

**(2002) 05 DEL CK 0185**

**In the Delhi High Court**

**Case No :** CWP No"s. 6884 of 1999 and 871, 890, 891, 893, 896, 898, 900, 902, 903, 907, 908, 909, 910 and 914 of 2002

Akay Cones Private Ltd. and Another

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

**Date of Decision :** 31-05-2002

**Acts Referred:**

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3(1), 3A(1)  
Central Sales Tax Act, 1956 — Section 15  
Constitution of India, 1950 — Article 14, 19(1)(G), 272, 286(3), 304  
Customs Tariff Act, 1975 — Section 12, 3, 3(1), 3A, 3A(5)  
Delhi Sales Tax Act, 1975 — Section 4(1)

**Citation :** (2003) 102 DLT 648 : (2003) 89 ECC 778 : (2003) 154 ELT 22

**Hon'ble Judges :** Vikramajit Sen, J; Dalveer Bhandari, J

**Bench :** Division Bench

**Advocate :** P.V. Kapur, Vibhu Bakru, Anuradha Dutt and Gautam Narain, for the Appellant; H.C. Bhatia, H.L. Taneja for respondents 1 and 3 and Jayant Bhushan, for respondent 2, for the Respondent

## Judgement

Dalveer Bhandari, J.—Several petitioners have approached this Court for quashing the Notification dated 31.3.1999 issued by respondent No. 1, Lt. Governor of Delhi imposing levy of sales tax on imported fabrics with effect from 1.4.1999.

2. The petitioners have in the alternative prayed that a direction be issued declaring that the levy of additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act and/or any amount equivalent relatable to the said Act is ultra virus and unconstitutional.

3. The petitioners are importers or in the business of importing fabrics and they are aggrieved by the imposition of sales tax at the rate of 4% on the imported fabrics u/s 4(1)(d) of the Delhi Sales Tax Act, 1975.

4. It is alleged in the petition that the entire scheme of taxation of imported into

India at par with the goods manufactured in India in so far as the taxes levied on goods manufactured in India.

5. The petitioners have drawn our attention to the statement of objects and reasons of the Additional Duties of Excise (Goods of Special Importance) Act 1957. The relevant portion of the said subjects and reasons is as under:-

"The object of this legislation is to impose additional duties of excise in replacement of sales tax levied by the Union and the States on sugar, tobacco and mill made textiles and to distribute the net proceeds of these taxes, except the proceeds attributable to Union Territories, to the States. The distribution of the proceeds of the additional duties broadly followed the pattern recommended by the Second Finance Commission. Provision has been made that States which levy a tax on sale or purchase of these commodities after 1st April, 1958 do not participate in the net proceeds. Provision is made in this Act for including these goods in category of goods declared to be of special importance in inter-state trade or commerce so that, following the imposition of uniform duties of excise on them, the rates of sales tax, if levied by the State are subject from 1st April, 1958 to the restrictions in Section 15 of the Central Sales Tax Act 1956."

6. The petitioners have also drawn our attention to the speech of the then Finance Minister, who introduced the bill in the Parliament to demonstrate that the additional duty of excise has been levied in replacement of sales tax levied by the Union and the States.

7. It is urged that the additional duty of excise is in replacement of sales tax and thus no sales tax is payable on the goods imported by the petitioners. It is also urged that the Additional Duties of Excise (Goods of Special Importance) Act 1957 has been enacted by the Parliament under the provisions of Article 286(3) of the Constitution of India. Article 286(3) expressly provides that any law of State imposing tax on sale and purchase of goods of special importance would be subject to restrictions and conditions in regard to the system of levy, rates and other incidents of tax. IN exercise of such powers the Parliament had already levied additional duty of excise in replacement of sales tax. Therefore, no sales tax can be levied on the same goods.

8. Mr. Kapur also submitted that the Statement of Objects and Reasons reflect the legislative intention. The Statement of Objects and Reasons intended to impose additional duties of excise in replacement of sales tax and this legislative intention of the legislature must be carried out by the Centre and the States while enacting subsequent legislations and issuing notifications. Mr. Kapur, the learned counsel for the petitioners, laid particular emphasis on Section 3A of the Custom Tariff Act, 1975. Section 3A reads as under:

"SECTION 3A. Special additional duty. - (1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to

the maximum sales tax, local tax or any other charges for the time being livable on a like article on its sale or purchase in India

Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article imported into India."

9. The petitioners also contended that the levy of sales tax on imported fabrics is most unreasonable and discriminatory. Imported fabrics are sold by the dealers along with the fabrics manufactured in India and there is no distinction between the said goods. The levy of sales tax only on imported fabrics is discriminatory under Article 14 of the Constitution. Therefore, levy of sales tax on imported fabrics is against the scheme of taxation of imported goods. Hence, it is arbitrary, illegal and amounts to unreasonable restriction on the importance of fabric.

10. Mr. P.V. Kapur, the learned Senior Counsel, who appeared for the petitioners, submitted that the petitioners pay customs duty u/s 12 of the Customs Act, countervailing duty and excise duty and now they have been called upon to pay the sales tax. He submitted that the sales tax is not imposed on their counterpart - the Indian manufacturers, who are manufacturing the fabrics indigenously. He submitted that the imposition of additional duties of excise on the petitioners is clearly discriminatory and violative of Article 14 of the Constitution of India. He also submitted that because of the imposition of sales tax on the petitioners, they cannot face the competition with indigenous manufacturers. Therefore, by imposition of sales tax on them, they are placed in a very unfair and disadvantageous position.

11. Mr. Kapur placed reliance on 1962 (13) STC 529 : AIR 1963 SC 409 titled East India Tobacco Company v. The State of Andhra Pradesh and Anr. In this case the court observed that all laws must satisfy the requirements of Article 14. Taxation laws are no exception to it. But the court in this case also observed that in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14 of the Constitution of India.

12. Mr. Kapur also submitted that in the era of liberalization, it is not proper to give undue benefit or boost to the domestic industries by exempting them from payment of sales tax, whereas the same has been imposed on the imported fabrics. Mr. Kapur had contended that imposition of the sales tax on imported fabrics is violative of the petitioners constitutional rights under Article 19(1)(G) and is consequently liable to be quashed. He further submitted that according to the scheme of taxation when the sales tax has been imposed on imported fabrics then no additional excise duty should have been levied.

13. Mr. Kapur, learned counsel for the petitioners, submitted that the scheme of levy of duties makes it abundantly clear that duties equivalent to excise are paid under the Customs Tariff Act in addition to the customs duty. These duties equivalent to excise are levied only with a view to provide a level playing field between importers dealing in imported goods and domestic manufactures of the same goods. The duties u/s 3(1) of the Customs Tariff Act are levied only with the purpose of counter-balancing the duties livable on the similar goods manufactured in India. The same principle has also been reiterated by the Hon"ble Supreme Court in the case of Hyderabad Industries Ltd. and Another Vs. Union of India and Others, .

It is submitted by Mr. Kapur that in view of this declared policy the petitioners cannot be put in a position which is worse than the dealers dealing in goods manufactured in India, as the same would amount to hostile discrimination and would be ex-facie contrary to the policy under which various taxes have been levied. Thus, the levy of sales tax on imported fabrics is arbitrary and unreasonable.

15. Mr. Kapur further submitted that the words which have been incorporated in this Section are that the duty shall be levied at a rate to be specified by the Central Government by notification in the Official Gazette having regard to the maximum sales tax, local tax or any other charges for the time being livable on the like article on its sale or purchase in India. Meaning thereby that the similar duty should be levied on goods or articles manufactured or produced in India by way of imposition of excise duty. In other words, the burden of taxation on indigenously manufactured/produced goods and imported goods should be the same. If that is the intention of the legislature then there seems to be no justification of imposition of both additional duty of custom and the sales tax on the imported fabrics.

16. Mr. Kapur further contended that the imposition of sales tax is illegal and it is not in consonance with the legislative spirit. After arguing for some time Mr. Kapur was confronted with the decision of the Supreme Court in Ujagar Prints Vs. Union of India (UOI), and number of subsequent judgments. At that juncture the petitioners conceded that they cannot legitimately question the powers of the State to impose sales tax but in view of the legislative intention either the additional duty or the sales tax ought have been charged from the petitioners. They cannot be compelled to pay both the additional excise duty and the sales tax. He submitted that if the State Government is bent upon charging sales tax then in that event the Central Government ought not to have charged additional excise duty.

17. Mr. Kapur also submitted that it is the declared policy of the Indian Government to integrate our economy with the rest of the world. There is also a commitment to reduce the tariff barriers on the imported goods. Viewed in this light, subjecting the imported fabrics to sales tax would in fact amounts to putting up another tariff barrier which is contrary to the commitment being given

by the Indian Government to integrate the domestic economy with the world economy.

18. Additional Duties on Excise Act, 1957 is imposed u/s 3 of the said Act. The charging Section 3 reads as under:

" 3. Levy and collection of additional duties. - (1) There shall be levied and collected in respect of the goods described in column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factors, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto, duties or excise at the rate or rates specified in column (4) of the said Schedule."

19. Mr. Kapur also submitted that according to Sub-clause (5) of Section 3A of the Act if additional duty is charged then nothing else can be imposed on the articles which are chargeable to additional duties levied under Sub-section (1) of Section 3A of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Sub-clause (5) of Section 3A reads as under:

"(5) Nothing contained in this section shall apply to any article which is chargeable to additional duties levied under Sub-section (1) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

20. On behalf of the respondents, Mr. H.C. Bhatia appeared for respondents Nos. 1 & 3 and Mr. Jayant Bhushan appeared for respondents No. 2. The learned counsel for the respondents submitted that the statement of the petitioners that additional duties of excise are being charged on the imported fabrics is false to the knowledge of the petitioners because duties of excise are livable on goods produced or manufactured in India and no duty of excise is levied or livable on goods imported into India.

21. Mr. Jayant Bhushan submitted that what the petitioners, in fact, pay is the additional duties of custom u/s 3 of the Customs Tariff Act, 1975. Merely because u/s 3 of the Customs Tariff Act the additional duty is livable at the rates equivalent to duty of excise livable on similar article produced or manufactured in India does not and cannot convert the additional duty of custom into duty of excise. hence, these writ petitions are wholly misconceived and are liable to be dismissed. He also submitted that the legal position is now well settled that the additional duties of excise levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 is of the same nature as the duty of excise and is referable to Entry 84 of List I of the Seventh Schedule to the Constitution of India. The judgments of Hon"ble Supreme Court and the High Courts have clearly settled the position of law that the levy of additional excise duty does not debar the States from levying sales tax on the same goods. The only effect of levy of sales tax on goods which is subject to the additional excise duty would be that the State which levies sales tax would be deprived of its share in the proceeds of the additional duties of excise for the financial year. Even this is subject to the power of the Central Government to direct otherwise. But the

Parliament has not and could not prohibit any State from making any law from levying any tax which a State can levy by virtue of entries in List II of the Seventh Schedule to the Constitution of India.

22. In reply to the argument of the petitioners in view of the Statement of Objects and Reasons to urge that the additional duty of excise is in replacement of sales tax and thus no sales tax is payable on the goods imported by the petitioners, Mr. Bhushan submitted that the settled position of law is that the Statement of Objects and Reasons cannot be used to determine the true meaning and effect of the substantive provision of statute. They cannot be used except for the limited purpose of understanding the background, antecedents and state of affairs leading up to the legislation. Reliance has been placed on the judgment of the Supreme Court in *State of West Bengal Vs. Union of India*, .

23. Mr. Bhushan placed reliance on the judgment of the Supreme Court in AIR 1997 3127 (SC) wherein their Lordships of the Supreme Court held that it is not permissible for the Courts to interpret statute by examining the Statement of Objects and Reasons of the statute in question.

24. Mr. Bhushan also relied on another judgment of the Supreme Court in *The Central Bank of India Vs. Their Workmen*, . Their Lordships of the Supreme Court observed that the Statement of Objects and Reasons is not admissible, however, for construing the section far less can it control the actual words used. Reliance has also been placed on another judgment of the Supreme Court in *The Tata Engineering and Locomotive Company Ltd. Vs. Gram Panchayat, Pimpri Waghere*, wherein the Supreme Court did not accept the recital in the Statement of Objects and Reasons that the amendment was made for the reason that the Panchayats could not levy tax on buildings and held that the word "houses" as originally used was comprehensive enough to include all buildings, including factory buildings and that the amendment only made explicit what was implicit. In *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, the Supreme Court observed that the general rule of interpretation is that the language employed is primarily the determining factor to find out the intention of the legislature. The Court further observed that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, the Supreme Court observed that the Statement of Objects and Reasons helps in explaining what reasons induced the mover to introduce the bill in the House and what objects he sought to achieve. But those objects may or may not correspond to the objective which the majority of members had in view when they passed it into law. The bill may have undergone radical changes during its passage through the House or Houses and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form a part of the Bill and are not voted upon by members. The Court also held that the Statement of Objects and Reasons appended to the bill should be ruled

out as an aid to the construction of the statute. Mr. Bhushan submitted that the petitioners' submission that the additional duty of excise is in replacement of sales tax is devoid of any merit and is contrary to the taxation scheme of the Constitution.

25. In reply to the petitioners arguments that if the State Government is bent upon charging sales tax then in the event the Central Government ought not to have charged additional excise duty, MR. Bhushan submitted that the argument is totally devoid of any merit. He contended that the validity of imposition of sales tax was challenged unsuccessfully. Then on the same analogy how can the imposition of additional duty of excise be challenged. Under the scheme of the Constitution both Centre and State can impose taxes on the same item. On the principle laid down in the aforesaid case this argument deserves to be rejected being devoid of any merit.

26. Learned counsel for respondent Nos. 1 & 3, Mr. H.C. Bhatia, submitted that the additional duty and sales tax are two separate levies. Under the scheme of the Constitution, the excise duty is livable by virtue of powers vested in Union under Entry 84 of List I, whereas, the sales tax is imposed by the State Legislature under entry 54 of List II of Seventh Schedule of the Constitution of India. It is denied that where the State levies the sales tax on goods which is subject to the additional excise duty, the goods are liable to be exempted from additional excise duty.

27. Mr. Bhatia, learned counsel for the respondents placed reliance on Haroon M. Adam v. State of West Bengal and Ors. (2001) 121 STC 134. In this case the court dealt with constitutionally permissible classification. The Legislature in its wisdom has clearly made separate classification of India made sugar and sugar not manufactured or made in India which includes imported, foreign made, sugar. This is a constitutionally valid classification. That is the object of Entry 79 of the First Schedule and subsequently incorporated Entry 70A of the Fourth Schedule. The Legislature has to be given freedom to do such classification for the purpose of taxation.

28. Mr. Bhatia placed reliance on Md. Zackria v. State of Tamil Nadu and Ors. (1999) 115 STC 679 where there was a similar challenge to the levy of sales tax on imported synthetic fabrics of artificial fur. Their Lordships of the Supreme Court were of the opinion that no excise duty or additional duties of Central Excise can be collected on foreign fabrics imported into India. What can be collected on such imported goods is only customs duties. Though for the purpose of measurement or quantifying the amount of duties, Central Excise and additional duties of Central Excise are taken as yardstick, on that account, the petitioners by paying customs duties cannot claim that they have paid excise duty and additional duties of excise on the goods imported from foreign countries. Therefore, the claim of the petitioners that they have paid additional duties of excise on the imported goods and Therefore no sales tax is livable is untenable.

29. Mr. Bhatia submitted that this exactly is the issue for adjudication in the case, that the petitioners cannot be subjected to payment of additional duties of customs and the sales tax. The courts have clearly ruled that both the additional duties of customs and the sales tax can be charged. Mr. Bhatia contended that u/s 3 of the Customs Tariff Act, 1975 merely because additional duty of custom which is levied on import of goods is equivalent to the duties of excise leviable on similar products manufactured or produced in India, does not and cannot convert additional duty of custom into additional duty of excise. Reference to the duties of excise in Section 3 of the Customs Tariff Act is only for rate purposes. Levy of duty and the yardstick for the levy are two different things. Merely because the yardstick for levy of additional duty of custom is the equivalent of the duty of excise does not convert the additional duty of custom into duty of excise. He placed reliance on a judgment delivered by their Lordships of the Supreme Court in *Ujagar Prints v. Union of India* (supra) .

30. Mr. Bhatia placed reliance on the judgment of the Supreme Court in *State of Kerala Vs. Attesee (Agro Industrial Trading Corporation)*, wherein it was held that by levying sales tax on an item covered by the Schedule to the 1957 Act, the State will have to forego its share on distribution of proceeds of the additional duty levied. Whether it should impose sales tax on an item of declared goods limited by the restrictions in Section 15 of the Central Sales Tax Act, 1956 and at the risk of losing a share in the additional excise duty levied in respect of this very item is for the State to determine.

31. A Division Bench of this Court in *Parekh Prints Vs. Union of India*, arrived at the conclusion that the additional duties of excise under the Act fall within the four corners of Article 272 of the Constitution and the meaning of the enactment being plain and clear, Therefore, there is no room for applying the principles of interpretation or construction to conclude that in "pith and substance" the Act imposes a sales tax and is a colourable piece of legislation. The petitioners cannot be heard to say that though the additional duty is a duty of excise, though by a different name, it is yet a sales tax. The argument is a contradiction in itself. Duty of excise is imposed on the manufacture and sales tax is imposed on the sales. It is as simple as that. When the language of the statute is clear and unambiguous and is a valid piece of legislation under the Constitution, we do not have to refer to the Objects and Reasons of the enactment or to the deliberations which preceded the introduction of the Bill and the debates in the Parliament at the time of the passing of the enactment.

32. In *Nemichand Parasmal and Company Vs. The Deputy Commercial Tax Officer, Evening Bazaar Assessment Circle, Madras and Another*, the Madras High Court observed that the Additional Duties of Excise (Goods of Special Importance) Act, 1957, instead of taking away the powers of the State Legislature to impose sales tax on the items of goods covered by the Act, merely disables the State Government from getting its share of the central excise revenue realized under the provisions of the Act. Therefore, the provisions of the

Act do not affect the powers of the State of levy sales tax on the goods which are covered by the Act. Therefore, the amendments brought in by the State legislature to Item 9 of the Second Schedule and Item 5 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959, do not suffer from legislative incompetence.

33. The aforesaid judgment of the Madras High Court was approved by the Supreme Court in *State of Bihar v. Bihar Chamber of Commerce* : [1996]2SCR184 . Their Lordships of the Supreme Court provided answer that in case the state also levy sales tax on an item on which additional duty of excise has been imposed in that event all that happens is that the State will be deprived of the share in the proceeds of additional duties of excise for that financial year. Even this is subject to the power of the Central Government to direct otherwise, and Parliament could not, and did not, prohibit any State from making any law levying any tax which a State can levy by virtue of the entries in List II.

34. In another case *Khataisons Vs. Addl. Sales Tax Officer and Another*, the Kerala High Court observed that the Additional Duties of Excise (Goods of Special Importance) Act does not and cannot take away the State's legislative competence to enact a law under Entry No. 54 of List-II of the Seventh Schedule to the Constitution. At best it only disables the State from getting its share of Central Excise Revenue realized under the provisions of 1957 Act. Similar view has been taken in *Anantpur Textile Ltd. and Ors. v. State of West Bengal and Ors.* (1993) 91 STC 272.

35. In *Hillmark Tobacco Company Ltd. v. State of Kerala and Ors.* (1998) 108 STC 539 (Ker) there was challenge to the levy of luxury tax on cigarettes on the ground that such legislation by the State was not permissible as cigarettes were also livable to additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act. It was held that the Additional Duties of Excise (Goods of Special Importance) Act, 1957 is a legislation under Entry No. 84 of List I, while the levy of luxury tax is under Entry No. 62 of List-II. When the exercise of power of the Parliament and State Legislature is specifically under the relative legislative entries, the Court cannot assume such powers are misused or misapplied in order to increase the revenue. It is not the function of Court to restrain Legislatures from exercising their legitimate legislative powers on the specified subjects."

36. Mr. Bhatia also placed reliance on *East India Tobacco Company (Supra)*. In this case their Lordships of the Supreme Court observed that in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide latitude and discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, it would be vocative of Article 14.

37. In Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, their Lordships of the Supreme Court observed that it is well settled that in order to tax some thing it is not necessary to tax everything. So long as those within the tax net can be legitimately classified together indicating an intelligible differentia vis-a-vis those left out and the classification so made bears a rational nexus with the object sought to be achieved, the classification is clearly permissible and it does not violate Article 14 of the Constitution.

38. Their Lordships of the Supreme Court approved the statement of the law in Wills on "Constitutional Law", page 587, in which it is mentioned:

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objections, persons, methods and even rates for taxation if it does so reasonably..... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

39. Mr. Bhatia submitted that there is no merit in the challenge of levy of sales tax by the petitioners on the avail of Article 19(1)(g). The law has been crystalised on this issue by the judgments of the Apex Court. In Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, the Supreme Court held that a taxing statute is not, per se, a restriction on the freedom under Article 19(1)(g). The policy of a tax, in its effectuation, might, of course, bring in some hardship in a few individual cases. But that is inevitable, so long as law represents a process of abstraction from the generality of cases and reflects the highest common factor. Every cause, it is said, has its martyrs. Then again, the mere excessiveness of a tax or even the circumstances that its implication might tend towards the diminution of the earnings or profits of the persons of the incidence does not, per se, and without more, constitute violation of the rights under Article 19(1)(g).

40. So far as the alleged violation of Article 304 is concerned, Mr. Bhatia placed reliance on the judgment of the Karnataka High Court in Varalakshmi Silk House v. State of Karnataka (1999) 112 STC 93 (Kar.) in which it is mentioned that import in Article 304 means import from other States and not from foreign countries.

41. We have heard learned counsel for the parties at length. We have carefully examined the various decisions cited at the bar. The petitioners challenge to the levy of imposition of sales tax in addition to customs duty is no longer rest integra. The legal position has been crystalised by a large number of authoritative decisions that imposition of additional customs duty cannot take away the State's legislative competence to enact a law under.

Entry 54 of List II of Seventh Schedule of the Constitution. The only consequence which can follow would be that the concerned State may not get its share of the central excise revenue.

42. It is the settled position of law that the statement of objects and Reasons

cannot be used to determine the true meaning and effect of the substantive provision of law. The general rule of interpretation is that the language employed is primarily the determining factor to find out the intention of the legislature. In other words, when the language employed by the legislature is clear and unambiguous, then it is not necessary to take external aids for construction.

43. We find no merit in the submission that it is the declared policy of the Government of India to integrate our economy with the rest of the world and Therefore, sales tax cannot be imposed on imported fabric when the same has not been imposed on indigenously produced fabrics.

44. The controversy which is sought to be raised in these petitions is squarely covered by a judgment delivered by their Lordships of the Supreme Court in the case of *Md. Zackria* (supra). In this case exactly similar issue fell for consideration of their Lordships of the Supreme Court and they have categorically held that the claim of the petitioners that they have paid additional duties of customs on imported goods and Therefore, no sales tax is payable is untenable.

45. the levy of sales tax on imported fabrics cannot be said to be discriminatory or violative of Article 14 or article 19(1)(g) or Article 304 of the Constitution. The State has wide tax. The statute or the notification cannot be challenged on the ground that it taxes some objects and not the others. It is only when within the range of its selection the law operates unequally then the question of discrimination may arise. The classification between the imported fabrics and indigenously manufactured fabrics is a constitutionally valid classification and clearly conforms to the mandate of Article 14 of the Constitution.

46. The intent behind Section 3 of the Customs Tariff Act, 1975, should not be overlooked. Its obvious object is to ensure that the Union does not lose the excise duty which would have been collected from similar goods manufactured in India. These considerations would not be achieved on imported goods, but for the fiction created by Section 3 which enables the collection of duties ordinarily collectable only from goods manufactured in India. No doubt, this could also be achieved by including this component into the customs duties chargeable, but this is exactly what Section 3 does, albeit by a reference to the excise duty payable on indigenously produced goods. This is what has been stated in *Thermax Private Limited Vs. The Collector of Customs (Bombay)*, New Customs House, , when the Hon'ble Supreme Court observed that Section 3(1) "specifically mandates that the CVD will be equal to the excise duty for the time being payable on a like article if produced or manufactured in India. In other words, we have to forget that the goods are imported; imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event". This passage was extracted by the Apex Court in *Hyderabad Industries Ltd. and Another Vs. Union of India and Others*, . Hon'ble Mr. Justice B.N. Kirpal (as his Lordship then was) observed that "Apart from the plain language of the Customs Tariff Act, 1975

even the notes to the clauses show the legislative intent of providing for a charging section in the Tariff Act, 1975 for enabling the levy of additional duty to be equal to the amount of excise duty livable on a like article if produced or manufactured in India was with a view to safeguard the interests of the manufacturers in India. Even though the impost u/s 3 is not called a countervailing duty there can be little doubt that this levy u/s 3 is with a view to levy additional duty on an imported article so as to counterbalance the excise duty livable on the like article indigenously made. In other words Section 3 of the Customs Tariff Act has been enacted to provide for a level playing field to the present or future manufacturers of the like articles in India".

47. There is no justification for Mr. Kapur to rely on the last sentence of the extracted passage in order to buttress his argument that a "level playing field" should be provided to the imported goods. The pronouncements of the Hon"ble Supreme Court are plainly to the contrary . There is yet another dimension and that is that the Government should also have a "level playing filed" inasmuch as it should not lose the revenues which it would have earned by way of excise duties solely because the similar goods were imported into the country. The market requirements may be saturated by imported goods, and the excise collection would then be minimal. Customs duties as well as excise duties are central collections whereas sales tax are State collections. There is no connection between these taxations. If the States are empowered to collect sales tax as has been held by the Hon"ble Supreme Court in Ujagar Prints case (supra) and Attests case (supra), regardless of the levy of Additional Duties of Excise (Goods of Special Importance) Act, for the same reasons the Centre should equally not lost its revenues merely because imported goods are additionally liable to sales tax. If this argument is carried to its conclusion, it would next be contended that since indigenously manufactured goods are not subject to payment of customs duties, because of the illusory "level playing field", customs duty should also not be charged.

48. In the scheme of taxation in the Constitution different entries have been incorporated and the duties levied in Entry 84 of List I and Seventh Schedule will not in any manner interfere with the imposition of sales tax levied in Entry 54 of the List II of Seventh Schedule.

49. In view of our aforesaid conclusions articulated in preceding paragraphs based on the provisions of the Constitution and the judgments of the Apex Court, these petitions being devoid of nay merit are accordingly dismissed with costs. All pending applications are also disposed of.