

(1956) 09 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 62 of 1955

Aluminium Corporation of India Ltd.

APPELLANT

Vs

Coal Board

RESPONDENT

Date of Decision : 12-09-1956

Acts Referred:

Coal Mines (Conservation, Safety and Development) Act, 1952 — Section 8(1)

Citation : AIR 1957 Cal 326 : 61 CWN 55

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : H.N. Sanyal, for the Appellant; G.P. Kar, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows: The petitioner is a company incorporated under the Indian Companies Act. The petitioner is the owner inter alia of a factory for the production of aluminium at Jayakanagar in the district of Burdwan. The said factory has a power house used for generating electricity. Adjacent to the factory the petitioner has a colliery known as the Jayakanagar Colliery. The distance between the pithead of the colliery and the power house of the factory, is about one furlong. The colliery has; an average annual output of seventy-five to eighty thousand tons of coal. It is stated that about 50,000 tons are consumed in the said power house for generation of electricity used in the factory for production of aluminium. The coal comes up from the shafts to the pithead and is taken by means of hand trolleys to the power house. Thus, the major portion of the output is consumed in the factory, the balance being sold to railways and others. To take an example, in the year 1953-54 the net raisings were 70,865 tons of which the factory consumed 54,169 tons and the balance was sold to the railways and others.

2. The Coal Mines (Conservation and Safety) Act 1952 (hereinafter referred to as the Act) being Act No. XII of 1952, is a Central Act the object of which is to provide for the conservation of. coal and to make provision for safety in coal mines. The Act extends to the whole of India excepting the State of Jammu and

Kashmir. Section 8 of the Act empowers the Central Government to impose excise duties. The relevant part of Section 8 is quoted below :

"8. Imposition of excise duties.

(1) With effect from such date as the Central Government may, by notification in the official Gazette, appoint, there shall be levied and collected-

(a) on all coal raised and despatched, and on all coke manufactured and despatched, from the collieries in India, such duty of excise not exceeding one rupee per ton as may be fixed from time to time by the Central Government by notification in the official Gazette, and different rates of duty may be levied on different grades or description of coal or coke.....".

3. Section 10 lays down that the duties of excise levied u/s 8 shall be collected by such agencies and in such manner as may be prescribed. Section 17 grants power to the Central Government to make rules by notification in the official Gazette, for carrying out the purposes of the Act. Rules may be made for the levy, collection and payment of the duties of excise. In exercise of the powers conferred by Section 17, rules have been prescribed by the Central Government, known as the Coal Mines (Conservation and Safety) Rules, published under Notification No. SRO 3146 dated 25th September, 1954. Chapter y of the said Rules, deals" with the levy and collection of excise duties. Rule 24 deals with the method of recovery of the duties of excise imposed u/s 8 of the Act on coal and coke. Chapter VII of the said Rules lays down the procedure for the grant of assistance. Under the Act, a Board may be appointed and by these Rules the Board may grant assistance from the funds raised by the imposition of the excise and custom duties, to any owner, agent or Manager of coal mine, for the purposes stated therein. It has, however, a discretion in granting such assistance, payment of which is not compulsory. On or about the 4th of November, 1954 the petitioner received a letter from the Deputy Secretary of the Coal Board, the office of which is situate at 1, Council House Street, Calcutta, a copy whereof is annexed to the petition and marked with the letter "B". The letter inter alia stated as follows :

"I am directed to state that in accordance with the Coal Mines (Conservation and Safety) Rules framed under the Coal Mines (Conservation and Safety) Act 1952 the duty of excise is also to be collected on coal or coke despatched by means other than rail, namely, road, river and air etc. with effect from 26th September 1954, the date of the issue of the Rules in the Gazette of India. An extract from these Rules is enclosed herewith for your information."

4. The rate of duty is thereafter set out and a request is made that the excise duty may be collected in the same manner as a coal mines welfare cess. A form of monthly return was enclosed as prescribed. On the 19th January, 1955 a further letter was received by the petitioner copy whereof is annexed to the petition and marked with the letter "C", asking the petitioner to take immediate steps to deposit in the Treasury all collections of excise duty.

5. This Rule was issued on the 7th day of April 1955 upon the respondents to show cause why an order in the nature of a writ of Mandamus should not be made directing the respondent Board to forbear from collecting and/or demanding the purported excise duty under the said Act in respect of the coal produced at Jayakanagar Colliery, including the coal produced in the said Colliery and consumed at the factory and why such further or other order or orders should not be made or directions given as to the Court seems fit and proper.

6. Mr. Sen appearing on behalf of the petitioner has taken the following points :

1. He says that the coal that is raised in the colliery of the petitioner and consumed by the factory, cannot be the subject-matter of the imposition of an excise duty, which can only be in the form of an indirect taxation, and not in the form of a direct tax upon goods which are consumed.

2. Assuming however, that it is a proper excise duty, it does not come within the ambit of Rule 8 because it cannot be said to be coal "raised and despatched, which can only mean despatched to outsiders and away from the colliery

3. Under Schedule VII, List I, Entry 84 of the Constitution, Parliament can levy duty of excise on tobacco and other goods "manufactured or produced in India". In raising coal it cannot be said that coal has either been manufactured or produced. Therefore, there is no power to pass legislation imposing excise duty on such an article.

4. If however it is said to fall within item 54 of the said Schedule, List I, which grants power of "regulation of mines.." to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest,, then it cannot include the imposition of a tax. The item does not confer any power to levy taxation. It will appear from the facts stated above that a portion of the coal which is raised from the petitioner's colliery is sold to outsiders including the Railways. With regard to this sale it is conceded that sale-tax is payable. Mr. Sen states that his application is directed towards the remaining portion which is consumed by the petitioner. The main point that has to be determined is as to the nature of the tax that is attempted to be levied upon the Coal intended for the petitioner's own consumption. Before we actually take up that question it will be necessary to clear the atmosphere, by deciding a few preliminary Questions.

7. The first question that has been raised is that under the facts and circumstances of this case, coal cannot be said to have been "raised and dispatched"". It is argued that "dispatch" means despatch to outsiders, and away from the colliery. If the coal remained in the colliery and was consumed therein, it might have been said that there was no question of "despatching" the same anywhere; But as soon as it leaves the colliery, then I do not see how it matters whether the destination is the adjacent factory or a remote place. I see no warrant for reading into the section the words "to outsiders" in connection with the word "dispatch.

8. It is next said that coal can neither be said to be "manufactured" nor "produced" in a colliery. It is true that "coal" is not said to be manufactured in colliery as "coke" is. But I do not see why it is not "produced". The word "produced" is to be taken in the widest sense. Coal is not, of course, produced in a colliery in the sense that fruit is produced in a tree or a book is produced by an author. All the same, we do speak of "production of coal". Any good book on Geography will provide us with comparative statistics of the production of coal in different parts of the world. One speaks of "production of coal", because to acquire coal which can be used for any human purpose; it is necessary to employ human labour and ingenuity, Coal exists in the bowels of the earth, but to procure it requires a great deal of labour, organisation and skill. A modern colliery uses various complicated machineries. Coal is not only to be dug out of the bowels of the earth, but has to be conditioned in many ways. It has to be broken, graded, sifted, moved and so forth. In my opinion it is entirely correct to say that coal is an article produced in India.

9. These two objections being out of the way, we are now in a position to consider the constitutional position with regard to the imposition of the tax. The Act in question is a Central Act and the two items in the 7th Schedule List I, which can be said to be the source of the power to impose such a tax, are items 54 and 84. These two items are set out below :

"54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

84. Duties of excise on tobacco and other goods manufactured or produced in India except--

(a) Alcoholic liquors for human consumption;

(b) Opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry".

10. The word "goods" as used in the Constitution has been defined in Article 366(12) and includes "all materials, commodities, and articles".

11. Let us first consider item 54. It will be observed that the two headings under which power has been conferred are, firstly, regulation of mines and secondly mineral development. But before such power can be exercised, there is a precondition viz., Parliament must declare that it was expedient to do so in the public interest. (sic) the Act takes recourse to this power is apparent from the fact that Section 2 declares that it was expedient in the public interest, that the Central Government should take under its control regulation of coal mines to the extent provided. The preamble to the Act shows that the object was to provide for the conservation of coal and to make further provisions for safety in coal mines. The Act is a short one and does not by itself make any provision directly

for the conservation of coal or for safety in coal mines. It enables the Central Government to take action for achieving the objects of the Act e.g., it contemplates creation of coal boards which are to take necessary measures for furtherance of the objects of the Act. What exactly is to be done for the purposes of maintenance of safety in coal mines or for conservation of coal is not mentioned in the Act, but power has been given to the Central Government to exercise such powers and take or cause to be taken all such measures, as it may deem necessary or proper, or as may be prescribed. Under the Act power has been given to the Central Government to levy and collect both excise and customs duty on the coal raised and despatched, and on coke manufactured and despatched, from the collieries. u/s 11, the Central Government may pay to the Board a sum not exceeding the net proceeds of the duties of excise collected under the Act. The Board is to credit the same to a fund called "Coal Mine Safety and Conservation Fund." This Fund is to be applied by the Board to meet the expenses of administration and for furtherance of the objects of the Act. u/s 17, the Central Government has been power to make rules to carry out the purposes of the Act. It Is but obvious that the rules in this case are of greater importance than the Act, containing as it does, all the directions in accordance with which the objects of the Act have to be fulfilled. Such rules have been made and came into operation on or about September 25, 1954. Chapter VII of the rules lays down the procedure for granting assistance. Under this Chapter, power has been given to the Board to grant assistance from the Fund to any owner, agent or manager of coal Mines for the purposes stated therein.

12. Mr. Sen has pointed out that u/s 11 of the Act the Central Government "may" make payment of the excise duties to the Coal Board, and under Chapter VII the Coal Board in its turn "may" grant money for assistance. Such payment is not compulsory. Mr. Sen concedes that in so far as provisions have been made for ensuring safety in coal mines or conservation of coal, the Central Government is well within the scope and the authority conferred upon it by the Constitution, to regulate mines and mineral development in any part of the country. He argues, however, that the levy of a tax is not included within the word "regulation". He says that the word "regulation" must be given a restricted meaning because if a wider meaning be given to it there will be conflict between the powers of the Centre and the power of the States. He relies for this proposition upon the Privy Council decision in *A. G. for the Dominion of Canada Etc. v. A. G. for Alberta* (1916) 1 A. C. 588 (A). By Section 4 of the Insurance Act of 1910 enacted by the Parliament of Canada, it was provided that in Canada no one can carry on the business of insurance, without obtaining a licence from the Minister. u/s 92 Head (13) of the British North America Act, 1867 power was conferred on the Provinces to make laws as to "Civil rights in the Provinces". By Section 91 Head (2) of the said Act, power was given to the Parliament to legislate as to regulation of trade and commerce. It was held that the said provisions of the Insurance Act, 1910 was invalid as it encroached upon the powers granted on the Provinces, and cannot be said to be covered by the power contained in Section

91 Head (2). Viscount Dunedin stated as follows :

"It must be taken to be now settled that the general authority to make laws for the peace, order and good Government of Canada, which the initial part of Section 91 of the British North America Act confers does not, unless the subject-matter of legislation falls within some one of the enumerated heads, enable the Dominion Parliament to trench on the subject-matters entrusted to the Provincial Legislatures by the enumeration in Section 92.....Their Lordships think that as the result of this decision it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend, to the Regulation by a licensing system of a particular trade in which the Canadians system of a particular trade in which the Canadians would otherwise be free to engage in the Provinces. Section 4 of the statute in consideration cannot in their opinion be justified under this Head."

13. Relying on this decision, Mr. Sen argues that the Central Government cannot, under the guise of regulating the coal mines, take upon itself the power of levying a tax. He points out that Schedule VII to the Constitution contains specific headings conferring power for the imposition of tax (e.g. List I--Items 82, 83, 84, 85, 86, 87, 88, 89, 90, 92. List II--Items 45, 46, 47, 48, 49, 50, 51,. 52, 53, 54, 55, 56, 57, 58, 60, 61 and 62). Under Article 265 of the Constitution no tax can be imposed save under authority of Jaw. In my opinion, the principle laid down in the Canadian case cited above can be distinguished. It lays down that a general provision for regulation cannot take away a specific power granted to the Provinces. In this case, however, there is no such conflict. I have already set out the provision of Section 54 in List I. A corresponding power is given to the States under Item 23 of List II which runs as follows :

"Regulation of mines and mineral development subject to the provisions of List I with respect to the regulation and development under the control of the Union."

14. The Constitution itself contemplates that the power may be taken out of the hands of the States in case Parliament declares by law that it was expedient to do so in the public interest. Where there is such a declaration, there is no conflict. The only point therefore that is really to be considered is as to whether the power to regulate mines and mineral development would, include power to impose a tax. I shall presently discuss some of the rules that are applicable for the interpretation of the provisions in the Constitution. It will appear therefrom that the items in the Schedules are not to be read in a narrow and restricted sense but are to be given the widest possible construction. Reference to legislative practice may be admissible for cutting down the meaning of a word in order to reconcile two conflicting provisions in two legislative lists. The cardinal rule of interpretation, however, is that words should be read in the ordinary, natural, and grammatical meaning subject to this rider that in construing words in Constitutional enactments conferring legislative powers, the most liberal construction should be put upon the words, so that the same may have effect in their widest amplitude. That then is the ordinary natural and grammatical

meaning of the word "regulate"? The dictionary meaning of the word "regulate" is to adjust, to govern or manage according to certain standards or law, rules, restrictions or governing principle. Thus Story in his Conflict of Laws p. 653 says -

"What law protects it has a right to regulate." If money was sought to be raised for the purposes of general revenue that can never be interpreted as in any manner connected with the regulation of coal mines. But in a law which is enacted for certain specific purposes e.g. the conservation of coal and safety in coal mines, it is easy to set; that the implementation thereof would require funds. To say that the Government would be entitled to make provisions for the conservation of coal and safety in coal mines but not be able to raise funds therefore, is unreasonable. Mr. Sen has pointed out that the provisions in the Act for making over such funds to the Coal Board, and the payment by the Coal Board in its turn to the owners of collieries are all discretionary. Whether in these provisions the word "may" should be taken as "must" it is unnecessary to consider at present. It is clear, however, that money is being raised not for the purpose of general revenue but for a specific purpose. Should there be such an occasion I would be willing to hold that the fund cannot be diverted for purposes alien to the Act. In my opinion, the word "Regulation" would not ordinarily imply power to impose taxation, but under particular circumstances where funds are required for the implementation of the objects of an Act, it might include the power of raising such funds. I must, however admit that the matter is not free from doubt. In the present case, however, we have not only Item 54 in List I but also Item 84. Let us investigate as to whether the Parliament can impose an excise duty under this heading. If it can, it would be sufficient for our purpose to hold that the imposition of the tax is valid under Item 54 read with Item 84. As I have already stated above, the Constitution has defined the meaning of the word "goods" and coal clearly comes within the definition. I have also held that coal is produced in India. There remains the only argument of Mr. Sen that the imposition of duty on coal which is meant for the producer's own consumption cannot be the subject-matter of the imposition of an excise duty. I shall, therefore, recapitulate some of the established principles of the interpretation of the Constitution. In *A. G. v. Brewery Employees Union* 1908-VI, Comm. W. L. R. 469 (611) (B), Higgins J. stated as follows :

"Although we are to interpret the words of the Constitution on the same principle of interpretation as we apply to any ordinary law, this very principle of interpretation compels us to take into account the nature and scope of Act that we are to interpret, to remember that it is a constitution, a mechanism under which laws are to be made, and not a mere Act which declares what law is to be."

Gwyer C. J.: *C. P. & Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938* in the matter of AIR 1939 1 (Federal Court) , said as follows:

"The judicial committee observed that the Constitution is not to be construed in any narrow and pedantic sense" rules which apply to the interpretation of other Statutes apply, it is true equally to the interpretation of a constitutional

enactment but their application is of necessity conditioned by the subject matter of the enactment itself specially is this true of a Federal Constitution with its nice balance of jurisdiction. I concede that a broad and liberal spirit will inspire those whose duty it is to interpret; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interest of any legal constitutional theory, or even for the purpose of supplying omission or of correcting supposed errors. A Federal Court will not strengthen but only derogate from its position if it seeks to do anything but declare the law; but it may rightly reflect that a constitutional Government is a living and organic thing which of all instrument has the greatest claim to be construed "ut res magis valeat quam pureat".

15. In "James v. Commonwealth of Australia, (No. 2) (1936) AC 573 (614) CD) Lord Wright said as follows:

"It is true that a constitution must not be construed in tiny narrow and pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning the true tent must, as always be the actual language used."

16. In the "United States v. Classic¹ (1941) 35 Law Ed. 136S (1378) (33), it is stated as follows;

"The constitution is not to be read as a legislative code subject to continuous revision with the changing course of events but rather as a revelation of the great purpose which was intended to be achieved by it as a continuing instrument of Government."

17. In Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, (F), Das J., as he then was said as follows:

"It should be remembered that the question before us relates to the correct interpretation of a word, appearing in a Constitution Act which as has been said must not be construed in any narrow and pedantic sense. Gwyer C. J., in re: Central Provinces and Berar Act No. XIV of 1938 (supra) (C), observed at pp. 36, 3V that the rules which apply to the interpretation of other statutes apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject-matter of the enactment itself. It should be remembered that the problem before us is to construe a word appearing in entry 54 which is a head of legislative power. As pointed out by Gwyer C. J. in the -- AIR 1941 16 (Federal Court) (G) none of the items in the lists is to be read in a narrow and restricted sense and that each general word should be held to explain all ancillary or "subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear and it is acknowledged by Chagla C. J..... that in construing an entry in a list

conferring legislative powers, the widest possible construction, according to their ordinary meaning must be put upon the words used therein. Reference to legislative practice may be admissible for cutting down the meaning of a word in order to reconcile two conflicting provisions in two legislative lists as was done in the "C. P. and Berar Act case (C)", (supra) or to enlarge their ordinary meaning as in -- "The State of Bombay and Another Vs. F.N. Balsara, (H). The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

18. The objection advanced in this case by Mr. Sen is based upon the enumeration of the tax as "Excise duty". According to learned counsel, an excise duty is an indirect tax. It is of course not defined in the Constitution, but Mr. Sen argues that if the word "Excise duty" has a special meaning in legal connection, it must be presumed to have been used in the same sense in the Constitution. By saying that an excise duty is a form of indirect taxation, what is meant is that such a duty is imposed upon the goods manufactured or produced in a way so that the manufacturer or producer can pass on the tax to the ultimate consumer. Mr. Sen principally relies on the decision of the Privy Council in a Canadian case -- "A. G. for British Columbia v. Kingcome Navigation Co. Ltd.". 1934 AC 45 (I). In this case, the provincial legislature of British Columbia passed a certain Act taxing fuel oil, upon every consumer. It was challenged on the ground that the taxation imposed thereby was not a direct taxation within the terms of Section 92 head 2, of the Canadian Constitution, and that it invaded the exclusive right of the Dominion under s 91 head 2 to legislate for the regulation of trade and commerce. It was held that the tax was a direct tax and not within the category of customs and excise duties which are indirect taxes. It would be however dangerous to attempt to decide the present case upon the authority of a Canadian case. In Canada, there is a specific distinction made in the Constitution, regarding the imposition of direct and indirect taxes. While the provinces can take recourse to direct taxation power to levy indirect taxes was given only to the Dominion legislature. This matter has been elaborately discussed by the Federal Court in re; C. P. and Berar Sales of Motor Spirit etc. (C) (supra). It was held there that the provincial tax on sales of motor spirit was not ultra vires, since it was a tax on the sale of goods and not a duty of excise. Although the point is not identical, the decision naturally involved an exhaustive examination of the nature of excise duties. Sulaiman J., has considered the cases not only in India but in England, United States, Canada and Australia. The learned Judge commences with the definition of "Excise" as propounded by economists. He has pointed out that certain economists including Mills have laid down that an excise duty did not include sales to consumers. "An Act of Parliament" says the learned Judge "is not a thesis on economics; and the question is really a question of law and not of economics". the learned Judge

next points out that the meaning of "excise" as given in English dictionaries cannot be of any assistance, because the writer of a dictionary has to include all possible uses to which the word can be put. He then proceeds to describe how it is dealt with under the English law. In Halsbury's Laws of England (Vol. 28, p. 330) the dictionary meaning has been adopted. Thus, in England, excise duties have a wide range. Even a dog tax, vehicles tax, hawker's licence tax, tax for wine licence and pawn broker's licence have been recognised to come within the range of excise duties, although in their nature they are nothing more than licences. A duty of excise payable on all payments for admission to any place of entertainment; In fact, all dues realised through the Commissioners of Customs and Excise, are treated either as customs or excise duties. It is clear therefore that the term "excise" is freely used in England and would include tax on goods consumed at home. In the United States the word "excise" has the same wide significance as in England. In Canada however the position is quite different. In the Canadian Constitution there is an elaborate distribution of legislative powers and it became essential for the Courts to ascertain the strict meaning of the word "direct taxation" and it has now been authoritatively settled that a tax on the consumer based on the amount consumed is a direct tax and not an excise duty. "The English or American conception that excise may be any inland imposition on consumption for home commodities." says the learned Judge, "has therefore been definitely negated and is no longer tenable."

19. Coming to the Australian cases, the learned Judge points out that the word "direct tax" is not mentioned in the Australian constitution. On the whole, however, the English tendency to use the word "excise" as including all kinds of inland revenue taxation which come under the control of the Commissioner of Customs and Excise, has not been accepted.

20. Coming to the Indian constitution, which meant the Government of India Act, 1935, the learned Judge proceeded to say as follows:--

"Fortunately in India it is not necessary to revive the fine niceties of distinction between direct and indirect taxation as no such division exists in the Act. Indeed, there are several taxes like tax on luxuries or trade which can be direct; and some taxes like succession duties (and even excise) have in part been assigned to both. -The ultimate incidence of the tax is certainly not a crucial test under the Indian Constitution. There is no justification for adopting any such principle as that, certain classes of duty which are to be regarded as direct have been assigned to the provinces, and other classes regarded as indirect have been reserved for the federation."

21. The learned Judge laid down certain tests to assist him in the interpretation of the particular words in the Government of India Act, 1935:

(1) Each case must be decided as best as one can without entering more largely upon an interpretation of the statute than was necessary for the decision of the particular question in hand;

(2) The structure and the degree to which the connotation of the expressions overlap, render it unwise to admit an exhaustive definition of the meaning and scope of such expressions;

(3) The true test must, as always, be the actual language used;

(4) We have to look to the pith and sub-stance of the Act in order to ascertain its true nature and character.

22. As I have already stated above, the learned judge came to the conclusion that after applying the above tests it cannot be held that under the Government of India Act, 1935, it could be said that certain- classes of duty which were regarded as direct, have been assigned to the provinces, and other classes regarded as indirect, have been reserved to the Federation. That being so, the, question is whether even if we consider that "Excise duty" is considered as indirect taxation in some countries like Canada or Australia, it should be our bounden duty to apply the same connotation or meaning, in interpreting the Indian Constitution. In other words, would it be permissible to consider a duty on the producer who is a consumer, as an excise duty, although it may not be considered as such in certain other countries? In this respect, the present Constitution of India is in *Pari materia* with its predecessor the Government of India Act, 1935. I : will refer to a case which is directly 011 the point under the said Act. In -- "Province of Madras v. Boddu Poidanna and Sons 1942 FCR 90: (AIR 1942 PC 33) (J) on page 35, Gwyer C. J., said as follows:

"In AIR 1939 1 (Federal Court) , (supra) the opinion expressed were advisory opinions only but we do not think that we ought to regard them as any less binding upon us on that account. We accept, therefore, the general division between the Central and provincial spheres of taxation which commended itself to the majority of the Courts in that case. They did not reach their conclusions by assigning any particular technical meaning to expressions "duty of excise" or "tax on the sale of goods" but rather by construing the language in which the taxing powers of the Centre and the Provinces respectively are conferred, in such a way as to give effect to what appeared to them to be the scheme of the Act and to reconcile the conflict which might otherwise arise between two independent Taxing Authorities The duties of excise which the Constitutional Act assigns exclusively to the Central Legislature are according to AIR 1939 1 (Federal Court) , duties levied upon the manufacturer or producer in respect of manufacture or production of the commodity taxed Plainly, a tax levied on the first sale must in the nature of things be a tax on the sale by the manufacturer or producer; but it is levied upon him qua-seller and not qua-manufacturer or producer 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 much 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 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; and We may draw attention to the Sugar Excise Act in which it is specially provided that the duty is payable not only in respect of sugar which is issued from the factory but also in respect of sugar which is consumed within the factory....."

23. This, I think, completely answers our problem. The conclusion is. that for the purposes of our Constitution it would not be necessary to import any narrow or pedantic definition of "Excise duty". The goods which are manufactured or produced in India, can be taxed under the heading of "Excise Duty", immediately upon manufacture or production, irrespective of the fact as to how or by whom it is consumed, and in spite of the fact that the producer consumes it himself, in this view, there is no particular significance in calling it an excise duty, not even the significance it has in England, namely, that it is realised by the Commissioners for Excise and Customs. In fact, it is irrelevant to consider whether it is a direct or an indirect taxation. In other words, any goods manufactured or produced in India can be taxed, and it becomes or may become an excise duty, irrespective of the fact as to how it is dealt with, after manufacture or production.

21. For the reasons aforesaid, all the points raised by Mr. Sen have failed. The petitioner has not been able to establish any justification for interference by this Court. The application consequently fails and must be dismissed. The Rule is discharged. All interim orders vacated. There will, however, be no order as to costs.