section 51 does not, in any manner, affect the provision of Section 11-A of the Act. In the absence of any specific provision overriding Section 11-A, it will be consistent with rules of harmonious construction to hold that Section 51 of the Finance Act, 1982 insofar as it gives retrospective effect to the amendments made to Rules 9 and 49 of the Rules, is subject to the provision of Section 11-A.

35. In the circumstances, there is no question of the amended provision of Rule 9 and Rule 49 being arbitrary, unreasonable or violative of the provision of Article 14 and Article 19(1)(g) of the Constitution of India.

36. We may now deal with the challenge made to the retrospective operation of amendments of Rules 9 and 49 on another ground. In order to appreciate the ground of such challenge, we may once more refer to Section 51 of the Finance Act, 1982. The Explanation to Section 51 provides as follows :

> Explanation. - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Under the Explanation, although Rules 9 and 49 have been given retrospective effect, an act or omission which was not punishable before the amendment of the Rules, will not be punishable after amendment. The Explanation does not, however, provide for the penalties and confiscation of goods. It is the contention of the appellants that as the appellants had not complied with the requirements of the amended Rules 9 and 49, they would be subjected to penalties and their goods would be confiscated under the amended Rules 9 and 49 read with Rule 173-Q of the Rules with retrospective effect. It is, accordingly, submitted on behalf of the appellants that the amendment of these two rules with retrospective effect is arbitrary and unreasonable and should be struck down as violative of Article 14 of the Constitution.

37. Attractive though the argument is, we regret we are unable to accept the same. It is true that the Explanation to Section 51 has not mentioned anything about the penalties and confiscation of goods, but we do not think that in view of such non-mention in the Explanation excluding imposition of penalties for acts or omissions before amendment, such penalties can be imposed or goods can be confiscated by virtue of the amended provision of Rules 9 and 49. It will be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law. The contention made on behalf of the appellants is founded on the assumption that under the Explanation to Section 51, the penalties can be imposed and goods can be confiscated with retrospective effect. In the circumstances, the challenge to the amendments of Rules 9 and 49, founded on the provision of the Explanation to Section 51 of the Finance Act, 1982, is without any substance and is rejected.

38. The appellants have also challenged the prospective operation of the Explanations to Rules 9 and 49 introduced by amendments of the same. It is strenuously urged by Mr. Sorabjee, leaned counsel for the appellants, that even after amendment there must be removal of the goods from one place to another for the purpose of collection of excise duty. Our attention has been drawn on behalf

of the appellants to clause (b) of sub-section (4) of Section 4 of the Act, which defines "place of removal" as follows :

> (4) For the purpose of this section, -
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> (b) "place of removal" means -
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> (i) a factory or any other place or premises of production or manufacture of the excisable goods; or
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> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such goods are removed.

39. It is submitted on behalf of the appellants that the Explanations to Rule 9 and Rule 49 are ultra vires the provision of clause (b) of sub-section (4) of Section 4 of a the Act inasmuch as "place of removal" as defined therein, does not contemplate any deemed removal, but a physical and actual removal of the goods from a factory or any other place or premises of production or manufacture or a warehouse etc. This contention is unsound and also does not follow from the definition of "place of removal". Under the definition "place of removal" may be a factory or any other place or premises of production or manufacture of the excisable goods etc. The Explanations to Rules 9 and 49 do not contain any definition of "place of removal", but provide that excisable goods produced or manufactured in any place or premises at an intermediate stage and consumed or utilised for the manufacture of another commodity in a continuous process, shall be deemed to have been removed from such place or premises immediately before such consumption or utilisation. Clause (b) of sub-section (4) of Section 4 has defined "place of removal", but it has not defined 'removal'. There can be no doubt that the word 'removal' contemplates shifting of a thing from one place to another. In other words, it contemplates physical movement of goods from one place to another.

40. It is well settled that a deeming provision is an admission of the non-existence of the fact deemed. Therefore, in view of the deeming provisions under Explanations to Rules 9 and 49, although the goods which are produced or manufactured at an intermediate stage and, thereafter, consumed or utilised in the integrated process for the manufacture of another commodity it not actually removed, shall be construed and regarded as removed. The legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. It has been already noticed that the taxing event under Section 3 of the Act is the production or manufacture of goods and not removal. The explanations to Rules 9 and 49 contemplate the collection of duty levied on the production of a commodity at an intermediate stage of an integrated process of manufacture of another commodity by deeming such production or manufacture of the commodity at an intermediate stage to be removal from such place or premises of manufacture. The deeming provisions are quite consistent with Section 3 of the Act. As observed by the Federal Court in Boddu Paidanna case [AIR 1942 FC 33] there is in theory nothing to prevent the central legislature from imposing a duty of excise on a commodity as soon as it comes into existence, no matter what happens to it afterwards, whether it be sold, consumed or destroyed or given away. It is for the convenience of the taxing authority that duty is collected at the time of removal of the commodity. There is, therefore, nothing unreasonable in the deeming provision and, as discussed above, it is quite in conformity with the provision of Section 3 of the Act. The contention that the amendments to Rules 9 and 49 are ultra vires clause (b) of sub-section (4) of Section 4 of the Act, is without substance and is overruled.

41. It is next contended on behalf of the appellants that even assuming that there can be fictional removal as provided in the Explanations to Rules 9 and 49, there cannot be such fictional or deemed removal without the specification of the place where the excisable goods are produced, cured or manufactured or any premises appurtenant thereto. Rule 9(1), inter alia, provides that no excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf until the excise duty leviable thereon has been paid. The Explanations to Rules 9 and 49 refer to the specification that has been made by the Collector under sub-rule (1) of Rule 9. It is submitted on behalf of the appellants that as no specification has been made by the Collector of such place of premises appurtenant thereto, the provision of deemed removal with regard to the commodity produced at the intermediate stage and consumed or utilised in the continuous process of manufacture of the end product, is inapplicable. It is contended that so long as such specification is not made by the Collector of the place of manufacture or of any premises appurtenant thereto, the provision of deemed removal as contained in the Explanations to Rule 9 and Rule 49 cannot be given effect to.

42. On the other hand, it is contended by the learned Attorney General that specification of the place of manufacture and other places for the storage of the goods, is made in the licence which is required to be obtained under Rule 174 of the Rules. Rule 178 provides for the from of licence. Clause (b) of Rule 178(1) provides that every licence granted or renewed under Rule 176 shall have reference only to the premises, if any, described in such licence. Form AL-IV is the form of an application for licence under Rule 176. In the Schedule to the Form, description of the premises intended to be used as a factory and of each main division or sub-division of the factory has to be given. Further, the detailed description of storeroom or other place of storage and the purpose of each has also to be given in the application form for the grant of licence for the manufacture of excisable goods. Again under Rule 44 of the Rules, the Collector may require any manufacturer to make a prior declaration of factory premises and its equipments. Such a declaration has to be given in Form D-2 in respect of buildings, rooms, vessel, etc. In view of the particulars which are required to be given by a licensee for the manufacture of excisable goods, it is submitted by the learned Attorney General that the specification that is required to be made under Rule 9(1), is made in the licence and in the declaration that has to be furnished by the manufacturer in Form D-2.

43. It is true that under Rule 9(1) there is a provision for specification by the Collector, but the question is what has to be specified by the Collector. It is the contention of the appellants that the Collector has to specify the place of manufacture and also any premises appurtenant thereto. We are, however, unable to accept this contention. The place where the goods are to be manufactured by a manufacturer, that is to say, the site of the factory cannot be specified by the Collector. IT is for the manufacturer to choose the site or the place where the factory will be constructed and goods will be manufactured. Rule 9(1), in our opinion, does not produced, cured or manufactured. The words "which may be specified by the Collector in this behalf" occurring in Rule 9(1) of the Rules do not qualify the words "any place where they are produced, cured or manufactured", but relate to or qualify the words "any premises appurtenant thereto". In other words, if the place of removal is not the place where the goods are produced, cured or manufactured, but any premises appurtenant to such place, in that case, the Collector has to specify such premises for the purpose of collection of excise duty. Thus the contention of the appellants that the Collector has to specify the place of manufacture and also any premises appurtenant thereto under Rule 9(1) of the Rules, is without any substance.

44. Our attention has, however, been drawn to the impugned circular dated September 24, 1980 issued by the Central Board of Excise and Customs. In Clause 3 of the circular, it is stated as

follows :

Mere approval of a the ground plan in a routine manner will not suffice for purposes of Rule 9 as under the said rule the place of production etc. or premises appurtenant thereto have also to be specified separately.

45. Under the circular, the Collector is required to specify under Rule 9(1) both the place of production and premises appurtenant thereto, if any. In view of this direction given in the circular, the learned counsel for the appellants submits that it is not only binding on the Collector and the other officers of the Central Excise Department, but also the circular is in the nature of contemporanea exposito rendering useful aid in the construction of the provision of Rule 9(1) of the Rules. This contention finds support from the decision of this Court in K. P. Varghese v. ITO [(1982) 1 SCR 629] relied on by the learned counsel of the appellants. Indeed, it has been observed in that case that the rule of construction by reference to contemporanea exposito is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. In our opinion, the language of Rule 9(1) admits of only one interpretation and that is that the specification that has to be made by the Collector is of any premises appurtenant to the place of manufacture or production of the excisable goods. The specification is not required to be made and, in our view, cannot be made of the place of manufacture or production of the excisable goods. Apart from that, as observed by Subba Rao, J., upon a review of all the decisions on the point, in an earlier decision of this Court in the Senior Electric Inspector v. Laxmi Narayan Chopra [(1962) 3 SCR 146], the maxim contemporanea exposito as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. Further, it has been observed that in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them. Most respectfully we agree with the said observation of Subba Rao, J. In the circumstances, we do not agree with the direction of the Board of Central Excise & Customs given in the impugned circular that both the place of manufacture and the premises appurtenant thereto must be specified by the Collector under Rule 9(1) of the Rules. Thus, there being no question of specification of the place of manufacture, the contention of the appellants that without such specification there cannot be any deemed removal, fails.

46. In view of the discussion made above, we hold that the amendments to Rules 9 and 49 are quite legal and valid. Further, Section 51 of the Finance Act, 1982 giving retrospective effect to the said amendments is also legal and valid.

47. In the instant case, the appellants are liable to pay excise duty on the yarn which is obtained at an intermediate stage and, thereafter, further processed in an integrated process for weaving the same into fabrics. Although it has been alleged that the yarn is obtained at an intermediate stage of an integrated process of manufacture of fabrics, it appears to be not so. After the yarn is produced it is sized and, thereafter, subjected to a process of weaving the same into fabrics. Be that as it may, as we have held that the commodity which is obtained at an intermediate stage of an integrated process of manufacture of another commodity, is liable to the payment of excise duty, the yarn that is produced by the appellants is also liable to payment of excise duty. In our view, the High Court by the impugned judgment has rightly held that the appellants are not liable to pay any excise duty on the yarn after it is sized for the purpose of weaving the same into fabrics. No distinction can be

made between unsized yarn and sized yarn, for the unsized yarn when converted into sized yarn does not lose its character as yarn.

48. For the reasons aforesaid, the judgment of the High Court is affirmed and this appeal is dismissed. There will, however, be no order as to costs.

Civil Appeal Nos. 2658 and 4168 of 1983

49. In view of the judgment passed in Civil Appeal No. 297 of 1983, these appeals are also dismissed. There will, however, be no order as to costs.

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