

(1973) 05 KL CK 0001
In the High Court Of Kerala
Case No : W.A. No. 114 of 1973

E.R. Jose and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-05-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(f), 289, 289(1)
Sales of Goods Act, 1930 — Section 28, 64A

Citation : (1973) KLJ 517

Hon'ble Judges : V.P. Gopalan Nambiyar, J; N.D.P. Namboodiripad, J

Bench : Division Bench

Advocate : O.V. Radhakrishnan, K. Radhamani Amma, V.V. Narayanan, V. Rama Shenoi, T.C. Mohandas, M. M. Pareed Pillai, Cherian Manjooran, M.A. Manhu, K.V. Kuriakose and Others, for the Appellant; M.M. Abdul Khader for State, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—These writ appeals, and writ petitions, challenge the levy of what is called "tree-tax" under the Abkari Act 1 of 1077 M.E. (referred to hereinafter as the Act). A learned judge of this Court, in a series of writ petitions, heard and disposed of by a common judgment, held the levy to be valid. The Writ Appeals have been preferred against the said judgment; and the connected petitions are among the rest of the applications which challenge the validity of the levy. Arguments were advanced only by Counsel in Writ Appeal Nos. 114, 145 and 158 of 1973; and the fate of the rest of the cases was left to depend upon the result of the contentions advanced in these three writ appeals. In Writ Appeal No. 114 of 1973, the 1st appellant is an abkari contractor who bid in auction certain toddy shops in Alwaye Range, for the years 1971 to 1973 for a sum of Rs. 10,00,000/-, and started the business of vendin toddy from these shops after furnishing the necessary security and surety. The 2nd appellant is the one who stood surety.

2. In Writ Appeal No 145 of 1973, the appellant is a purchaser in auction of toddy shop No. 54 in Panankara Muriyil, Muvattupuzha Range. He likewise challenges the validity of the tree-tax.

3. In Writ Appeal No. 158 of 1973 the appellant is an abkari contractor, having purchased in auction toddy shop No. 7 in Ankamali Range for the period 1971-72.

4. S. 3 (8) of the Act defines "toddy" as "fermented or unfermented juice drawn from a coconut, palmyra, date, or any other kind of palm tree". S. 3 (10) defines "Liquor" as "including spirits of wine, methylated spirits, spirits, wine, toddy, beer, and all liquid consisting of or containing alcohol". S. 12 of the Act prohibits, inter alia, the manufacture of liquor and the tapping of any toddy producing tree and the drawing of toddy from such tree except under the authority and subject to the terms and conditions of a licence to be granted by the appropriate authority. S. 17 provides that a duty of excise or luxury-tax or both, shall, if the Government so directs be levied on all liquors and intoxicating drugs which are inter alia manufactured under any licence granted under S. 12 S. 18(1)(e) provides:

18- How duty may be imposed. (1) Such duty of excise may be levied

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) in the case of toddy, or spirits manufactured from toddy, in the form of a tax on each tree from which toddy is drawn to be paid in such instalments and for such period as the Government may direct.

and S. 18(3) (1) (iii) reads:

(3) The duty of excise under sub section

(1) and the luxury tax under sub section

(2) shall be levied at such rates as may be fixed by the Government, from time to time, by notification in the Gazette, not exceeding, the rates specified below:

(1) Duty of excise:- Maximum rates

(i) xxxx xxxx

(ii) xxxx xxxx

(iii) Duty of excise in the form of tax on Rs. 50/- per tree per half-year or part thereof

trees tapped for toddy

By notification No. 2184/G. 2/69-1/RD dated 141969 published in Kerala Gazette dated 141969 the rates for each half-year or part thereof have been fixed at Rs. 10/- per palmyra tree, Rs. 20 per coconut tree and Rs. 40/- per sago (Choondapana) tree. S. 69 of the Act enacts that all rules and notifications made or issued under the Act shall be published in the Gazette and shall thereupon have the force of law and be read as part of the Act, and may, in like manner be varied suspended or annulled. In exercise of the power conferred by. S. 4(5), 24 and 29 of the Act, the Tree-Tax Rules have been framed. Under R. 6, the tree-tax is to be paid in three instalments as provided therein. Under Clause (f) of the Rule, in case of default of payment of any of the instalments on the due dates, interest at 6% per annum shall be charged and the arrears if any shall be adjusted as security and recovered under the Revenue Recovery Act. Reference to the other provisions of the Act and the Rules, will be made where necessary.

6. The levy has been attacked as outside the legislative competence of the State Legislature under Entry 51 of List II of the Seventh Schedule to the Constitution; as having provided no machinery or procedure for assessment or collection; and as violative of Art. 14 & 19 of the Constitution. The legislative competence has been rested only on Entry 51 of List II, which reads;

"Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

An argument was attempted that the definition of "toddy" as comprehending both fermented and unfermented juice, and the definition of "liquor" as including methylated spirits, and all liquids consisting of, or containing, alcohol travel far beyond the scope of Entry 51. The entry, it was said, was confined only to alcoholic liquors (unfermented juice being claimed to be not such); and again only to such liquors meant for human consumption (methylated spirit being claimed to be not answering this description). It is unnecessary to deal with this objection. The cases before us all relate to alcoholic liquors meant for human consumption. It would be time enough to consider the validity of a tree-tax levied not on any alcoholic liquor, nor on such, meant for human consumption, if and when such a case pointedly arises.

6. By far the most important question argued before us was that the tree-tax imposed by the Act and the Rules is not a duty of excise and therefore besides the purview of the constitutional entry. It was contended that a duty of excise is essentially one on the excisable goods, and that the taxable event is the manufacture or production of the goods; that the impugned levy was not a tax

on excisable goods, namely alcoholic liquor, but only on the trees tapped for their unfermented juice, which had yet to be made into alcoholic liquor; nor was the taxable event the manufacture of the goods, as the tax was imposed at a stage long prior to the manufacture or production. We were taken in detail through the various decisions which had explained the nature and scope of an excise duty. In the matter of the Central Province Solas of Motor Spirits and Lubricants Taxation Act, 1938 AIR 1939 1 (Federal Court) the nature and scope of excise duty was fully discussed. Gwyer C.J. observed:

...But its primary and fundamental meaning in English is still that of a tax on articles produced or manufactured in the taxing country and intended for home consumption. I am satisfied that that is also its primary and fundamental meaning in India; and no one has suggested that it has any other meaning in Entry (45)".

The learned Chief Justice then dealt with the contention of the Government of India that an excise duty may be imposed upon home produced goods at any stage from production to consumption; and proceeded to observe:

Subject always to the legislative competence of the taxing authority a duty on home-produced goods will obviously be imposed at the stage which the authority finds to be the most convenient and the most lucrative, wherever it may be; but that is a matter of the machinery of collection, and does not affect the essential nature of the tax.

Again, it was observed:

In my opinion the power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of, or in connection with, manufacture or production, and that it extends no further.

The learned Chief Justice noticed the definition of "excise duty" given in the Oxford Dictionary which purported to be a quotation from the Encyclopaedia Britannica. The said definition was: a duty charged on home goods, either in process of their manufacture or before their sale to the home consumers.

7. Sulaiman J. noted the definition of excise given in the Encyclopaedia of Social Sciences by Seligman and Johnson, Vol. 5 page 669. At page 670 of the Volume, it was remarked that the excise tax may be levied on the raw material or the finished article, or it may attach to an intermediate stage of the production process.

8. The third learned judge. Jayakar J., observed:

It is further to be noted that in neither of the items (45 in List I and 40 in List II) occur the words "in respect of" manufacture or production, though the Legislature has used this expression in some items, for instance in item 56 of List

1 and in item 43 of List 11. If the intention of the legislature was to place the incidence of the duty of excise "on the manufacturer production", we would have expected the said expressions to occur in the Section or some equivalent words indicating clearly that the incidence was either "on" or "in respect of" production or manufacture. On the contrary, the words are duties "on" the "goods" indicating thereby that the duty arose in connection with the goods and followed them through the several stages of their progress to the consumer and was not limited to the stage of their manufacture or production. An instance of an excise duty pursuing a commodity through several, stages, for instance, of increase, decrease of remission, is to be found in S. 10, Indian Tariff Act, 1934".

The learned judge also referred to the passages from the "Encyclopaedia of Social Sciences" by Seligman, Vol. V.P. 669 and 670, which had been noticed by Sulaiman J. The passage at page 670 proceeds to state that a raw material tax is disadvantageous to producers inasmuch as it is collected at the very beginning of the production process, long before the manufacturer has the opportunity to recover it by selling the finished product. Reference was also made to Findlay Shirras's "Science of Public Finance", where occurs the following passage:

Excises or taxes on commodities of domestic manufacture may be levied on the raw materials or at an intermediate stage of their production or when the articles are ready for consumption. The taxes should be levied in accordance with the canon of convenience.

In The 1942 F.C.R. 90 (Federal Court) , the Federal Court had occasion to expound the precise nature of sales-tax vis-?-vis excise duty. It was observed that duties of excise are levied upon the manufacturer or producer "in respect of" the manufacture or production of the commodity taxed, (*italics ours*). It was further stated that it is the fact of manufacture which attracts the duty, even though it may be collected later. Gwyer C.J. in the course of the judgment referred to Canadian, Australian and American decisions. Among these, it was observed that the Australian cases are more in point. It was also observed that a duty of excise should be levied 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. (The same had been stated also by Sulaiman J. in AIR 1939 1 (Federal Court) . In AIR 1945 98 (Privy Council) the Judicial Committee, considering the validity of the Madras General Sales-tax Act, observed:

The tax imposed by the Madras Act is not a duty of excise in cloak of a tax on sales. Lacking the characteristic features of a duty of excise such as uniformity of incidence and discrimination in subject-matter, it is in its general scope and in its detailed provisions a "tax on sales.

In Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, it was ruled that the duty levied by S. 7 (2.) of the Finance Act 1951 was a duty of excise. Ayyangar J. who spoke for himself and three other learned judges

observed:

In our view, a duty of excise is a tax levied on home-produced goods of a specified class or description, the duty being calculated according to the quantity or value of the goods, and which is levied because of the mere fact of the goods having been produced or manufactured and unrelated to and not dependent on any commercial transaction in them. The duty in the present case satisfies this test and therefore it is unnecessary to seek other grounds for sustaining the validity of the tax-

In *R.C. Jall Vs. Union of India (UOI)*, the court was concerned with the validity of coal cess levied by the the Coal Production Fund Ordinance 1944 and the Rules framed thereunder. The duty was laid on the consignees of coal. It was observed:

It is then contended that the excise duty cannot legally be levied on the consignee, who had nothing to do with the manufacture or production of coal. The argument confuses the incidence of taxation with the machinery provided for the collection thereof.

The case constitutes illustration of the principle that the duty is levied as soon as the commodity comes into existence, no matter what happens to it afterwards

9. We may then refer to the pronouncement of the Supreme Court In *Re: The Bill To Amend S. 20 of The Sea Customs Act, 1878 and S. 3 of The Central Excises and Salt Act, 1944*, . The court was there concerned with the scope of the immunity guaranteed by Art. 289 of the Constitution which stated that the property and the income of the State shall be exempt from Union Taxation. The question was whether certain proposed amendments to the Sea Customs Act and the Central Excise and Salt Act, levying customs duty and excise duty on the properties of the State were valid. Sinha C.J. who spoke for himself and three others, and whose judgment and reasoning were concurred in by Ayyangar J., surveyed the decisions starting from AIR 1939 1 (Federal Court) , dealing with the nature of an excise duty, and observed:

25. This will show that the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. We may in this connection contrast sales tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is, on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax. It would thus appear that duties of excise partake of the nature of indirect taxes as known to standard works on economics and are to be distinguished from direct taxes like taxes on property and income."

26. In other words, the immunity granted in favour of States has to be restricted

to taxes levied directly on property and income. Therefore, even though import and export duty or duties of excise have reference to goods and commodities, they are not taxes on property directly and are not within the exemption in Art. 289 (1)

These are the important decisions cited before us to expound the precise nature, scope and incidence of excise duty. From the principles stated in them, we do not think we would be justified in accepting the extreme proposition stated by Counsel for the appellants that a duty of excise is a duty on the excisable goods, that is, the goods manufactured or produced. In the light of the exposition made in *In Re: The Bill To Amend S. 20 of The Sea Customs Act, 1878 and S. 3 of The Central Excises and Salt Act, 1944*, , we would rather be justified in stating that the duty is in relation to goods. Nor do we appear to be justified in stating that taxable event being manufacture or production the duty cannot be imposed at any stage prior to these. This seems to be opposed to the economists' conception of the tax as given by Seligman, or Findlay Shirras, or the Oxford Dictionary in the passages which have been noticed in the judgments cited earlier, and according to which, duties of excise can be levied on raw material and at any stage from the process of production to consumption. These passages have been referred to without demur, and we were not referred to any authority that the economists' definition and concept of excise duty on this aspect has either been rejected or modified by the Lawyers, jurists or Judges. The same, as we understand, is the import of the passage in *R.C. Jall Vs. Union of India (UOI)*, which we have extracted earlier, where a warning is administered that the incidence of the tax is not to be confused with the machinery provided for collection thereof. We are therefore of the opinion that, on principle, there is nothing objectionable to levy an excise duty on toddy even at the stage where the unfermented juice is drawn from the trees by tapping and before production or manufacture of alcoholic liquor for human consumption by the process of fermentation. This pertains to the machinery for collection and does not destroy its nature as essentially an excise duty. We are only aided in this conclusion by the fact that the process of fermentation of toddy is quick, and neither elaborate nor involved, (See the Excise Manual p. 57 and 84.)

10. But we were strongly pressed with the decision of the Supreme Court in *Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc.*, and it was claimed that the said decision covers these cases completely in favour of the petitioners. We shall therefore carefully examine the said decision. The question considered was regarding the validity of the levy of Health Cess under the Mysore Health Cess Act 1962 at nine paise per rupee on duties of excise leviable by the State. The cess was levied on shop rents collected from contractors who had bid in auction the toddy shops in the State under the Mysore Excise Act of 1901. The validity of the tree-tax levied on almost similar terms as by the impugned Act in these cases was also questioned: but it was conceded we should think the concession is not without significance, although we are not inclined to over stress this aspect that this was an excise duty. The validity of the Health

Cess essentially depended upon the question as to whether the shop rent on which it was based, was an excise duty. It was ruled by the majority of Judges (Hidayatulla. J. dissenting) that it was not.

11. Sikri J. (who spoke for himself, Subba Rao C.J. and Raghubar Dayal JJ.) analysed the provisions of the Mysore Health Cess Act and the Excise Act and also the decisions dealing with the nature of an excise duty, and concluded that the decided cases had established that in order to be an excise duty, (a) the levy must be upon goods, and (b) the taxable event must be the manufacture or production of goods, although levy need not be imposed at the stage of production or manufacture but may be imposed later. Stating that the nature of levy had to be gathered on the facts of each case, the learned judge emphasised the principles which had to be kept in mind before coming to a conclusion. Three principles were high-lighted. First that the essential characteristic of excise duty was uniformity of incidence; second, that the duty must be closely related to manufacture or production; and third, that if the levy is for the privilege of selling an excisable article and the excisable article has already borne the duty and the duty has been paid, there must be clear terms in the charging section to indicate that what was being levied for the purpose of the privilege is in fact a duty of excise. These three main principles were elaborated in the judgment. It was pointed out that the shop rent was what the licensee considered to be the equivalent to the value of the right to sell toddy from certain shops; that it has no close relation to production or manufacture; that the toddy had already borne an excise duty in the form of tree-tax; that the duty is not uniform in incidence as the shop rent was found to be variable, and has no relation to the quantity or quality of the product sold; that the privilege of selling was auctioned well before the goods came into existence; and that express language was wanting to show that shop rent was an excise duty. In the course of elaboration of the principles, after referring to Entry 51 of List II of the Seventh Schedule of the Constitution, it was observed that it was difficult for the State to fix countervailing duties at the same or similar rates, unless the rate of excise as such is known or can be ascertained. Uniformity of incidence, it was said was also indicated by S. 64-A of the Sale of Goods Act. Bachawat J. in a separate concurring judgment observed that the duty of excise may be collected at such time in such manner and on such person as may be convenient or beneficial to the Revenue. On a survey of the provisions of the Act, and the nature of the duty imposed, the learned judge held that the charge on toddy licence had no connection with the production or manufacture of toddy and that the shop-rent does not satisfy the definition of a duty of excise. Hidayatulla, J. dissented. In the course of his judgment the learned judge surveyed the manuals and authorities dealing with excise duty.

12. It was contended, relying upon the above decision, that the test of uniformity of the incidence for the duty is not satisfied, that countervailing duties at the same rates within the meaning of Entry 51 of List II cannot possibly be imposed, and that S. 64-A of the Sale of Goods Act was impossible of compliance. It was also said that the duty was not on the excisable goods themselves, being levied

long before the toddy was manufactured or produced; and that the duty had no close relation to manufacture or production. It seems to us that the decision in *Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc.*, must be understood in the light of the provisions of the relevant statutes disclosed by the said decision. The absence of express mention in the Act that the duty in question was one of excise, and the fact that the goods had admittedly suffered tree-tax, conceded to be excise duty, were stressed to show that shop-rent could not again be regarded as a duty of excise. We do not understand the decision as an authority for the proposition that in every case, where imposition of countervailing duties at same or similar rates is impossible, or S. 64-A of the Sale of Goods Act cannot be complied with, the duty can never be regarded as an excise duty. The provision regarding countervailing duties in Entry 51 of List II, and for recovery of excise duty from the consumer under S. 64-A of the Sale of Goods Act, are essentially enabling provisions; and the fact that action is impossible on the lines indicated in the "provisions, cannot make the duty, if essentially one of excise, any the less so. The duty in these cases is imposed at a uniform rate with respect to each tree that is tapped, the licensee being given the option to choose the trees for tapping-We cannot regard the decision in *Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another*, the relevant passage from which we have extracted earlier, as authority that the incident of uniformity can be secured only if the levy is geared either to the weight or volume of the article. Nor do we think that countervailing duties cannot be imposed at all in respect of tree-tax, levied and collected as provided under the impugned statute and rules.

13. Regarding S. 64-A of the Sale of Goods Act, it contemplates a case of imposition of duties after the making of the contract for sale of goods. The levy here is not a case of that description. Besides, if on a true analysis of the nature of the duty it is found to be one of excise we are not prepared to deny it that character on the mere ground that action under S. 64-A is impossible. As for the argument that duty has been imposed before the excisable article, namely toddy, has come into existence, we find ourselves unable to accept it. From the decisions and authorities which we have surveyed, it is clear that it is enough if the duty is in respect of the manufacture or production of the goods. Economists seem to postulate that the duty can be levied even on raw materials before the stage of production or manufacture of the goods. The learned Government Pleader drew our attention to R. 40 of the Tree-tax Rules, under which all the toddy drawn must be immediately conveyed to a toddy shop; and to the passages in the Excise Manual (See Pages 57 and 84) to show that alcoholic fermentation of toddy which is self generated by the action of wild yeasts starts in the collecting pot itself; and that sweet toddy gets rapidly fermented on account of the pollution in the atmosphere and also on account of the coating with old ferment of the pots in which the juice is drawn. In view of these considerations, we do not think that the duty imposed in these cases can be said to be wholly unrelated to the manufacture or production of toddy. Some analogy

is afforded in regard to this aspect by some of the other entries in the Constitution. Entry 56 of List II is: "(axes on goods and passengers carried by road or on inland waterways". It was conceded by Counsel, and it is a matter of common knowledge, that the taxes can be levied and collected before the carriage of the goods or the passengers starts. And in the *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , the levy of the tax, not on the consignor or consignee or the carrier, but on the producer, of tea, was sustained. Under entry 62 of List II, taxes are leviable "on entertainments". It was not disputed, and it is again common knowledge, that the tax can be levied and collected before the entertainment starts. We agree with the learned single judge that tree-tax is a duty of excise within the meaning of Entry 51 of List II of the Seventh Schedule of the Constitution.

14. The learned single judge has noticed the Australian decision in *Mathews v. The Chicory Marketing Board* (60-CWLR. 263) where a duty at the rate of one pound per half an acre was levied on all land planted with Chicory irrespective of what was produced. It was held that the duty was one of excise. It is unnecessary for us to call in aid the principle of this decision which seems to fully support the stand taken by the Government. Gwyer C.J. said in 1942 F.C.R. 90 (Federal Court) that the Australian decisions are more in point. Ever/unaided by the principle of the Australian decision, there is enough in the decisions and the authorities which we have surveyed, to sustain the validity of the levy as a duty of excise.

15. We should refer to two decisions which appear to directly support the contentions of Counsel for the appellants who argued the writ appeals before us. In *Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others*, , a Division Bench of the Allahabad High Court was considering the validity of the Uttar Pradesh Sugarcane Cess Act (22 of 1956). On the strength of certain observations in the AIR 1939 1 (Federal Court) , it was contended that it was an excise duty. The Division Bench observed:

The question at issue in the *Central Provinces*" case (B) was whether an Act of the Provincial Legislature levying a tax on retail sales of motor spirit and lubricants was a tax on the sale of goods (and thus within the competence of that Legislature) or a duty of excise within the meaning of Entry 45 of List I

No question arose as to the levy of the tax at any point of time prior to the sale by the retail dealer and in my opinion the learned Chief Justice, when he referred to the stags at which an excise duty may be collected referred only to the period of time between production and consumption. This is stated in so many words in a passage at the top of page 41 (of FCR): (at p. 6 Col. 2 of AIR.) & it is I think clear from the first paragraph on page 42 (of FCR): (at p. 7 col.1 of AIR.) that the argument which the learned Chief justice was considering was that an excise duty was a tax on manufacture or production only, and could not therefore be levied at any later stage.

In my view the Chief Justice's observations do not assist the petitioners.

(22) In my judgment the learned Advocate General is right when he says that an excise duty on sugar is a tax on the manufactured product and does not include a tax on the raw materials required in the process of manufacture. Excise duty is a duty on goods and not "in respect of them. I do not think that an octroi, for example, on timber entering the municipality of Bareilly is within the meaning of Entry 84 of List I, a duty of excise on matches manufactured within the municipal limits.

In *Nabha Rice and Oil Mills, Nabha Vs. State of Punjab and Others*, the validity of the East Punjab General Sales-tax Act (46 of 1948) was challenged, and one of the arguments was that the levy was an excise duty, beyond the competence of the State Legislature. After referring to the *Central Province Sales of Motor Spirits* case (AIR. 1939 Fed. C. 1) and other cases, it was observed that a duty of excise is a tax on home produced goods, the duty being calculated according to the quantity or value of the goods and unrelated to, and not dependent on, any commercial transaction in them. It was further observed:

The taxable event being the manufacture or production, till that event happened there is hardly any occasion for excise duty being imposed, for the right to levy this duty accrues only by virtue of the manufacture or production of the goods on which it is imposed- The base of the excise duty is the commodity produced and it must, therefore, actually exist for the duty to be attracted.

16. The observations in these cases undoubtedly support the stand taken by Counsel for the appellants. But on a survey of the decisions and the authorities to which we have referred in detail, we are unable, with respect, to agree that an excise duty cannot in any circumstance be imposed, prior to the stage of manufacture or production of the goods. To the extent to which the Punjab and the Allahabad decisions suggest the contrary view, we would, with respect, differ from them.

17. The learned Counsel for the appellants argued that unless the duty is imposed by reference to the weight or volume of the goods produced or manufactured, viz. either on a volumetric or gravimetric basis, it would be impossible to secure uniformity of incidence, stated to be an essential characteristic of excise duty. We cannot agree; and we are not prepared to hold that any of the decided cases have laid down this extreme proposition, although observations are to be found in some of them that an excise duty or an indirect tax is to be imposed on the goods by reference to their quantity or value (See for *Nabha Rice and Oil Mills, Nabha Vs. State of Punjab and Others*, ; See also *Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another*, . In the cases before us, the duty has been levied at a uniform rate reckoned with respect to each tree that is tapped for toddy. This, in our opinion satisfies the test of uniformity of incidence.

18. Arguments advanced with respect to Art. 14 of the Constitution were quite

feeble. It was said that to levy a uniform rate of tax or duty on all trees tapped in the different areas of the State without regard to the yield of toddy from each, either by weight or by volume, would be to treat unequals equally. There is no foundation in the pleadings for the plea that the yield of toddy from the trees in the different areas of this State is different or disproportionate or exhibits striking disparities. In the counter-affidavit (treated as common to all cases, as noticed by the single judge) the State has taken the position that the yield per tree is practically the same throughout the State. *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, which was concerned with the levy of land tax at a uniform rate on unequally situated plots of land, is not applicable to the case. Land tax, unlike excise duty is geared to the actual or potential income derivable from the land. We are unable to accept the argument that the levy offends Art. 14 of the Constitution.

19. The provisions in the Act and the Rules were attacked as violative of Art. 19(1) (f) on the ground that they do not contain any machinery for assessment or collection. There is no substance in the argument. The rate of tax being calculated per tree, the assessment is a process of simple arithmetical calculation. R. 17 to 19 etc. of the Tree-tax Rules embody the procedure for assessment and collection of the tax, and S. 28 of the Act authorises recovery as arrears of land revenue. In the face of these, we cannot accept the argument that there is no machinery for assessment or collection.

20. Counsel for the appellant in Writ Appeal No. 145 of 1973 raised the contention that for default of payment of tree-tax imposed under the Act and the Tree-tax Rules, the rate of interest to be charged is only six per cent according to R. 6(f) of the Tree-tax Rules; and that condition 29 of the Notification calling for the auction of the toddy shops, and condition 6 of the Special Conditions for vending toddy, had fixed nine percent interest on the arrears. This, it was said, was illegal and unjustified. The Government Pleader replied that the rate of interest had been fixed by the Statutory Notification issued under S. 18A and 29 of the Act, and that by, reason of S. 69 of the Act, the notification must be regarded as part and parcel of the Act itself. We doubt as to whether the rate of interest for defaulted arrears of tree-tax, expressly provided for only at six per cent by R. 6 (f), can be varied by a notification under S. 69 without any express power to vary, by notification the rate fixed by the statutory rule. However, this is not a matter for striking down the levy as illegal. We have difficulty in these proceedings, even in directing that the interest on the arrears of tree-tax shall be only at the lesser rate of 6% as provided by the R. 6 (f); for, the counter-affidavit, treated as common to all cases, has pointed out that in terms of the notification, agreements have been executed, and the matter has passed into the region of contract. We trust that the matter will receive attention of the Government and that the claim for interest, as far as tree-tax, at any rate, is concerned, will receive greater scrutiny. We see no grounds to declare the levy of tree-tax illegal. We dismiss these writ appeals and the writ petitions. But in the circumstances, we make no order as to costs. The C. M. Ps. in these cases

seeking interim relief"s pending disposal of these cases, will also stand dismissed.