(1979) 03 CAL CK 0027

Calcutta High Court

Case No: F.M.A. No''s. 910 of 1978 and 106 to 115 of 1979

New Central Jute Mills Company Limited and Others		APPELLANT
	Vs	
Inspector of Central Excise and Others		RESPONDENT

Date of Decision: March 28, 1979

Acts Referred:

- Central Excise Rules, 1944 - Rule 10, 56A, 96E
- Central Excises and Salt Act, 1944 - Section 3(1), 4
- Constitution of India, 1950 - Article 133, 133(1), 14, 31B
- Industries (Development and Regulation) Act, 1951 - Section 2, 3, 6(1), 6(4), 9
- Jute Manufactures Cess Rules, 1976 - Rule 2

Citation: (1979) CENCUS 359 : (1984) 15 ELT 337

Hon'ble Judges: Chittatosh Mookerjee, J; Bankim Chandra Ray, J

Bench: Division Bench

Advocate: R.N. Bajoria, D.K. Dhar, P.L. Khaitan, in FMA 910/78 and Debi Prosad Pal, P.K. Pal, R.K. Murarka and Manisha Seal, in FMA Nos. 106-115/79, for the Appellant; D.K. Sen, S.C. Bose, Samar Banerji, in FMA 106/79, Anwar Husaain in FMA 107/79, Samar Banerjee in FMA 108/79, Nilava and Mitra, in FMA 109-110/79, S.N. Banerjee in FMA 111-112/79, A. Rahaman in FMA 113-114/79 and B.P. Banerjee in FMA 115/79, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The appellants companies arc manufacturers of the jute products like jute twine, yarn, sacking, carpet backing etc. The appellants have further claimed that portions of jute twine and jute yarn manufactured by them are used for producing finished products, namely, jute textiles. In other words, portions of jute twine and jute yarn are their intermediate products for captive consumption.

2. Jute Textile Industries is one of the industries specified in the First Schedule of the Industries (Development and Regulation) Act, 1951. But the specifications relating to jute industry in the First Schedule of the said Act have been from time to time amended/substituted. The Act LXX1 of 1956 substituted the First Schedule of the Industries (Development and Regulation) Act, 1951 with effect from 1st of March, 1957. The Heading No. 23 of the First Schedule is as follows :-

"Textiles (including those dyed, printed or otherwise processed);

(1) * * * *

(2) made wholly or in part of jute, including jute twine and rope.

(3) * * * *

(4) * * * *

(5) * * * *

By the said amending Act of 1956, two Explanations have been also inserted in the First Schedule of the Parent Act.

3. The Central Government by G.S.R. 89(E), dated 18th February, 1976 made and published the Jute Manufactures Cess Rules, 1976. The clause (f) of Rule 2 of the said Jute Manufactures Cess Rules, 1976 defined "jute manufactures" as ''manufactures of jute'' of Bimlipatam jute or of Mesta fibre of all sorts including :

(1) twist, yarn, thread, rope and twine, all sorts, containing more than 50 per cent by weight of jute (including Bimlipatam jute or Mesta fibre) calculated on the total fibre content in or in relation to the manufacture of which any process is ordinarily carried on with aid of power ;

(2) others, but excluding any such manufacture,--

(i) * * * *

(ii) * * * *

4. The Central Government by its Order No. S.O. 141(2) in the exercise of its powers u/s 9(1) of the Industries (Development and Regulation) Act, 1951 specified the classes of goods manufactured or produced wholly or in part in the scheduled industry of textiles as mentioned in column (2) of the Table below the Order on which a duty of excise shall be levied and collected as a cess for the purposes of the said Act for a period of one year commencing from the 1st March, 1976 at the specified rates. The said period has been since extended for another year. The Collectorate of Central Excise and Customs, West Bengal by a trade notice dated 28th April, 1977 clarified that jute twines and jute yarn when consumed within the

factory of production for conversion into manufacture falling under the Tariff Item No. 22-A were subjected to levy of cess. The said trade notice further stated that it had been decided that jute twine and jute yarn consumed within the factory though exempted from payment of Central Excise duty, were liable to levy of cess under the Jute Manufactures Cess Rules, 1976.

5. Thereafter, the respondents had individually called upon the appellants to pay cess on jute twine and jute yarn on captive consumption with effect from 1st of March, 1976.

6. The present appellants had filed writ petitions challenging the levy of cess u/s 9(1) of the Industries (Development and Regulation) Act, 1951 read with the Jute Manufactures Cess Rules and Orders made thereunder. Levy of any cess on jute twine and yarn in the process of manufacture of other jute products was challenged as unauthorised and illegal. His Lordship Mr. Justice Amiya Kumar Mookerji analogously heard and disposed of the Rules obtained by these appellants. The learned Single Judge held that the levy of jute cess under the aforesaid provisions of law were valid and authorised. Therefore, the learned Single Judge discharged the Civil Rules. The appellants, being aggrieved thereby, have preferred these appeals under Clause 15 of the Letters Patent.

7. We have heard these appeals analogously. On behalf of the appellants two sets of submissions have been made by Dr. Debiprasad Pal and Mr. R.N. Bajoria.

8. Mr. Bajoria, learned Advocate for the appellants in P.M.A. No. 910 of 1978, submitted that the Central Government is empowered to levy cess u/s 9 of the Industries (Development and Regulation) Act, 1951 only upon those articles which have been specified in the different items or headings of the First Schedule of the said Act. According to Mr. Bajoria, jute twine and jute yarn have not been specified in Item 23(2) of the First Schedule of the Act and therefore, the impugned assessments of cess u/s 9(1) of the Act read with the Jute Manufactures Cess Rules, 1976 were illegal and without any authority of law. According to Mr. Bajoria Item No. 23(2) relating to Jute Textiles Industry has not been specified either in the Explanation (1) or in the Explanation (2) of the First Schedule of the Industries (Development and Regulation) Act, 1951, Therefore, accessories and intermediate products like yarn and twine used for captive production are not liable to be assessed to jute cess. Dr. Pal, learned Advocate for the appellants in F.M.A. No. 105 of 1979, has similarly urged that jute twine and yarn which are intermediate products for captive consumption in the appellants'' jute mills cannot be subjected to cess. The learned Advocates for the appellants, however, did not urge that such jute cess could not be imposed on finished products of Jute Textile Industry specified in the relevant item of the First Schedule of the said Act of 1951. In fact, the Fort William Company Limited, the appellant in P.M.A. No, 106 of 1979, in paragraph (3) of its writ petition had admitted that it had been all along paying cess on its finished products u/s 9(1) of the Industries (Development and Regulation) Act, 1951,

if and when it had removed jute twine and yarn excepting for the purpose of manufacture of the jute products of the petitioner, the petitioner duly paid cess on the said jute twine and yarn at the time of their removal u/s 9(1) of the Act.

9. The substance of the above contention is that the Central Government has power u/s 9(1) of the aforesaid Act to impose levy only on those articles of the scheduled industries which have been specified in the relevant item or items of the First Schedule of the said Act. Secondly, intermediate products like jute twine and jute yarn which are used for manufacturing finished products are not subjected to such levy. Before examining the value of these submissions we may first proceed to examine some of the provisions of the Industries (Development and Regulation) Act, 1951. The preamble of the said Act stated that said Act was enacted "to provide for the development and regulation of certain industries". The Section 2 of the Act "declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule". We may at this stage refer to the definitions of the expressions "schedule" and "scheduled industries". The term "schedule" u/s 3(h) means "a Schedule to this Act". The term "Scheduled industries" u/s 3(i) means "any of the industries specified in the First Schedule". Thus the First Schedule specified the industries whose control have been taken up in the public interest by the Union. The heading of the First Schedule of the Act refers to Sections 2 and 3(i) of the said Act and significantly Section 9(1) of Act 65 of 1951 has not been mentioned therein.

10. Thus, the First Schedule to the Industries (Development and Regulation) Act. 1951 mentions the industries which have become subject to control by the Central Government in terms of the said Act. The Section 2 and the First Schedule to the Act of 1951 are to be read together and the said Schedule serves as a list of specified industries. The articles manufactured or produced by the specified industries have been mentioned in the different headings and subheadings of the First Schedule in order to identify the particular scheduled industries included therein. But the said enumeration of the articles manufactured or produced "do not follow any logical or scientific pattern but are put in merely as devices for convenient grouping of the industries" (vide observations of the Supreme Court in Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others,). The Supreme Court in Harakchand''s case, (supra), had rejected the submission that manufacture of gold ornaments does not fall within Item No. 2 "semi-manufactures or manufactures" under the sub-heading ''B'' "Non-ferrous" of the heading "metallurgical industries". It was argued before the Supreme Court that Item No. 2 of sub-heading "B" must be read in the context of the heading "metallurgical industries" which was the controlling factor in interpretation of Item No. 2, under the sub-heading. In other words, the argument was that the heading "metallurgical industries" was the key to the interpretation of the item "semimanufactures or manufactures". The Supreme Court had rejected the said contentions and at page 1461 had further observed "that there was no scientific or logical scheme in the classification of First Schedule

of the Act 65 of 1951, but it is a mere enumeration and grouping of various items. We are unable to accept the argument of the petitioners that the heading ''metallurgical industries'' should be construed as having a controlling effect on the meaning of Item B (2) "semi-manufacturers or manufacturers", incidentally, Dr. Pal, learned Advocate for the appellant in P.M.A. 106 of 1979 had similarly urged before us that the expression "textile" in the heading of Item 23 of the First Schedule controlled the sub-heading (2) and therefore, unless an article answered the description of "textile", same would not come within the said sub-heading. It is not necessary for us to deal with the decision of the Supreme Court in Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , which was cited by Dr. Pal, learned Advocate for the appellant. The Supreme Court in the said case with reference to the Schedule ''B'' Item 30 of the Punjab General Sales Tax Act, 1948 had interpreted the word "textile". We are bound by the decision of the Supreme Court in Harakchand v. Union of India, (supra), regarding the interpretation of the First Schedule to the Act 65 of 1951. Therefore, we respectfully follow the said decision and hold that the word "textiles" in the heading of Item No. 23 does not qualify the sub-heading (2) which reads as follows :-
"made wholly or in part of jute, including jute twine arid rope".

11. We have already stated that the First Schedule mentions the industries which become subject to control by the Central Government according to the different provisions of the Act 65 of 1951. The said Act has described in detail the different ways in which the Central Government may exercise such control over the scheduled industries. Such powers of control by the Central Government include :

(i) Regulation of scheduled industries under Chapter III

(a) registration of existing industrial undertakings and power to revoke such registration.

(b) licencing of new industrial undertakings.

(c) licence for producing or manufacturing new articles.

(d) powers to cause investigation.

(ii) Direct management or control of industrial undertakings by the Central Government in certain cases mentioned in Chapter IIIA.

(iii) Management or control of industrial undertakings owned by companies in liquidation under Chapter IIIAA.

(iv) Power to provide relief under Chapter IIIAB. (v) Liquidation of reconstruction of companies under Chapter IIIAC.

(vi) Control of supply, distribution and price of certain articles under Chapter IIIB etc.

12. The Chapter II of the Act 65 of 1951, inter alia, contains provisions for establishment and constitution of the Central Advisory Council and Development Councils. The Central Government u/s 6(1) may by notified order establish for any scheduled industry or group of scheduled industries a body of persons to be called Development Council. The Sub-section (4) of Section 6 of the Act provides that a Development Council shall perform such functions of a kind specified in the Second Schedule as may be assigned to it by the Central Government. Section 9 authorizes the Central Government to impose by notified order cess "for the purposes of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf...". We shall hereinafter consider the effect of the proviso and the Explanation to Sub-section (4) of Section 9 of the Act 65 of 1951. The subsection (4) of Section 9 of the Act lays down that the Central Government may hand over the proceeds of the cess collected u/s 9(1) to the Development Council established for that industry or group of industries. The Development Council shall utilise the said proceeds : (a) to promote scientific and industrial research with reference to the scheduled industry ; (b) improvement in design and quality of the products of such industry ; (c) training of technicians and labour in such industry and (d) to meet expenses of the functions of the Development Council.

13. Dr. Pal has submitted that a cess u/s 9(1) of the Act 65 of 1951 is a tax earmarked for a specific object or purpose. In this connection, he relied upon the observations of the Supreme Court in Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc., . Mr. Sen, learned Advocate for the respondents, in this connection has placed before us the observations in paragraph 43 of the judgment delivered by B.K. Mukherjee, J. (as he then was) in the well-known case of The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . The learned Judge inter alia indicated the indicia of a tax. It is unnecessary for us to discuss at length the real nature of the levy u/s 9(1) of the Act 65 of 1951 because Section 9(1) itself contains elaborate provisions relating to both imposition of cess on scheduled industries and also utilization of the proceeds of such cess. Such proceeds may not form part of the general revenue but may be handed over to the Development Council for promotion of research, improvements in design and quality, imparting of training etc. Further, the real question in these appeals is whether or not the imposition of cess u/s 9(1) has been restricted only to articles mentioned in Heading 23, sub-heading (2) of the First Schedule of the Act 65 of 1951. In our view, there is no substance in the submission made on behalf of the appellants that no cess u/s 9(1) may be imposed upon goods manufactured or produced in any scheduled industry which have not been mentioned in the relevant heading and/or sub-heading of the First Schedule. Section 9(1) authorized the Central Government to levy and collect cess on "all goods manufactured or produced" in any scheduled industry as may be specified in this behalf. Section 9(1) makes no reference to the First Schedule. By reason of its inclusion, an industry engaged in manufacturing the articles mentioned in different headings and

sub-headings of the First Schedule becomes a industry and subject to control in the manner indicated in the Act. We have already mentioned that the list of articles manufactured by an industry included in the First Schedule is not exhaustive. Thereafter, a scheduled industry may conceivably manufacture or produce not only the articles specified in the First Schedule of the Act but also various other goods-both intermediate and finished products. Section 9(1) authorizes levy on all such goods manufactured or produced by a scheduled industry.

14. Mr. Bajoria, learned Advocate for the appellant, drew our attention to the fact that the Heading 23(2) has not been included either in the Explanation (1) or Explanation (2) of the First Schedule of the Act. Therefore, according to Mr. Bajoria law has not authorised the Central Government to impose cess upon the intermediate products like twine and yarn manufactured by the jute industry. There is no substance in the above submission. In the first place, we have already held that for the purpose of interpreting the scope of the power of the Central Government u/s 9(1) of the Act to levy cess on goods manufactured or produced by scheduled industry, the enumeration of the articles under the different headings of the First Schedule is not relevant. Secondly, the Explanation (1) purports to enlarge the scope of the Headings 3, 4,5,6,7,8, 10, 11,13 by including therein the industries engaged only in manufacturing component parts and accessories of the articles specified under the said Headings, Such industries may not be manufacturing the articles themselves. Similarly, the Explanation (2) includes the industries manufacturing the intermediates required for the manufacture of the articles specified under the Headings 18, 19, 21 and 22. The two Explanations have the effect of enlarging the ambit of the headings respectively specified in the two Explanations. But as already stated, First Schedule including the two Explanations do not control or restrict the power of the Central Government u/s 9(1) to impose levy on goods manufactured or produced by the scheduled industry in question. The expression "all" in Sub-section (1) of Section 9 of the Act in the present context means "every goods produced or manufactured by a scheduled industry". The Legislature has also deliberately used the words "manufactured or produced" to include both intermediate and the final products of the scheduled industry as may be notified. Therefore, we conclude that the power of the Central Government to levy cess u/s 9(1) is of wide amplitude and such power is not confined or restricted only to articles mentioned in the Heading 23(2) of the First Schedule. We reject the submission of the appellants that the Central Government has no power to impose cess upon intermediate products of jute industry.

15. We may now examine the next submission made on behalf of the appellants that u/s 9 of the Act 65 of 1951 the Central Government is empowered to levy cess only according to the value of the goods produced or manufactured by the scheduled industries. The appellants have submitted that the impugned levy of cess according to the weight of the goods notified u/s 9(1) of the Act read with the Jute Manufactures Cess Rules, 1976 was ultra vires. The main part of Sub-section (1) of

Section 9 of the Act 65 of 1951 does not expressly circumscribe the power of the Central Government to levy and collect cess only according to the value of goods manufactured or produced in any specified scheduled" industry. But according to the appellants, such limitation has been imposed by the proviso to Sub-section (1) of Section 9 and the Explanation under the said subsection. According to the proviso no rate of levy "shall in any case exceed 12 n. p. percent of the value of the goods". The Explanation under subsection (1) elucidates the meaning of the expression "value".

16. It is undisputed that "the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect" (vide Craies on Statute Law, 6th Edition, page 217). The proviso to subsection (I) of Section 9 has clearly limited the maximum amount of cess which may be imposed by a Central Government Notification made u/s 9(1). The Legislature u/s 9(1) has delegated to the Central Government the power to impose cess, on goods manufactured or produced by scheduled industries. Presumably, to repel any attack on the ground of excessive delegation, the Legislature under the proviso to Sub-section (1) has specified the maximum amount of the cess which could be levied with reference to the value of the notified goods. But for the said proviso, the enacting part of Sub-section (1) of Section 9 would have conferred unqualified power to impose cess upon the notified goods manufactured or produced by the scheduled industries. Mr. Sen rightly submitted that unless it is held that to assess cess u/s 9(1) on weight basis would be unworkable and totally repugnant to the proviso to Sub-section (1), it cannot be correct to hold that the Legislature has prohibited imposition of cess u/s 9(1) of the Act 65 of 1951 according to weight basis. Mr. Sen has also pointed out that imposition of cess according to weight basis is a common feature of the taxing law and therefore, cess according to weight of any commodity is not per se arbitrary and illegal. The Central Excises and Salt Act also recognizes the power to impose cess under the said Act both according to weight and value of excisable commodities. Section 3(1) of the Central Excises and Salt Act which is the charging section, inter alia provides "there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than sale which are produced or manufactured in and a duty on salt manufactured in, or imported by land into any part of India as, and at the rates, set forth in the First Schedule". In case of some of the excisable goods duty has been imposed according to value and in respect of others according to their weight. For example, the Item 18D of the First Schedule relating to jute twist, yarn, thread, rope and twine etc. etc., excise duty is at a certain rate per metric tonne. Item 22A of the First Schedule of the Central Excises and Salt Act relates to jute manufacturers including manufacturers of Vimlipatam jute or Mesta fibre all sorts not elsewhere

specified but excluding the goods specified in (i) and (ii) and excise duty is leviable also according to their weight. Thus, in Entries 18D and 22A of the First Schedule of the Central Excises and Salt Act corresponding to Heading 23, sub-heading (2) of the First Schedule of the Act 65 of 1951 cess has been imposed according to weight of the goods.

17. The scheme of Section 9 of Act 65 of 1951 is slightly different from that of the corresponding provisions of the Central Excises and Salt Act. The Section 9 of the former Act is a composite one. The Section 9(1) of the Act 65 of 1951 is the charging provision and corresponds to Section 3(1) of the Central Excises and Salt Act. But unlike the Central Excises and Salt Act where the First Schedule forming part of the Act itself specifies the rate of duty on excisable goods, the Section 9(1) has delegated the power to the Central Government to issue notifications specifying rates of cess on goods manufactured or produced by scheduled industries. In view of the said delegated power, the proviso to Section 9(1) of the Act 65 of 1951 imposes a ceiling or the maximum of the cess which could be imposed by Central Government orders upon the goods produced or manufactured by scheduled industries. The Explanation under Sub-section (1) of Section 9 of the Act 65 of 1951 corresponds to Section 4 of the Central Excises and Salt Act. Both these provisions indicate the method for determining the wholesale cash price for imposing duty/cess. Thus, the said Explanation u/s 9(1) of Act 65 of 1951 and the Section 4 of the Central Excises and Salt Act apply in case of assessment of duty chargeable with reference to value of excisable goods. Therefore, the mere fact that the Explanation to Section 9(1) makes reference to value, the same does not necessarily limit or curtail the power of the Central Government under Sub-section (1) of Section 9 to impose cess only according to value of specified goods produced or manufactured by a scheduled industry. Sub-sections (2) and (3) of Section 9 of Act 65 of 1951 relate to payment or recovery of cess payable upon specified goods produced or manufactured by scheduled industries. We have already pointed out that Sub-section (4) of Section 9 of the Act 65 of 1951 makes provision for utilization of proceeds of cess collected u/s 9 of the Act.

18. It would not be correct to urge that in case cess u/s 9(1) is levied on weight basis, the proviso under Sub-section (1) of Section 9 would be totally unworkable. If the rate of cess is specified according to their weight, it may be still possible to check whether or not the amount of duty payable according to weight exceeds 12 n.p.. per cent of the value of the goods in goods. In this case, the cess imposed u/s 9(1) upon the goods manufactured or produced by the appellants admittedly does not exceed 12 n.p. per cent of their value. Mr. Bajoria and Dr. Pal, learned Advocates for the different appellants, submitted that in case cess u/s 9(1) is imposed according to the weight of the specified goods of a scheduled industry, an element of uncertainty would be introduced and there would always remain a possibility of the said cess exceeding at some point of time 12 n.p. per cent of the value of the goods in question and therefore, the cess would become illegal and irrevocable. According to

the learned Advocates for the appellants, the wholesale cash prices of the specified goods of the jute industry very often fluctuate. Therefore, the authority collecting the cess would be required to determine whether or not cess imposed by a Central Government order u/s 9(1) on the weight of the specified goods at a particular point of time exceeded the maximum limit laid down by the proviso to Sub-section (1) of Section 9 of Act 65 of 1951. The learned Advocates for the appellants have submitted that the legislature did not intend such an anomalous situation to arise. For the purpose of harmonious working of the different parts of Section 9(1) of the Act 65 of 1951, it should be held that Section 9(1) read with proviso has laid down the cess can be levied only according to the specified goods produced or manufactured by a scheduled industry.

19. In our view, the above reasoning is unacceptable. In the present case, there is no allegation that the rates prescribed exceeded 12 n.p. per cent of the value of the goods. Therefore, we need not deal with a hypothetical case as suggested by the learned Advocates. Secondly, there is no material before us to suggest that the wholesale cash price of such goods in terms of the Explanation to Section 9(1) is highly fluctuating as claimed by the appellants. In any case, the cess calculated according to the weight "of the specified goods and the amount specified under the proviso are easily ascertainable. The Legislature has delegated the power to impose cess to the Central Government. The Central Government is expected to be alive to the changes, if any, in the wholesale cash prices of goods upon which cess has been imposed u/s 9(1) and therefore, if it becomes necessary, the Central Government would always be in a position to revise the rate of cess according to weight in order to keep the said rates at the figures below the maximum amounts calculated according to the proviso to Sub-section (1) of Section 9. The said delegated power u/s 9(1) has introduced an element of flexibility and has dispensed with the necessity of legislative amendment in case of alteration of the rates of cess imposed on specified goods produced or manufactured by a scheduled industry. The Central Government would be always competent to notify changes in the rates of cess in order to make adjustments, if necessary, according to changes in circumstances. A possibility of the Assessing Authority deciding the legality of a Central Government notification u/s 9(1) imposing cess upon specified goods of a scheduled industry is entirely remote and in actuality rates of cess accordingly to the weight of the specified goods is likely to be much lower than 12 n.p. per cent of the price of the goods in question. We have also observed that with changes in their wholesale cash price, the Central Government may alter the rate of the cess of the notified goods according to weight basis so as to keep the same within the limit laid down by the proviso to Sub-section (1) of Section 9 of Act 65 of 1951.

20. Mr. Bajoria, learned Advocate appearing on behalf of the appellants, had submitted that the Explanation u/s 9(1) applies both to the main part of Sub-section (1) of Section 9 and the proviso thereunder. The Explanation to the main part may apply in case the cess u/s 9(1) is imposed ad valorem. But in case such cess is

imposed according to weight of the notified goods, the meaning of the expression ''value'' given in the said Explanation will not be required to be applied. But the said Explanation shall always apply in relation to the proviso under Sub-section (I) of Section 9 inasmuch as maximum rate of cess has been stated with reference to the value of the goods. Mr. Bajoria also has argued that the expression'' no such rate'' refers to the rate as may be specified in the notified order u/s 9(1) of the Act. But we hold that this expression ''rate'' does not necessarily imply that the Legislature intended that the cess u/s 9(1) shall be always ad valorem and not according to weight of the goods manufactured or produced in any scheduled industry as may be specified. The expression ''such rate'' in the proviso refers both to cess upon notified goods according to weight and value. In the absence of a clear indication to the contrary, we hold that Section 9(1) does not restrict the power of the Central Government to impose cess only according to value of such goods. Thus notified order may specify rate of cess either according to weight or according to value of the goods in question.

21. The learned Advocate for the appellants placed before us that paragraph (3) of the Jute Manufactures Cess Rules, 1976 lays down :

"Save as otherwise provided in these rules, the provision of the Central Excises and Salt Act, 1944 (I of 1944) and the Rules made thereunder, including those relating to refund of duty shall, so far as may be applied in relation to the levy and collection of the cess as they apply in relation to the levy and collection of the duty of the excise on jute manufacturers under that Act."

22. According to the learned Advocates for the appellants, the provisions of the Central Excises and Salt Act and the Central Excise Rules relating to levy and collection of excise duty including notifications for exemption from payment of excise duty would be attracted to levy and collection of cess u/s 9(1) of the Act 65 of 1951 read with the Jute Manufactures Cess Rules, 1976. The Government of India, Ministry of Finance, Department of Revenue and Insurance by Notification No. 56/72-C.E., dated 17-3-72, had exempted jute, twine, yarn, thread, ropes and twine, all sorts falling under Item 18D of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), and consumed within the factory in which they are produced for the manufacture of jute manufacturers falling under Item 22A of the said Schedule from the whole of the duty of excise leviable thereon. The said exemption is subject to the proviso that where such consumption is elsewhere than in the factory of production the exemption contained in this notification shall be allowable only if the procedure laid down in Rule 56A or Rule 96E of the Central Excise Rules, 1944 is followed. Thus, the Central Government by the aforesaid notification has exempted twine, yarn etc. which are used for captive production from the payment of the excise duty under the Central Excises and Salt Act, 1944. The Central Government, however, has refused to extend the said notification and exempt these intermediate jute goods used for captive production from payment u/s 9(1) of Act 65

of 1951.

23. In our view, the said notification exempting jute twine, yarn etc. from payment of excise duty does not apply to the imposition of cess u/s 9(1). In the first place, the paragraph (3) of the Jute Manufactures Cess Rules, 1944 does not provide that even notifications made under the Central Excise Law Rules, law would automatically apply. The exemption from payment of a duty or taxis a matter of substantive law. The Central Excise Rules has expressly authorized the Central Government to issue notifications exempting payment of excise duty. But the Act 65 of 1951 or the Jute Manufactures Cess Rules does not similarly empower the Central Government to exempt payment of cess upon goods which are specified in a notification u/s 9(1) of the Act 65 of 1951. Since cess u/s 9(1) of Act 65 of 1951 is imposed by specifying in the notification the goods manufactured or produced in a particular scheduled industry, the Central Government if it so chooses, may by a subsequent order exclude a particular good or goods previously specified in an earlier notification. But, until and unless there is such amendment or revocation of a notification u/s 9(1) the goods specified remain subject to cess and no question of exemption from payment of such cess can or does arise.

24. Further, the object of paragraph (3) of the Jute Manufactures Cess Rules is to apply the procedure and not recovery of duty to jute cess imposed u/s 9(1). Dr. Pal has drawn our attention to the observations in paragraph (2) of the Supreme Court decision in Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., Beg J. (as he then was) delivering the judgment had observed that in the context of the Central Excise Rules, the term "levy" appears to be wider in its import than the term "assessment". It may include both imposition of a tax as well as assessment. The term "imposition" is generally used for the levy of a tax or duty by legislative provisions indicating the subject-matter of the tax and the rates at which it has to be taxed. The term "assessment" on the other hand, is generally used in this country for the actual procedure adopting in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. According to the Supreme Court, the term " levy" in the context of the Rules which came up for consideration did not extend to collection. In this connection, reference was also made to the earlier decision of the Supreme Court in N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd., , where also a distinction was made between levy and collection as used in the Central Excises and Salt Act and the Central Excise Rules, in particular Rule 10. In the present case, the Section 9(1) of the Act 65 of 1951 is the charging section and it has delegated power to the Central Government to impose cess upon goods manufactured or produced by a scheduled industry as may be specified by a notification. But the Act did not prescribe in detail how the cess imposed is to be calculated and assessment order shall be made. There is also no provision in the Act relating to machinery for collection of cess. The paragraph (3) of

Jute Manufactures Cess Rules has purported to adopt the procedural provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder for the purpose of making assessment of jute cess and collection. Therefore, the expression "the levy and collection of the cess" obviously refers to the assessment and realization. As already stated, the imposition of cess is made by a notification u/s 9(1) of Act 65 of 1951. The expression ''levy'' in paragraph (3) of the Jute Manufactures Cess Rules does not mean ''imposition''.

25. In the above view, we hold that in the absence of any substantive provision for exemption of cess u/s 9(1), the appellants cannot claim that they are entitled to exemption from payment of cess upon the goods used for captive production and which have been specified in the notification u/s 9(1) of the Act 65 of 1951.

26. The appellants have further argued that the imposition of cess according to weight of jute, twine and yarn is discriminatory because coarser varieties of jute yarn and twine have greater weight but fetch lesser value. A uniform rate of cess on yarn and twine irrespective of their quality and price would result in imposing greater burden on interior qualities of twine and yarn. According to the appellants, this involves discrimination because unequals have been equally or similarly treated. In this connection, the learned Advocates rightly submitted that, an immunity under Article 31B of the Constitution is not a derivative one. Therefore, although the Act 65 of 1951, by reason of its inclusion in the Ninth Schedule of the Constitution, enjoys immunity under Article 31B, the notifications and Rules made u/s 9(1) cannot claim similar validation under Article 31B. This submission about the scope of Article 31B of the learned Advocates for the appellants is amply supported by the observations of the Supreme Court in Prag Ice and Oil Mills and Another Vs. Union of India (UOI), . In fact, Mr. Sen, learned Advocate appearing on behalf of the respondents, has not disputed the above submission of the appellants that an Act included in the Ninth Schedule may be valid but any order or rule made under the said Act may be open to challenge on the ground that such orders or rules are inconsistent with or violative of any of the rights contained in Part III of the Constitution.

27. Therefore, we proceed to examine the merits of the submission made on behalf of the appellants that uniform rate of cess according to the weight of the specified jute goods is. violative of Article 14 of the Constitution. In considering the vires of the impugned notification u/s 9(1) of the Act, it would be legitimate to take into consideration the fact that an imposition of cess is for a specified i.e. limited period. Secondly, the cess imposed u/s 9(1) may be utilised by the Development Council constituted u/s 6(1) for the purposes specified in Sub-section (4) of Section 9 of the Act 65 of 1951. The object of the said cess inter alia is to promote research, improvements in design and quality, provisions for training etc. Further, Section 9(1) by delegating the power to the Central Government to impose cess on goods manufactured in any scheduled industry which may be specified has introduced an clement of flexibility and adjustability. Therefore, in case the burden of a cess

imposed u/s 9(1) causes hardship or it is not commensurate with the value of any particular specified goods, the Central Government is always in a position to make modifications by a fresh notification u/s 9(1).

28. Dr. Pal in support of his submission on the point of discrimination had relied upon the decisions of the Supreme Court in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, ; Khandige Sham Bhat v. Agricultural Income Tax Officer AIR 1963 S.C. 591; New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, and The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., . These decisions recognized that the power of the Legislature to levy faxes cannot be used arbitrarily and in a manner inconsistent with the fundamental rights guaranteed to the people under the Constitution. No tax may be levied or collected under our constitutional set-up except by authority of law and the law must not only be within the legislative competence of the State, but it must also not be inconsistent with any provision of the Constitution. The validity of a taxing statute is open to question on the ground that it infringes fundamental rights. Therefore, where objects, persons, or transactions essentially dissimilar are treated by the imposition of an uniform tax, discrimination may result, for, refusal to make a rational classification may itself in some cases operate as denial of equality. [Vide State of Kerala v. Haji K. Kutti and Ors. (supra)].

29. The Supreme Court in their later decision in Dantuluri Ram Raju and Others Vs. State of Andhra Pradesh and Another, , had considered most of the above decisions which were relied upon by the learned Advocates for the appellants. The Supreme Court in. D. Ramaraju v. State of Andhra Pradesh (supra), considered the validity of the Andhra Pradesh (Krishna and Godavari Delta Area) Drainage Cess Act, 1968. The object of the said Act was to raise funds for implementation of schemes to secure protection of the lands in the deltaic area from ravages of the floods. As the Act was designed to benefit the land in the divisions of the deltaic area, the levy of cess at uniform rate for each acre of the land in a division cannot be considered to offend the principle of equality. According to the Supreme Court, the floods strike equally all lands in the area and make no discrimination so far as the quality and productive capacity of those lands are concerned. In the circumstances, it appears to be just and reasonable that each acre in a division should bear equal burden of the amount which is sought to be raised to fight the danger of floods and provide for an efficient system of drainage. Further, as the cost of drainage scheme varies in the different division, the rate of cess has been fixed at different rates for the divisions keeping each division. The differential in the cost of drainage schemes for the four divisions has been properly reflected in the varying rates of cess for each division. The Supreme Court further held that the Act contains sufficient guidelines for the fixation of the rate of cess and there is also enough material on record to justify a uniform rate of cess for each acre of land in a division of the deltaic area. The imposition of tax on land for raising general revenue is substantially different from

the levy of cess for implementation of a drainage scheme for the benefit of lands in an area and the principles applicable in one cess would not necessarily hold good in the others.

30. In our view, the principles laid down in D. Ramaraju''s case (supra), should be applied for testing the validity of the jute cess imposed u/s 9(1) of the Act 65 of 1951. The cess u/s 9(1) of the Act 65 of 1951 is to be utilised for the development purposes u/s 9(4) of the Act. The proceeds are to be utilised by the Development Council for any scheduled industry or group of scheduled industries. Therefore, the proceeds of cess are to be used not for promotion of any particular goods but for the scheduled industry as a whole. A scheduled industry as a whole is likely to be benefited by power utilization of the proceeds of cess in the manner laid down in Sub-section (4) of Section 9 of the Act 65 of 1951. Further, imposition of cess according to weight basis is an established principle of taxation. The Central Excises and Salt Act has also imposed cess on jute goods specified in Items 18D and 22A of the First Schedule of the Central Excises and Salt Act, 1944. Therefore, imposition of cess according to weight basis cannot be held to be per se arbitrary and discriminatory. It would not be also correct to hold that there is no intelligible basis for imposing cess u/s 9(1) upon all jute goods according to their weight. When a tax or cess may impose higher burden on any particular goods, the same may cause hardship. But, every cause of hardship in the matter of liability to pay tax or cess does not invariably lead to discrimination. It might be a case for making representation for mitigating the alleged hardship caused by a notification imposing cess on any particular specified goods. But when the Act 65 of 1951 contains enough guidelines for imposition of a temporary levy for development purposes, such levy cannot be pronounced as violative of Article 14 of the Constitution.

31. The learned Judge in his judgment under appeal made it clear that all other points taken in the petitions shall be kept open and the petitioners shall be at liberty to urge these points before the appropriate authorities. Therefore, the learned Advocates for the parties did not make further submission before us with regard to the other points taken in the writ petition. We also keep open the said points with liberty to both parties to take their respective stands in respect of these points in other appropriate proceedings.

32. For the foregoing reasons, all the submissions made on behalf of the appellants fail. We, accordingly dismiss these appeals without any order as to costs.

33. After we delivered the judgment today, Dr. Pal, appearing on the behalf of the appellants in F.M.A. 106-115 of 1979 and Mr. Dhar for the appellants in F.M.A. 910 of 1978, have submitted that Certificates under Article 133 of the Constitution be granted for preferring appeals to the Supreme Court against our judgment. We have given our anxious consideration to the matter. There is some force in the submission of Dr. Pal that the appeals raise substantial question of law of some importance. But for the reasons given by us in our judgment, we are unable to hold

that the points involved need be decided by the Supreme Court. In this connection, our attention has been drawn to the observations made in paragraph 2 of the judgment of the Supreme Court in The State Bank of India Vs. Shri N. Sundara Money, . The Supreme Court had observed inter alia :-

"The certificate issued by the High Court under Article 133(1) is bad on its face, according to Counsel for the respondent and the appeal consequently incompetent. We are inclined to agree that the grant of a constitutional passport to the Supreme Court by the High Court is not a matter of easy insouciance but anxious advertence to the dual vital requirements built into Article 133(1) by specific amendment. Failure here stultifies the scheme of the Article and floods this Court with cases of lesser magnitude with illegitimate entry. A substantial question of law of general importance is a nine qua non to certify fitness for hearing by the apex Court. Nay, more; the question, however, important and substantial, must be of such pervasive import and deep significance (hat in the High Court''s judgment it imperatively needs to be settled at the national level by the highest Bench. The crux of the matter has been correctly set out in a decision, The Union of India and Others Vs. Hafiz Mohd. Said, Delhi and Others, of the Delhi High Court in words which find our approval :

"A certificate can be granted only if the case involves a question of law :

(i) which is not only substantial but is also of general importance; and

(ii) the said question, in our opinion, needs to be decided by the Supreme Court.

It has to be noted that all the above requirements should be satisfied before a certificate can be granted. It means that it is not sufficient if the case involves a substantial question of law of general importance but in addition to it the High Court should be of the opinion that such question needs to be decided by the Supreme Court. Further, the word ''need'' suggests that there has to be a necessity for a decision by the Supreme Court on the question, and such a necessity can be said to exist when, for instance, two views are possible regarding the question and High Court takes one of the said views. Such a necessity can also be said to exist when a different view has been expressed by another High Court".

34. The above observations are binding upon us. Therefore, we reject the prayer in all the appeals for certificate under Article 133 of the Constitution.

35. Let operation of our judgment, delivered today, be stayed for ten weeks from date, as prayed for.

36. Let certified copy of our judgment be granted expeditiously.