

(1991) 09 GUJ CK 0003

In the Gujarat High Court

Case No : Special Application No. 5476 of 1982

Brooke Bond India Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-09-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 3

Citation : (1992) 60 ELT 88 : (1992) 1 GLR 452

Hon'ble Judges : R.D. Vyas, J; M.B. Shah, J

Bench : Division Bench

Advocate : K.S. Nanavati, for the Appellant; P.M. Raval, for the Respondent

Judgement

M.B. Shah, J.—Petitioner No. 1 is the Brooke Bond India Limited which is a Company incorporated and registered under the Companies Act. Petitioner No. 2 is the Director and Shareholder of petitioner No. 1-Company. In this petition the petitioners have mainly prayed that Tariff Item 3(2) of the First Schedule to the Central Excises and Salt Act, 1944 ("the Act" for brief) which provides for rate of duty of excise on "package tea", is illegal and ultra vires the Constitution of India as it is arbitrary, discriminatory and beyond the legislative competence, and for a direction to the respondents not to levy and collect duty of excise on the basis of Tariff Item 3(2) from the petitioners and to refund the amount which is recovered on the basis of Tariff Item 3(2) on "package tea" sold by the petitioners.

2. The learned advocate for the petitioners vehemently submitted that :

(i) Package tea is not a different product of the tea and there is no difference between package tea of all varieties. For having package tea no manufacturing process as defined u/s 2(f) of the Act is involved.

(ii) As per charging Section 3, the excise duty can be levied on the goods which are manufactured in India but it cannot be levied only on the basis of packing because packing or blending of tea does not involve a manufacturing process.

(iii) Duty of excise on process not amounting to manufacture is beyond the legislative competence of the Parliament and recourse cannot be taken to Entry 97 of List 1 of the Seventh Schedule to the Constitution of India to justify such a levy.

(iv) In any set of circumstances, as there is no difference between the package tea and tea falling within the Tariff Item 3(1) the levy of higher rate of duty of excise on package tea is discriminatory and is violative of Article 14 of the Constitution of India.

3. As against this, in affidavit in reply, it has been pointed out and contended by the respondents as under :

(i) The process of conversion of original tea into package tea is a manufacturing process within the meaning of Section 2(f) of the Act. From the stage of plucking of tea leaves from shrubs and thereafter till it is packed in packages so as to make it marketable is a continuous process. After purchasing tea in bulk, the process undertaken by the petitioners as described by them involves removal of impurities such as iron filings, dust, sand, etc. Without removing the said impurities, tea cannot be marketed for human consumption. Not only this, after removing the impurities loose tea obtained from various bulks is blended by the petitioners by means of bulkers. Blending of tea in the context of tea trade occupies a very vital place. Blending determines the quality, strength, colour and flavour of ultimate tea which is packed for marketing with different brand names. Tea is not a product completely manufactured until it is purified, blended and packed. After purification, blending and packing, package tea as covered by Tariff Item 3(2) comes into existence.

(ii) Apart from the fact that the process undertaken by the petitioners is part of the manufacturing process and even assuming that it does not involve manufacturing process, on package tea, different rate of duty of excise can be levied.

(iii) There is no discrimination for a package tea which is packed in a container containing less than 27 kg. of tea. All these packages containing not more than 27 kg. of package tea are treated in equal manner. Classification between tea sold in packages and loose tea is reasonable. Reliance is placed on the decision of the Supreme Court in the case of *Dantuluri Ram Raju and Others Vs. State of Andhra Pradesh and Another*, wherein the Supreme Court has held that State is presumed to know the requirements of the situation and act accordingly and with regard to a taxing statute the power of the legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in proper and reasonable ways. It is also stated that so far as the package tea is concerned, generally larger consumers such as canteens, big hotels, but blended tea in packages of limited quantity of their specific use and period. It is also contended that classification of package tea in a container containing less than 27 kgs. and container containing more than 27 kgs. is reasonable. The practice in the trade of

packing of blended tea is normally below limited quantity of tea. keeping in view the demand of the trade the packing upto 27 kgs. is considered as Package Tea. The petitioners themselves are enjoying facility of duty free removal of tea packed in container containing more than 27 kgs. of tea.

(iv) Lastly, it has been stated that for a long period of 30 years, that is, since 1953, the duty has been paid by the petitioners on the basis of Tariff Item 3(2) which indicates that Package Tea is known as different variety of tea in the market. For a long period of 30 years the petitioners have not raised the contention that Package Tea cannot be considered as different product of tea which indicates that it is known to the petitioners and in the market as different product of tea.

4. For considering the aforesaid contentions it is necessary to consider Tariff Entry 3, which defines the word "tea" and prescribes different rates of duty for three different varieties of tea. Tariff Item 3 reads as under :

Item No. 3 - Tea -----			
Item	Tariff Description	Rate of duty -----	No. Basic
Duty	Cess -----		(1)
(2)	(3)	(4) -----	3.
Tea "Tea" includes all varieties of the product known commercially as Tea, and also includes "Green Tea" and "Instant Tea" (1) Tea, all varieties except Not exceeding Rs. two Eight "package tea" falling within per kg. as the Central paise sub-items (2) and (3), Government may, by kg. per kg. respectively, of this Item. notification in the Official Gazette, fix. (2) Package tea, that is to say, One rupee and tea packed in any kind of twentyfive paise per kg. container containing not plus the duty for the more than 27 kg. net of tea time being leviable under but excluding "Instant Tea". sub-item (1) of this, Item if not already paid. (3) "Instant Tea" Ten per cent ad valorem plus the duty for the time being leviable on tea falling under sub-item (1) of this item, if not already paid and if such tea is used in the manufacture of such "Instant Tea".			

Reading the aforesaid Entry, it is abundantly clear that the word "tea" is given wider meaning so as to include all varieties of the products known commercially as "tea" and it includes "Green Tea" and "Instant Tea". After giving the specific meaning and inclusive definition for the purpose of fixing the rate of duty of excise, tea is divided into three varieties. Tariff Entry 3(1) includes tea of all varieties except "Package Tea" and "Instant Tea" falling within sub-items (2) and (3) respectively. Under sub-item (2) only a package tea packed in any kind of container containing not more than 27 kgs. net is covered. Sub-item (3) only deals with "Instant Tea" which is admittedly a different variety of tea. The legislature has defined the word "tea" as per Tariff Item 3 to include all varieties of the product known commercially as "tea". What is commercially known as "tea" is not defined. To find out the process of manufacturing tea, it would be worthwhile to refer to Encyclopaedia Britannica. It states that "Tea" is beverage

made from the dried leaves of the tea plant an ever green shrub or small tree (Camellia Sinensis) of the family Theaceae. Its manufacturing process is as under :-

"Teas may be divided into three classes : (1) fermented or black tea; (2) unfermented or green tea; and (3) semi-fermented or oolong tea. These classes result from different processes applied to the same kind of leaf, or even to leaves from the same plant, though various regions generally specialize in one type.

Most stages of processing are generally common to the three types of tea. First, the fresh leaves are withered by exposure to the sun or by heating in trays until pliable (usually 18-24 hours). Next the leaves are rolled by hand or machine in order to break the leaf cells and liberate the juices and enzymes. This rolling process may last upto three hours. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air, usually for 30-40 minutes.

In making black tea, the leaves, after being rolled are fermented in baskets, or on glass shelves or cement floors under damp clothes, usually for 1/2 to 4 1/2 hours, followed by the usual drying process until the leaves are black and crisp. The process of fermentation, or oxidation reduces the stringency of the leaf and changes its colour and flavour.

Green tea is made by steaming without fermentation in a perforated cylinder or boiler, thus retaining some of the green colour. The leaves are lightly rolled before drying. Oolong teas, which have some of the characteristics of both black and green teas, are partially fermented before drying.

After drying, teas are graded by cutting, sifting, and sorting machines before being packaged. The principal grades are broken orange pekoe (terminal buds and the finest leaves), pekoe, pekoe souchong, and congou (successively coarser leaves) and pekoe dust (fine broken tea)".

To the same effect, in the petition and in the affidavit-in-rejoinder, the process of manufacturing of tea is mentioned. It has been inter alia stated that the fresh green tea leaves are required to be withered so as to remove moisture. Withered leaves are rolled so as to rupture the leaf cells for releasing enzymes. Thereafter the process of fermentation carried out. At this point of time, the colour of leaf is bright gold. Lastly, the fermented leaves are exposed to heat and that process is known as firing process. After the aforesaid process is undergone, tea is made as final product by the manufacturers. Before its removal from the place of production the manufacturer pays duty of excise as per Tariff Item 3(1). It is the say of the petitioners that the petitioners purchase the aforesaid tea which is finished product and commercially known as tea in bulk from various auction centres in India. In the affidavit-in-rejoinder, it has also been pointed out that the moment the raw tea is fired, it gets transformed into a commercial product known in the market as "tea". Any subsequent removal of impurities such as iron filings or dust would not make it a different product. It removes impurities such

as iron filing by passing it through the magnetic drums which have the effect of separating iron filings to a considerable extent. Thereafter, it is mixed or blended with different varieties of tea which is sold in the market under the different brand names. Red Label, Tajmahal, etc., are sold in package of different sizes. The learned advocate for the petitioners insisted that the petitioners are concerned with "Oolong Tea" which has characteristic of both black and green teas. But it is contended that the said process of mixing, or blending, removal of impurities, and of packing it into small packets does not involve any manufacturing process so as to make package tea as different product of tea.

5. Considering the aforesaid averments in the petition, affidavit-in-rejoinder and meaning of tea as per Encyclopaedia Britannica, there cannot be any doubt that package tea can be classified as a different variety of tea from instant tea or remaining varieties of tea. On different varieties of the same product the duty of excise at different rates can be levied. Tariff Item 3 provides for it. The different rate of duty of excise is fixed for instant tea, package tea and remaining tea of all varieties including green tea. Different rates of duty of excise are fixed on the basis that they are of different varieties of tea and not on the basis that they are different products. Therefore, the main contention of the petitioners that package tea is not a different product than other tea and that no manufacturing process as defined u/s 2(f) of the Act is required for having package tea and, therefore, Tariff Item 3(2) is illegal is misconceived. As stated earlier, it is the say of the petitioners that the petitioners purchased tea in bulk from various auction centres in India. After its purchase impurities are removed and different varieties of tea are blended and sold in the market under different brand names such as Red Label, Red Special, Tajmahal, etc. in different sizes of packets. Therefore, after removal of impurities and blending with different varieties of tea, the product cannot be different variety of tea which is sold in the market to suit different taste of the consumers. Hence, even assuming that the process of package tea does not involve manufacturing process which can be covered by the provisions of Section 2(f), still, however, it cannot be said that the legislature cannot levy the duty of excise at different rates on different varieties of tea.

6. The concept of package tea as of different variety was introduced for the first time by the provisions of the Central Excises and Salt (Amendment) Act, 1953 (Act 15 of 1953). The said Act reads as under :

"Be it enacted by Parliament as follows :

1. Short title :- This Act may be called the Central Excises and Salt (Amendment) Act, 1953.

Note :- With a view to afford relief directly to the tea growers and consumers of unpacked tea, readjustment of duty was necessary. This enactment is intended to achieve the above object. For Statement of Objects and Reasons, see. Gaz. of Ind. 14-4-1953, Part II Section 2 page 297.

2. Amendment of First Schedule, Act 1 of 1944 -

(1) In the First Schedule to the Central Excises and Salt Act, 1944, for Item 14, the following Item shall be substituted, namely :-

14. TEA -

"Tea" includes all varieties of the product known commercially as tea, and also includes green tea.

(1) Package tea, that is to say, tea packed in any kind of container containing not more than 60 lbs. net of tea -

(i) If before being so packed, Three annas per lb. net

duty has been paid thereon

under sub-item (2) of this

Item

(ii) If, before being so Four annas per lb. net

packed, duty has not been paid

thereon under sub-item (2)

of this Item.

(2) Tea not otherwise specified One annas per lb. net

(2) The amendment made by sub-section (1) shall apply to tea as defined therein which is lying in stock on the 15th day of April, 1953, in any premises where tea is produced or manufactured or in any premises appurtenant thereto as it applies to tea produced or manufactured on or after the said date".

7. From the object of introducing the concept of the Package Tea, it is apparent that it has been introduced with a specific purpose of giving relief to the tea growers and consumers of unpacked tea. At the initial stage for package tea containing more than 60 lbs. (equivalent to 27 kgs.) net of tea, the rate of duty of excise was four annas per lb. The rate of duty of excise on other tea was one annas per lb. If before being packed excise duty of one anna per lb. is paid, then the excise duty on package tea was reduced to that extent. Therefore, on a package tea containing not more than 60 lbs. of tea, higher excise duty was levied and on loose tea or on other tea, lower excise duty was levied. Therefore, the main contention of the petitioners that the Parliament is not competent to levy a different rate of duty of excise on package tea because the petitioners are not manufacturing or producing the package tea and, therefore, Tariff Item 3(2) is beyond the legislative competence of the Parliament, is devoid of substance. Hence, considering the aforesaid Tariff Item 3(1), (2) and (3) by which tea is classified into three different varieties, it would not be necessary for our purpose to decide whether process of package tea involves a manufacturing process as defined in Section 2(f) of the Act. In this view of the matter, it is not necessary

to discuss various judgments of the Supreme Court including the decisions in the case of *Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*, and in the case of *Empire Industries Limited and Others Vs. Union of India and Others*, , which deal with the aspect as to when it can be said to be the manufacturing process as required u/s 2(f) of the Act. In this view of the matter, it would not be necessary to consider the decisions of the Calcutta High Court in the case of *Indian Tea Packing Industry v. Union of India* (1988) 18 ECC 180 and also in the case of *Brooke Bond India Ltd. and Another Vs. Union of India (UOI) and Others*, wherein the Calcutta High Court has held that levy of excise duty on package tea under Tariff Item 3(2) is valid.

8. Further even assuming that blending tea and packing it in different packages is continuous manufacturing process for marketing the tea which remains the same product, then also it is open to the legislature to devise proper and appropriate machinery to recover duty of excise at appropriate stages. Duty of excise can be levied and collected at any stage before consumption of the product. In other words, duty of excise can be levied and collected from the time when the commodity is produced or manufactured and till it reaches the consumer. Therefore, duty of excise can be levied and collected even on retail sale of an article. Keeping this in mind, if duty of excise is paid before tea is packed in packages and thereafter there is additional impost of duty of excise on package tea, it would amount to levying of duty at different stages of final product. Hence it would not be in any way illegal. In the case of *R.C. Jall Vs. Union of India (UOI)*, , the Supreme Court held that duty of excise can be levied and collected at any stage before consumption because ultimate incident of excise duty is on the consumer. The Supreme Court referred to the decisions of the Federal Court in the case of AIR 1939 1 (Federal Court) , in the case of *Province of Madras v. Boddu Paidanna and Sons* AIR 1942 FC 33 and of the Privy Council in the case of AIR 1945 98 (Privy Council) , and held as under :

"With great respect, we accept the principles laid down by the said three decisions in the matter of levy of an excise duty and the machinery for collection thereof. Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, its ultimate incidence will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is, it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience. Whether in a particular case the tax ceases to be in essence an excise duty, and the rational connection between the duty and the person on whom it is imposed ceased to exist, is to be decided on fair construction of the provisions of a particular Act".

Therefore, assuming for the time being that the petitioner's product which is

package tea is not different from other varieties of tea, yet additional duty of excise can be levied and collected when loose tea is packed and thereafter sold in different packages with different labels. It can be said that additional duty of excise is levied and collected on tea at subsequent stages.

9. Further after 1985 the Parliament has clarified that blending, sorting, packing or repacking in smaller containers shall amount to manufacturing process. This is made clear in Chapter IX of the Central Excise Tariff Act, 1985. Relying upon this deeming provision, the learned advocate for the petitioner submitted that till 1985, as there was no deeming provision, blending, sorting, packing and repacking in smaller containers cannot be considered to be manufacturing process, and, therefore, package tea cannot be said to be a new product. As against this, learned counsel for the respondents submitted that for a period of 30 years, the petitioners have accepted that package tea was a different product from loose tea and have paid duty of excise on that basis without any protest. He submitted that those who were dealing tea considered all throughout package tea as a different product.

10. It is true that for a period of 30 years, that is, from 1953 onwards neither the petitioners nor any persons concerned with tea have raised objection that package tea cannot be considered to be of different variety or cannot be said to be a different product from loose tea. It is also true that mere circumstance that for more than 30 years none of the hundreds of thousands of dealers in tea has objected to this duty of excise is no ground for holding that the duty must be valid if on a true interpretation of the relevant provisions it were to appear that it is not lawful. However, this would have important bearing in deciding where the process carried out by the petitioners for having package tea can be considered to be a manufacturing process as defined under S. 2(f) of the Act, that is, to decide whether package tea is different commercial commodity having its distinct character, use and name and commercially known as such because transformation of package tea from loose tea purchased in bulk would be question of degree. The Division Bench of this Court in the case of Prabhat Cotton and Silk Mills Ltd. Vs. Union of India, , dealt with similar aspect and the relevant observations of the Division Bench (Coram : M. P. Thakkar, CJ. and V. V. Bedarkar, J.) which are important are as under :

"All the same the circumstance that all concerned have adjusted their affairs on the basis that the payment of duty on the aforesaid basis was in accordance with law, is a circumstance which cannot be brushed aside in a cavalier fashion. The following factors must be flashed on the mental screen in this context : (1) The annual budget of the Central Government has been moulded on the assumption that this duty can be lawfully levied for more than 30 years, not to speak of the formulation of the budget by the appropriate Government prior to the enforcement of the Constitution of India upon the attainment of Independence. (2) Income tax must have been collected from tens of thousands of assesseees on this footing. (3) The importer must have marketed the goods on this premise.

(4) The Consumer must have been made to pay the price on this assumption. (5) And while the real losers, the consumers, cannot be identified and compensated, the importers will be enabled to make windfall profits and unjust enrichment. (6) The Central Budget will have to bear an unanticipated outflow which will have to be passed on to the tax-payer, and (7) the consumer, the original and real sufferer, will again have to suffer as the burden will have to be again borne by him. He will have to pay the price for his pocket having been picked in the past instead of being compensated for it - thus insult will be added to injury. While, therefore, the Court will not be deterred from upholding the plea if this was the only interpretation which was possible, it will not be in too great a hurry to do so without examining the matter closely, carefully and in depth. In such circumstances, upholding such a plea is not the first thing the Court will do. The Court will do so only provided it appears that the other view is not equally possible. More so since the Court in exercising its high prerogative jurisdiction under Article 226 of the Constitution of India will not exercise it in such a manner that everything settled becomes unsettled and hundreds of crores of rupees are required to be refunded at the cost of the much exploited consumer or the majority of the populace who bear more than 75% of the tax-burden by way of indirect taxes. And only in order to benefit those importers who have marketed their goods on the footing that the duty was payable and have sustained no loss or detriment on that account and for no other purpose. One may then be tempted to quip "not in order to rob Peter to pay Paul" but in order to "rob the poor in order to pay the rich" (Robinhood in reversal). The court will not, therefore, without due deliberation create a situation where the decision of the Court will result in such unwholesome and unpalatable consequences and perhaps create a situation where the exercise in the Courts of law may well become a paper exercise by inviting a validating legislation. And all this at the time-cost of thousands of litigants who are waiting in the queue for the removal of the injustice being suffered by them for many years. Pragmatism and common-sense approach need not therefore be outlawed in favour of unduly sophisticated, unduly refined, disingenuous approach, if two views are possible and what is reasonable, as also accords with reason, prevails over what is unreasonable, but may also accord with reason. "Just and reasons" may well prevail instead of "just and unreasonable" when both sides are equally able to call into aid goods reasons in support of their respective pleas".

Therefore, it can reasonably be said that if the Parliament and the dealers in tea have considered package tea as a different product for a period of 30 years and subsequently the Parliament by deeming provision provided that package tea is a different product then it would be just and proper to hold that package tea was considered to be a different product by all growers who were and are concerned in the tea market. Still, however, as we have arrived at the conclusion that the Parliament has levied higher duty of excise on package tea on the basis that it is of different variety and not a different product, therefore, as stated earlier, it is not necessary for us to deal further with this aspect.

11. Lastly, we would deal with the contention that Tariff Item 3(2) is violative of Article 14 of the Constitution of India. By Tariff Item 3(2) there is classification between (a) package tea and unpacked tea and (b) package tea packed in any kind of container containing not more than 27 kgs. net of tea and package tea in a container containing more than 27 Kgs. of tea. This classification was introduced for the first time by Act 15 of 1953. The object is to afford the relief directly to the tea growers and the consumers of unpacked tea. In the affidavit in reply, it has been pointed out that so far as package tea is concerned, generally the larger consumers such as canteens, big hotels, buy blended tea in packages of limited quantity for their specific use and period; practice in trade of packing of blended tea is normally below limited quantity; keeping in view the demand of the trade, packing upto 27 kg. has been considered as package tea.

12. In our view, the aforesaid classification between package tea and loose tea as well as package tea in a container containing less than 27 kg. and in a container containing more than 27 kg. cannot be considered to be unreasonable. The aforesaid classification was made by the Parliament with the specific object to afford relief to the tea growers and consumers of unpacked tea. That object is directly achieved by levying higher duty of excise on a package tea and lesser duty on loose tea which is sold in bulk by the tea growers or by the consumers who cannot afford to purchase different brands of label tea. Therefore, it cannot be said that there is no nexus between the classification and the object sought to be achieved. Even with regard to classification between package tea in a container containing less than 27 kgs. and package tea in a container containing more than 27 kgs., it cannot be said that the said classification is in any way unreasonable because in order to levy excise duty it is not necessary to levy duty on every article. The Parliament after considering demand of the trade by large consumers, such as canteens, big hotels who buy blended tea in packages of limited quantity, decided to levy higher duty on package tea in a container containing less than 27 kgs. If the petitioners sell their commodity in a container containing more than 27 kg tea, they are not discriminated. The classification between loose tea and package tea is intelligible and real as taste of the consumers who purchase the same is different. Presuming that tea is of the same variety, if it is packed in packages having different brand names, would have bearing with the purchasers. Blending tea also would have its own effect on the purchase of tea as it depends upon different tastes of the consumers.

13. In any set of circumstances, scope of classification permitted in taxation is greater and unless classification made can be termed to be palpably arbitrary, it is left to the legislature's wisdom to choose a yardstick for classification in the background of fiscal policy of the State. This is established by numerous decisions of the Supreme Court. The mere fact that duty of excise is more some category of package tea is not by itself a ground to render the law invalid. While dealing with the similar contention in the case of *Dunlop (1) Limited v. Union of India*, AIR 1977 Supreme Court 597, the Supreme Court observed as under :

"36. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry".

14. Further in the case of Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, , the Supreme Court has extensively dealt with the contention of alleged discrimination. The Court was required to consider discrimination on the tax imposed on sale of cooked food only in costly or luxury hotels or eating houses. The Court held that it was not violative of Article 14 of the Constitution of India. The Court considered a number of decisions and relied upon the observations of the Supreme Court in the case of P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, , which are as under :

"27. A recent decision of this Court in P. M. Ashwathanarayana Setty v. State of Karnataka gives a fresh look to the extent of classification held valid in a taxing statute; and the scope of judicial review permitted while considering its validity on the ground of equality under Article 14. The true position has been succinctly summarised by Venkatachaliah, J. speaking for the Court, as under : (SCC pp. 723-25, paras 79 and 81-83) :

"The problem is indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discrimination advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a largest discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The legislature possesses the greatest freedom in such areas".

"The legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolution of these conflicts and evolve a fiscal policy it thinks is best suited to

the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental modes. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to predetermined solutions..."

"The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services. In *G. K. Krishnan v. State of Tamil Nadu* this Court referred to, with approval, the majority view in *Sanantonio Independent School District v. Rodriguz* Speaking through Justice Stewart : (SCC p. 389 para 38) :

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection clause", and also the dissent of Marchall, J. who summed up his conclusion thus : (SCC p. 389, para 38)

"In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review State discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory State action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, the extremes to which the court has gone in dreaming up rational bases for State regulation in that area may in many instances be ascribed to a healthy revulsion from the court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls".

"The observations of this Court in *ITO v. K. N. Takin Rymbai* made in the context of taxation laws are worth recalling : (SCC p. 923)

Formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.

Classification based on differences in the value of articles or the economic superiority of the persons of incidence are well recognised. A reasonable classification is one which includes all who are similarly situated and none who are not. In order to ascertain whether persons are similarly placed, one must look beyond the classification and to the purpose of the law."

From the aforesaid decision it can be stated that with regard to taxation the

State enjoys widest latitude as the taxation measure is taken for fiscal and economic regulations in a complex economic situation depending upon the policy of the Government; it is also an accepted position that no taxation measure can be devised which would be free from discriminatory impact; the mere fact that tax falls more heavily on some category, say of package tea which is packed in a container containing less than 27 kgs. by itself would not be a ground to render it invalid; further, the classification between package tea and loose tea seems to be based on difference in value and its notional superiority to the persons who consume it. Therefore, it cannot be said that Tariff Item 3(2) is violative of Article 14 of the Constitution of India. As stated above, classification between loose tea and package tea is reasonable and with the specific object of affording relief to the tea growers and to the consumers of loose tea. Package tea has its own market and is considered by all concerned to be of different variety.

15. In the result, there is no substance in the petition and it is rejected. Rule discharged with costs.