
(1978) 08 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 4578 of 1975

Madras Rubber Factory

APPELLANT

Vs

Assistant Collector of Central Excise and Others

RESPONDENT

Date of Decision : 25-08-1978

Acts Referred:

Central Excise (Amendment) Act, 1973 — Section 3
Central Excises and Salt Act, 1944 — Section 2, 35, 37, 4, 4(1)
Constitution Act — Section 213
Lubricants Taxation Act, 1938 — Section 3(1), 4

Citation : (1978) 2 ELT 595

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Khalid, J.—The petitioner is the Madras Rubber Factory Ltd., a company registered under the Indian Companies Act, having its registered office at Madras, engaged in the business of manufacturing automobile tubes, treed rubber with cushion, treed rubber without cushion, and other products. The reliefs prayed are:

"(a) to declare the provisions of Section 4 (1) to (3) of the new section of the Central Excise and Salt Act, 1944 as revised by the Central Excises and Salt Act, 1973 (22 of 1973) as ultra vires of Section 3 of the Act and beyond the competence of Parliament;

(b) by a writ of certiorari or any other appropriate writ, direction or

order, quash the orders of the first respondent Exts. P 2, P 2 (a), P 2 (b), and P 2 (c);

(c) to direct the first respondent to accept the value claimed by the petitioner-company, viz., manufacturing cost and manufacturing profit in the price-lists Exhibits P 1, P 1 (a), P 1 (b) and P 1 (c);

(d) to stay the collection of excise duty on the goods of the petitioner-company other than the manufacturing cost and manufacturing profit till the disposal of the above writ petition ;

(e) to pass other orders as are necessary in the circumstances of the case and to allow the costs of this Original Petition ; and

(f) to quash the order Ext. P 9 of the first respondent by a writ of certiorari or any appropriate writ, direction or order calling for the records relating to the same."

The last prayer was included by an amendment petition as per C.M.P. 648/76 which was not opposed and hence allowed.

2. The petitioner had come to this Court earlier in O.P. Nos. [1977 ELT (85)] and 1524 of 1973, in which a learned Judge of this Court granted the relief prayed for in favour of the petitioner. The judgments rendered in those O.Ps. were affirmed by a Division Bench in Writ Appeal Nos. 461 and 462 of 1975, These petitions were under the old Section 4 of Central Excise and Salt Act, 1944, for short "The Act" The present writ petition deals with the new Section 4 of the Act and its impact on the duty of excise leviable.

3. The manufacturing unit of the petitioner-company is situated in Vadavathoor in Kottayam District, Kerala State. No sales are effected at the factory and therefore the petitioner does not have an ex-factory price for the goods manufactured by it. It has its sales depots distributed all over the country and sales are effected from the said depots. The goods manufactured at the factory are transported to these sales depots. The goods are sold at these sales depots at a price called the billing price. Dealers in turn sell them at a price known as list-price.

4. According to the petitioner, the goods manufactured are sold to "retail dealers or tyre dealers, fleet owners and government accounts". The petitioner-company bears the cost of freights, interest charges on the goods stocked and other expenses in retailing them to the customers. Their price is uniform throughout the country. This uniform price takes in, besides the manufacturing cost and manufacturing profit, other post-manufacturing expenses also like selling and administrative expenses, salaries and wages paid to selling staff, advertisement expenses, godown charges, freight and distribution expenses.

5. Section 3 of the Act, the charging section, provides for the levy of an excise duty on all excisable goods which are manufactured or produced in India. The rates are set forth in the Schedule I of the Act. Item 16 of Schedule I is "tyres". Section 4 is the machinery section, which provides for the method of determination of the value for imposing the duty of excise. The petitioner-company submitted their price-list for the purpose of determining the value for imposing the duty on excise. Four price-lists dated 20th and 23rd September, 1975 were submitted by the petitioner before the first respondent the Assistant

Collector of Central Excise, Kottavam. They are, Exts. P 1, P 1 (a), P 1 (b) and P 1 (c). Ext. P 1 (d) is the covering letter accompanying the price-list. These lists were prepared on the basis of the certificates issued by the petitioner's Chartered Accountant. The first respondent passed orders on the reverse of each of the price-list on 1.10.1975 disagreeing with the petitioner's request for approval of the value claimed. These orders are challenged as being illegal and without jurisdiction.

6. The contention of the petitioner is that the charging section, Section 3, has remained intact. The amended Section 4 is in conflict with Section 3 and is therefore ultra vires. Item 84 in List I of the Seventh Schedule of the Constitution of India, provides for levy of duties of excise on goods manufactured and produced in India. The Central Government is precluded from including in the cost of production any value subsequent to the clearance of the goods from the factory. The amended provision violates both Section 3 and Item 84 of the Union List. In Ground "c" it is stated that "normal price" mentioned in the new Section 4 (1) (a) in the place of the "wholesale price in the original section, "takes in not only the manufacturing costs and manufacturing profits, but also, other costs subsequent to the clearance of goods from the factory", which is in conflict with Section 3 of the Act. It is further stated that since the petitioner-company does not deliver the goods in the course of the wholesale trade and at the place and at the time of removal, but despatch them to the sales depots, who in turn send them for delivery to the customers, Section 4 (1) (a) is inapplicable to the petitioner-company. The section applicable, if at all, so far as the petitioner is concerned, is Section 4 (1) (b). In rejecting the price-lists submitted by the petitioner, the authorities have acted in excess of the jurisdiction vested in them. The orders, Exts, P 2, P 2 (a), P 2 (b) and P 2(c) are violative of the principles of natural justice. The petitioner has not other effective or efficacious remedy except to approach this Court for a writ under Article 226 of the Constitution and hence this writ petition.

7. In the counter-affidavit filed by the respondents, the averments in the petition have been controverted. The crucial point highlighted in the counter-affidavit is that the dispute involved in this writ petition has to be decided in the light of the new Section 4 of the Act and the decisions rendered by the Supreme Court under the old section are not serviceable for resolving the said dispute. The statement that the petitioner has no ex-factory price is not admitted by the respondents. According to the respondents, a normal price/ ex-factory price exists so far as the petitioner is concerned, and that a buyer can purchase a tube from the factory gate if he wants to. All that Section 3 stipulates is, that duty of excise can be levied on all excisable goods which are manufactured and produced in India. Section 4 provides for determination of the value of the excisable goods. All that Entry 84 in List I of the Seventh. Schedule to the Constitution prohibits is the levy of excise duty on goods which are not manufactured or produced in India. It is well within the competence of Parliament to lay down the manner in which and the value on which duties of excite could be levied and collected. Section 4

speaks of the normal price and such a normal price exists in the case of the petitioner's goods manufactured at Kottayam. The new section 4 provides in great detail the mode of determination of the normal price in varying circumstances, and the said section is strictly within the legislative competence of the Parliament. The wholesale removal of the goods manufactured by the petitioner to the sales depot as a price amounts to wholesale trade and cannot be considered as retail trade. The averments in paragraph 14 of the petition that the petitioner has no alternative remedy is denied. The petitioners have a right of appeal to the Appellate Collector u/s 35 of the Act. These, in brief, are the pleadings in the case.

8. The points for consideration in this writ petition are :

(i) whether Section 4 is invalid and in excess of the legislative competence of the Parliament ? Is it ultra vires Section 3 of the Act ?

(ii) what is the content of the expression "duty of excise"? Does Entry 84 in List I of the Seventh Schedule limit the power of Parliament from legislating on the valuation of goods for the purposes of duty of excise ? and

(iii) whether the orders passed by the Department are nullity, or are they liable to be set aside for the reasons mentioned in the petition ?

9. Before examining these questions, I will deal with the earlier judgments dealing with the points at issue and to find out what those decisions have laid down with regard to the scope of the expression "duty of excise".

10. In O.P. Nos. 1290 and 1524 of 1973, two writ petitions by the same petitioner under the old Section 4, Poti J., in his judgment reported in ILR 1975 Ker 407 held that in determining the value for the purpose of duty of excise, post-manufacturing expenses cannot be taken into account. The following passage from the judgment can be usefully read :

"...Excise duty is leviable on the value of goods as manufactured. That takes into account manufacturing cost and manufacturing profit. There may be post-manufacturing operations in respect of goods produced such as freight incurred in conveying the goods to the sales depots, godown charges and other expenses. No doubt when the goods are sold ultimately these may become part of the cost structure. But these are not components in the cost of the goods as manufactured."

Further down, it is thus stated :

"...Suffice to say that the excise authorities were not right in their stand that they are entitled to levy duty on the billing price without making allowance for all the items of operation subsequent to manufacture, what all items should be deducted from the bill price is a matter which calls for examination by the authorities competent to levy the excise duty."

The writ petitions were allowed with a direction to the authorities concerned to

go in to the matter afresh in the light of what was stated in the judgment.

11. Writ Appeal Nos. 461 and 462 of 1975 filed against the above judgment were dismissed. I am told that a SLP against this is now pending in the Supreme Court.

12. The sum and substance of the argument advanced by the learned counsel for the petitioner, Shri F. S. Nariman is, that the duty of excise can be levied only on the value which represents the manufacturing cost and the manufacturing profit and nothing more. Such determination may be at any time. But it should be restricted to the value as stated above, at the time and at the place of removal of goods from the factory. As a corollary what follows is that in determining the value for purposes of duty of excise, nothing else which may ultimately become part of the cost structure can be taken into account. This, according to him, has been finally decided by the Supreme Court.

13. Two questions arise : (1) In the absence of a definition of the expression "duty of excise" in the Act, could it be said that the law has been finally settled by the Supreme Court, even disabling the Parliament to bring the necessary amendment to Section 4; and (2) Conceding that the scope of the content of the expression "duty of excise" has been settled by the Supreme Court, am I precluded from examining the case in the light of the new section ?

14. I shall first refer to the following conclusions in the Book "Legislative, Executive and Judicial Powers in Australia" by W.A. Wynes, Fifth Edition, arrived at by the learned Author after an exhaustive discussion about the import and content of the expression "duty of excise", at pages 374 to 382, at page 382 :

"1. For a compulsory payment to be a customs or excise duty it must answer to the description of "taxation".

2. It must be a tax "upon" goods.

3. Although an excise tax is primarily connected with production or manufacture, a tax on a commodity at any point in the course of distribution before it reaches the consumer is a tax upon production or manufacture and therefore an excise duty.

4. A fee for a mere licence to engage in business, even if it be indirectly connected with production or manufacture, is not an excise duty, if it be regulative.

5. Whether duties of excise are limited to duties charged upon or in respect of goods of home production must be considered an open question.

6. Customs duty is a duty on the importation or exportation whether by land or sea. "Importation" means importation into the Commonwealth even though the goods have been delivered for home consumption and consumed before liability to pay is imposed, and not from another State, taxes upon inter-State goods being already covered by Section 92."

I have extracted the above conclusions as they are instructive. I must confess that I have not closely examined the law on excise duty that obtains in Australia, and the field of operations of direct and indirect tax in that country. Conclusion No. 3 appears to be against the petitioner. Conclusion Nos. 5 and 6 cannot apply to the concept of excise duty in our country and the law in force governing the same.

15. The learned counsel for the petitioner traced the evolution of law on "duty of excise" with reference to the following authorities : AIR 1939 1 (Federal Court) , Madras Province v. Boddu Paidanna and Sons AIR 1942 F.C. 33 The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, , Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, , Union of India (UOI) Vs. Delhi Cloth and General Mills, , In re : Sea Customs Act AIR 1963 S.C. 1760 and Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc., . The principle deducible from these decisions, according to Shri Nariman, is that the duty of excise cannot take in expenses or costs after production or manufacture. In other words, the taxable event is "manufacture" or "production" and the authorities act without jurisdiction if post-manufacturing profits or expenses are taken into account for determination of the value for purposes of imposing a duty on excise. According to him, the law that has been laid down by the Supreme Court in this regard remains intact notwithstanding the new Section 4 of the Act. A collateral argument sought to be built up by him questioning the orders passed by the authorities was that the orders which took in post-manufacturing expenses are orders in excess of their jurisdiction and hence nullities. This argument is advanced to overcome the contention that the writ petition should abate as there is an alternative remedy.

16. The learned counsel for the excise Shri Govinda Warriar cautioned me with reference to the decision in Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, , that observations of the Supreme Court in other cases should be confined to the particular facts of each case. Headnote (j) in that case at page 1215 is relevant and the same is therefore extracted :

"While considering the observations of a high judicial authority like the Supreme Court, the greatest possible care must be taken to relate the observations of a Judge to the precise issues before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for Judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards the case in hand."

It is true, each case has to be considered on its facts. My task is to examine the authorities cited, to find out whether a fresh look at the new Section 4 is barred, and whether the amendment of Section 4 was an exercise in futility.

17. The first case cited by Shri Nariman, learned counsel for the petitioner, is the one reported in AIR 1939 1 (Federal Court) . This case came before the Federal Court on a special reference by the Governor-General u/s 213 of the Constitution Act (Government of India Act, 1935). The reference is in the following terms :

"Is the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, or any of the provisions thereof, and in what particular or particulars, or to what extent, ultra vires the Legislature of the Central Provinces and Berar ?"

The contention put forward by the Government of India in that case was that the tax imposed by Section 3 (1) of the impugned Act, in so far as it fell on motor spirit and lubricants of Indian Origin, really was duty of excise within Entry 45 in List 1 of the Seventh Schedule of the Act, which is in pari materia with Entry 84 in List 1 of the Seventh Schedule of our Constitution. The contention was that Section 3 was an intrusion upon the field of taxation reserved by the Government exclusively for the Federal Legislature. It was in this context that the Court had to consider the relative fields of operation of sales tax and duty of excise. Gwyar C.J. has observed as follows at page 6 :

"But there can be no reason in theory why an excise duty should not be imposed even on the retail sale of an article, if the taxing Act so provides. 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 find 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. The ultimate incidence of an excise duty, a typical indirect tax, must always be on the consumer, who pays as he consumes or expends : and it continues to be an excise duty, that is a duty on home-produced or home-manufactured goods, no matter at what stage it is collected. The definition of excise duties is therefore of little assistance in determining the extent of the legislative power to impose them: for the duty imposed by a restricted legislative power does not differ in essence from the duty imposed by an extended one."

Gwyar C J. has also this to say at page 9 :

"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. I think that this is an interpretation reasonable in itself, more consonant than any other within the context and general scheme of the Act, and supported by other considerations to which I shall refer."

The above extracts lend support to a possible contention that the duty of excise can be imposed even on the retail sale of an article and the authority can impose it at a stage most lucrative for them. The learned Chief Justice upheld the validity of the provincial tax.

18. In a separate but concurring judgment Sulaiman J. looked at the question from a slightly different angle. The learned Judge observes at page 14, thus:

"The validity of the impugned Act therefore depends on the meanings to be given to these two competing entries, and on the question whether they are mutually exclusive or overlap. If the meaning Of the words used in No. 45 includes taxes on retail sales, then the power of the Central Legislature to make laws with respect to the latter would follow as a matter of course. In such an inevitable overlap the provinces must give way. The meaning of the latter expression "taxes on the sale of goods" is perfectly plain; the ambiguity, if any, lies in the interpretation of the words "duties of excise" which have not been defined in the Act."

The important point that I wish to emphasize is the ambiguity which the learned Judge points out for want of a definition of the word "duties of excise". The learned Judge observes :

"The economists" distinction between direct and indirect taxation as a test of a duty being excise duty or not cannot be accepted in full. An excise duty is certainly an indirect tax, but the converse is not true. Every indirect inland tax is not necessarily an excise duty."

The learned Judge further observes :

"It is no wonder therefore that the term "excise" is freely used in England in a very general and comprehensive sense, and for convenience includes even collection of revenue on goods manufactured, produced or sold, in the country, that is to say, on home products and home consumption, as well as certain licences."

"There is a fine distinction between taxes on the sale of goods and taxes on the goods themselves. The essence of a tax on goods manufactured or produced is that the right to levy it accrues by virtue of their manufacture or production. It is immaterial whether the goods are actually sold or consumed by the owner or even destroyed before they can be used. If duty is imposed on the goods manufactured or produced when they issue from the manufactory, then the duty becomes leviable independently of the purpose for which they leave it and irrespective of what happens to them later."

The conclusion of the learned Judge is contained at the following passage occurring in page 31 :

"Without in any way attempting to give an exhaustive definition of "duties of excise", but giving to the words "taxes on the sale of goods" as used in the Provincial Legislative List, Entry No. 48, their ordinary and natural meaning, and comparing them with the words, "duties of excise on goods manufactured or produced in India," as used in the Federal List, Entry No. 45, my conclusion is that the tax on the retail sales to the consumers is in pith and substance not an excise duty, and that therefore the Central Provinces and Berar Sales of Motor

Spirit and Lubricants Taxation Act, 1938, and all the provisions thereof are not ultra vires of the legislature of the Central Provinces and Berar."

Jayakar J., also agreed with the conclusion and had this to say about the two entries :

"On a careful review of the whole question, I am therefore inclined to hold that Parliament intended :

(1) That, as regards goods centrally excisable, taxes on their sale within the Province for purposes of consumption, when such taxes are in no way connected with their production, manufacture etc. within the province, but are imposed on their sale, in the Province, merely as existing articles of trade and commerce should be exclusively within the competence of the Provincial Legislature.

(2) That, save as aforesaid, all duties of excise, on those goods, whether levied and collected at the stage of manufacture, production or any subsequent stage up to consumption (exclusive of sale in the Province, as stated above); should remain exclusively within the competence of the Centre. A corollary of this rule will be that the residuary powers, if any, of levying and collecting excise duties on those goods (save on their sales as aforesaid), will remain exclusively within the competence of the Central Legislature."

I thought it necessary to refer to these observations to disabuse an impression that duty of excise is not a tax on goods and also to highlight the very narrow line that divides tax on goods and tax on sale of goods. This may have a bearing upon what I have to say regarding the impact of the new Section 4 on the contention that post-manufacturing expenses shall be completely excluded from the duty of excise leviable.

19. The second case on which Shri Nariman relied is reported in AIR 1942 F.C. 33 In that case, the appellants were the Province of Madras, who challenged the judgment of the Madras High Court in which it was held that "certain taxes which had been levied on the respondents" under the Madras General Sales Tax Act, 1939 were in the nature of duties of excise and therefore beyond the competence of the Madras Legislature to impose. The following passages can be usefully read ;

"The duties of excise which the Constitution Act assigns exclusively to the Central Legislature are, according to 1939 F.C.R. 18 duties levied upon the manufacturer or producer in respect of the manufacture or production of the commodity taxed. The tax on the sale of goods, which the Act assigns exclusively to the Provincial Legislatures, of the goods...."

* * * * *

"They did not reach their conclusions by assigning any particular technical meaning to the 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

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. They recognized that the expression "duty of excise" is wide enough to include a tax on sales; but where power is expressly given to another authority to levy a tax on sales, it is clear that "duty of excise" must be given a more restricted meaning than it might otherwise bear. On the other hand, the fact that "duty of excise" is itself an expression of very general import is no reason at all for refusing to give to the expression "tax on sales, the meaning which it would, ordinarily and naturally convey. In these" circumstances, the question at issue in the present appeal appears to us to lie within a very small compass,"

The Federal Court allowed the appeal and it was held that the tax on first sale cannot be equated with duty of excise.

20. The third case cited is reported in AIR 1945 98 (Privy Council) . That case arose from a decree made by the Federal Court of India in its original jurisdiction where the question posed was identical to the one reported in A.I.R 1942 F.C. 33. Their Lordships held that "the competing Entries No. 45 of the Federal List (excise duty) and No 48 of the Provincial List (sales tax) may fairly be reconciled without adopting the contention of the appellant, and that the validity of the Madras Act cannot successfully be challenged". It may be useful to refer to the following observations of Lord Simonds, occurring at page 100 :

"Its real nature, its "pith and substance", is that it imposes a tax on the sale of goods. No other succinct description could be given of it except that it is a "tax on the sales of goods." It is in fact a tax which according to the ordinary canons of interpretation appears to fall precisely within Entry No. 48 of the Provincial Legislative List."

It is further observed at page 101 :

"To their Lordships this contention does not appear well-founded. The term "duty of excise" is a somewhat flexible one; it may, no doubt, cover a tax on first and perhaps on other sales; it may in a proper context have an even wider meaning. An exhaustive discussion of this subject from which their Lordships have obtained valuable assistance, is to be found in the judgment of the Federal Court in 1939 F.C.R. 18. Consistently with this decision, Their Lordships are of opinion that a duty of excise is primarily a duty levied upon a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax upon goods not upon sales or the proceeds of sale of goods."

21. The decision reported in Union of India (UOI) Vs. Delhi Cloth and General Mills, , related to the legality of levy of excise duty on a substance produced by the manufacturer at an intermediate stage. It was held that "excise duty being leviable on the manufacturer of goods and not on their sale, the petitioners would no doubt be liable if they produced "refined oil" as known in the market at an intermediate stage". In other words, if from the material, a new substance is

produced by the application of processes one or more of which are with the aid of power at an intermediary stage, before the final product comes into existence and such substance is the same as refined oil, as is known to the market, excise duty can be levied on such substance in addition to the duty of excise, on the finished product. The emphasis placed on these cases is that the incidence of taxation is the manufacture of goods.

22. The decision reported in AIR 1963 S.C. 1760 was a case that arose on a reference by the President of India under Article 143(1) of the Constitution of India, on the true scope and interpretation of Article 289 of the Constitution relating to the immunity of State properties from Union taxation. Though there are four different judgments, the relevant discussion for our purpose is contained in paragraph 25 by Sinha C.J., which reads :

"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."

23. The following observations in *Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc.*, at paragraph 20, are also relevant:

"These cases establish 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. Further the levy need not be imposed at the stage of production or manufacture, but may be imposed later."

24. These observations though bring out the dichotomy between tax on sale of goods and tax on goods also indicate that the areas of their operations overlap. The discussions lend support to the contention that a duty of excise is not only a duty on manufacture or production but is a tax upon goods as well. In my view, a categorical statement that in no circumstances can anything other than the manufacturing cost and the manufacturing profit attract the impost of excise duty may need a closer scrutiny in the light of the new section.

25. Before proceeding further, two other Supreme Court cases have to be referred : the *Voltas* case and the *Atic* case, reported respectively in *Atic Industries Ltd. Vs. H.H. Dewa, Asstt. Collector of Central Excise and Others*, and *A.K. Roy and Another Vs. Voltas Limited*, the question that fell for consideration before the Supreme Court was, whether the *Voltas Limited*, the assessee in that

case, was liable to be charged with excise duty on the basis of the price of retail sales made by it directly to consumers or whether it was liable to be charged on the basis of the price payable by the wholesale dealer after deducting 22% discount. That case was decided under the old Section 4. From the materials available in that case, it is seen that 90 to 95% of the articles manufactured by the Voltas Limited were sold to consumers direct and only the remaining were sold to the wholesale dealers. It was held by the Supreme Court (Mathew J., speaking for the Bench) that the term "wholesale cash price" meant the price paid by retail traders on wholesale purchase.

26. Great emphasis was placed by the learned counsel for the petitioner on the following sentences in paragraph 21 :

"Excise is a tax on the production and manufacture of goods....Section 4 of the Act therefore provides that the real value should be found after deducting the selling cost and selling profits and that the real value can include only the manufacturing cost and the manufacturing profit. The section makes it clear that excise duty is levied only on the amount representing the manufacturing cost plus the manufacturing profit and excludes post-manufacturing cost and the profit arising from post-manufacturing operation, namely, selling profit."

In that case, the Supreme Court held that to determine the wholesale cash price, for the purpose of Section 4, all that was necessary, was to see whether the sale was at arms length and not to a favoured dealer.

27. The matter again fell for consideration before the Supreme Court in the decision reported in *Atic Industries Ltd. Vs. H.H. Dewa, Asstt. Collector of Central Excise and Others*, , otherwise known as "Atic case". There also the scope of the term "wholesale cash price", had to be considered. Bhagwati J., spoke in approval of the observations of Mathew J., in *Voltas* case and held in paragraph 12 as follows :

"The value of the goods for the purpose of excise must take into account only the manufacturing cost and the manufacturing profit and it must not be loaded with post-manufacturing cost or profit arising from post-manufacturing operation. The price charged by the manufacturer for sale of the goods in wholesale would, therefore, represent the real value of the goods for the purpose of assessment of excise duty.

* * * * *

It is the first immediate contact between the manufacturer and the trade that is made decisive for determining the wholesale cash price which is to be the measure of the value of the goods for the purpose of excise."

With this, we come to the close of the discussion about the concept of "duty of excise" prior to the coming into force of the new Section 4,

28 The amendment to Section 4 of the Act was perhaps necessitated because of

the Voltas" case. The section had to be changed to overcome the hurdle created by the Supreme Court decisions. Therefore, the new section has to be properly analysed before applying the judgments mentioned above. To say that the matter is concluded, is to forget that the section has been amended. I am emboldened to make this statement for the reason that Mathew J. has observed in the Voltas case that "the section makes it clear that excise is levied only on the amount representing the manufacturing cost plus the manufacturing profit and excludes post-manufacturing cost and the profit arising from post-manufacturing operation, namely, selling profit," referring to the old section. Therefore, even if the law is settled that duty of excise for the purpose of Section 4 as it then stood can take in only the manufacturing cost and manufacturing profit, it cannot be said to be the law for the purpose of interpreting the new Section 4 also. It is against this background that I propose to consider the new section, and its impact on the determination of the value for excise duty.

29. The respondents' counsel, to start with, made a desperate attempt to take refuge under Entry 97 in List 1 of the Seventh Schedule to contend that even if Entry 84 did not authorise the Parliament to include post-manufacturing expenses for the purpose of determining the value for assessment, it could be brought within the legislative competence of Parliament under the residuary Entry 97 in List I of the Seventh Schedule. It was contended that the Federal Court decisions and the Privy Council decision referred above were rendered under the Government of India Act under which the distribution of legislative powers was a unique one. The residuary powers did not vest either with the Provinces or with the Centre and therefore the considerations which prevailed then, are not relevant now. It is true that under the said Act, the residuary powers rested with the Governor-General, a scheme of four-fold distribution of legislative power, which, perhaps, was the contribution of India, under the British regime, to political science. Under our Constitution, we have Entry 97, which reposes all residuary powers with the Parliament. This argument based on Entry 97 was advanced by the learned Central Government Pleader indirectly admitting, for arguments' sake, that duty of excise did not permit post-manufacturing expenses also to be taken into account. I think it is a meaningless exercise to go deep into this argument for two reasons : (1) the Supreme Court had viewed with disfavour the indiscriminate resort to Entry 97 in cases where I a party is kept at bay with reference to a particular Entry and secondly because in my view Section 3 does not define "duty of excise" to take in only the manufacturing costs and manufacturing profit.

30. In *Union of India v. H.S. Dhillon* AIR 1972 S.C. 1961 the Supreme Court observed that "the object of providing residuary power was to confer power only in respect of a matter which was not foreseen or contemplated then and which by reason of changed circumstances has arisen and which could not therefore be dealt with when the lists are framed". The Supreme Court also noted with approval the following observation of Sulaiman J., in 1939 F.C.33

"To resort to that residuary power should be the very last refuge. It is only when all the categories in the three lists are absolutely exhausted, that one can think of falling back upon non-descript."

I have therefore to repel the contention of the learned counsel for the Excise that the post-manufacturing expenses can be brought within the ambit of "duty of excise" within the help of Article 248 and Entry 97 in List I of the Seventh Schedule.

31. In the absence of any definition in Section 3 of the expression "duty of excise", we have to consider the new Section 4 which lays down the methodology of determining the value for the impost of excise, independently.

32. There are indications in the judgments of the Federal Court and the Privy Council referred above that their Lordships laboured under a handicap for want of a definition of the expression "duty of excise".

33. The matter has to be considered with reference to the section itself. I shall read both the old and the new section 4 :

34. Though the prayer in the writ petition is, to declare the provisions of Section 4 (1) to (3) as ultra vires, I do not find any foundation made for this prayer in the pleadings. In Ground (D) of the petition, it is stated that the petitioner-company does not deliver the goods in the course of wholesale trade at the place and at the time of removal but despatch all their goods to their sales depots which, in turn, send them for delivery to the customers at a different point of time after incurring certain expenses for the purpose of sale. Hence Section 4(1) (a) is inapplicable for the purpose of valuation of the goods. Again, in Ext. P 1 (d), this is reiterated as follows:

"There is no sale by us to a bayer in the course of the wholesale trade or delivery at the time and place of removal and therefore Section 4(1)(a) is not applicable."

Thus, according to the petitioner, Section 4(1) (a) is inapplicable for the purpose of valuation of their goods. If we go by this pleading, it is not necessary to consider the validity of this section. In Ground (D) it is further stated that the section applicable if at all, so far as the petitioner-company is concerned, is Section 4(1)(b). Section 4(1) (b) only states that where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as maybe prescribed. Section 4 (1) (b) thus enables the Government to frame rules for the ascertainment of normal price under the circumstances mentioned therein. The rule-making power of the Government cannot be questioned and is not questioned. No rule made pursuant to Rule 4 (1) (b) is also questioned in this writ petition. Therefore, on the pleadings, it is not strictly necessary to express myself on the legislative competence of this section.

35. Be that as it may, since arguments were addressed at length on the correct interpretation of the section, may in passing refer to this aspect of the case also.

36. The legislative competence of Section 4 is challenged on the ground that the amended provision of Section 4 is in conflict with Section 3 of the Central Excises and Salt Act, 1944 and is hence ultra vires". This contention assumes that Section 3 has defined "duty of excise" to mean duty on a value consisting of the manufacturing cost and the manufacturing profit alone. It is not so. It is better to extract Section 3(1) itself, which has not been amended. Section 3 (D reads :

"3. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt Which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India, as, and at the rates set forth in the First Schedule."

The section starts by saying that "there shall be levied and collected in such manner a may be prescribed duties of excise...." Thus, the section contemplates the levy and collection of duties of excise in a manner to be prescribed. That manner seen in Section 3 is that duty of excise can be only on "excisable goods" which are produced or manufactured in India. According to me, Section 3 does not control Section 4 in any other manner. Section 4 does not contravene Section 3. Both can co-exist. It is by the combined operation of these two sections, that the authorities can collect excise duty. In my view, this contention has to fail. In Ground (C) of the petition, the difference between the normal price in Section 4(1)(a) and the wholesale price in the original section is noted. It is further stated that this normal price takes in not only manufacturing cost and manufacturing profit, but also other costs subsequent to the clearance of the goods from the factory. It is on this ground that the validity of Section 4 is attacked.

37. From Section 4 extracted above, it is clear that duty of excise is chargeable with reference to a deemed value called the normal price, to be arrived at in a manner indicated in the Sub-sections. The opening words of Section 4, old and new, are different. The old section begins with the words "where under this Act, any article is chargeable with duty at a rate dependent on the value of the Article...", while the new section begins with the words "where under this Act, the duty of excise is chargeable on any excisable goods, with reference to value, such value shall...." The deliberate departure in the phraseology in the opening words of the new section shows that it has been enacted with a purpose. Normal price is explained in the section itself as "the price at which excisable goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade". The word "ordinarily" has its own significance. The object is further made clear in the concluding portion of Section 4 (1) (a) in the words "where the buyer is not a related person and the price is the sole consideration for the sale". The section thus rules out all possibilities for favouritism from the concept of price for the purpose of levy of excise.

38. This Sub-section contains three provisos. These three provisos have in-built safeguards for the officers to arrive at the price for assessment. The first proviso deals with the sale by the assessee to different classes of buyers. For purpose of

levy of excise, each such price shall be deemed to be the normal price. This can obviate the difficulty, which the departmental officers may meet with, where different dealers got excisable goods at different prices. The second proviso deals with the cases where price is fixed under any law for the time being in force or a price the maximum of which is the price fixed under any law. Under those conditions; the normal price will be the price so fixed. The third proviso deals with the price in cases where an assessee sells only through a related person. In such cases, normal price shall be deemed to be the wholesale price at which the related persons sells to dealers not being related persons. In the absence of such dealers, the price that the retailer pays to a related person shall be the normal price. Thus, the three provisos to Section 4 (1) (a) clearly bring out the object with which the section was enacted and we get a clear idea about the manner in which the value has to be fixed for the purpose of the levy of duty of excise.

39. I fail to see how this section can be said to be violative of Section 3. The value for excise duty has to be fixed in the manner indicated therein. The question whether a particular case comes within proviso (i), (ii) or (iii) is a matter to be decided by the authorities. Section 4 details the manner in which the normal price has to be fixed in different circumstances. In my view, Section 4 (1) (a) does not suffer from any legal infirmity. Nor is it in excess of the legislative competence of Parliament.

40. Now coming to Section 4 (1) (b), this section only provides that where normal price of such goods is not ascertainable, in one or the other manner indicated in Section 4 (1) (a) their value will be determined in such manner as may be prescribed. In exercise of the powers conferred u/s 37 of the Act, rules have been framed as the Central Excise (Valuation) Rules, 1975, as authorised under this section. Rule 3 prescribes that the value of any excisable goods for the purpose of Section 4 (1) (b) shall be determined by the appropriate officer in accordance with the rules. The petitioner's case is that section 4 (1) (a) is inapplicable to them and the section applicable is Section 4 (1) (b). If that be so, valuation has to be done in accordance with the rules, the validity of which is not under challenge here. The question is, whether the valuation should be under Rule 6 or under Rule 7, a matter for the departmental authorities to decide. The petitioner's consistent case has always been that they have no ex-factory price though the Department has shifted their stand now. The factual details, on which the petitioner seeks to build up their case have to be considered by the authorities concerned. Rule 6 provides for the determination of the value of the excisable goods to be assessed, if they cannot be determined under Rule 4 or under Rule 5. Sub-clause (a) of Rule 6 states that where such goods are sold by the assessee in retail, the officer concerned will have to consider whether the sale is in retail and thereafter the officer concerned will have to reduce the value by such amount which in his opinion the assessee would have sold such goods in the course of the wholesale trade to a person other than a related person. All the details in Sub- Clause (a) of Rule 6 will have to be worked out by the officer. The first proviso to this rule relates to excisable goods specified in column (2) of the

Schedule appended to these rules. This relates to patent medicines. The second proviso gives further guidelines to the officer in determining the amount of reduction as mentioned in Rule 6 (a). Rule 6 (b) relates to captive consumption. Necessary guidelines are given there also for arriving at the value. Proviso to that Sub-rule gives guidelines to the appropriate officer. Sub-Rule (ii) of Rule 6 (b) deals with a separate type of sales value of which cannot be determined under Sub-Clause (i). Rule 6 (c) deals with other forms of sale. It is when the value of the excisable goods cannot be determined by any of the methods provided under Rule 6 that their value can be determined under Rule 7. In this case, the officer concerned has resorted to Rule 7 for determining the value of excisable goods. Whether this is proper or not is a matter which has to be adjudicated by the Departmental authorities concerned. The petitioner's contention as is seen from Ext. P 1 (d) is that their goods are sold in retail and the price quoted in their price-lists are retail prices as stated in Rule 6 (a) and hence entitled to the reduction provided therein. The petitioner states in paragraph 3 that the post-manufacturing expenses include selling and administrative expenses, for example, salaries, wages paid to the selling staff, advertising expenses, godown charges, freight and distribution expenses. According to them, these expenses have to be deducted as provided for in Rule 6 (a). This contention can be accepted only if the petitioner succeeds in establishing satisfactorily that their sales are retail sales. According to the Department, the prices charged by the assessee at factory sale depot are the wholesale price for all practical purposes. The retail price is the one charged by the dealers to the consumers. Ext. P 2 would indicate that this price is 71/2% in excess of the price declared by the assessee. Sufficient materials were not placed before me by counsel for the Department to substantiate the contention that the price charged by the dealers to consumers is 71/2% in excess of the price declared by the assessee. But on this ground alone, I cannot accept the petitioner's contention that the sales are only retail sales. This again, is a matter which has to be decided by the officers, and if they have not done so, to be agitated in the Departmental Forum provided for by the Government by way of appeal and second appeal. In Ext. P 2, the Assistant Collector has proceeded on the footing that the prices shown in their bills is not retail price but are wholesale price for all practical purposes on the ground that the retail price is the one charged by the dealers to the consumers. In Ext. P 2 (a) regarding treed rubber, the Assistant Collector has granted deduction for amounts representing freight, octroi and other taxes. The officer has disallowed other claims made by the petitioner. The remedy for the petitioner, if aggrieved, is to move the statutory authority under the Act in appeal.

41. The Central Government Pleader would contend that there is no specific plea that the assessment should be under Rule 6 and not under Rule 7. This may not be wholly correct since there are indications in the petition to the effect that the determination of the price of the goods should be under Rule 6.

42. It will be appropriate to read paragraph 3 of the petition to appreciate the

contentions of the petitioner :

"The petitioner removes their goods from their factory at Vadavathoor and transports them to their sales depots throughout the country from where these goods are sold to retail outlets or tyre dealers, fleet owners and Government accounts. There is no sale of their goods at the place of removal as well as at the time of removal of their goods. The petitioner-company bears the cost of freights, interest charges on the goods stocked at the sales depots and the expenses in retailing them to their customers. The petitioner's prices for their goods is uniform throughout the country and such price includes besides the cost of manufacture and manufacturing profit all other costs of post-manufacturing portions and sales profits, namely, freight, interest charges etc. The post-manufacturing expenses include selling administrative expenses, for example, salaries and wages paid to . selling staff, advertising expenses, godown charges, freight and distribution expenses."

It is difficult to find in para 3 of the petition a definite statement that the sales conducted by the petitioner are only retail sales. If the different forms of sale contained in para 3 are compared with Section 4 (4) (a) of the Act, which defines wholesale trade, one gets more or less an idea as to what is the nature of the sale effected by the petitioner. In para 3, the statement is that those goods are sold to "retail outlets, or tyre dealers, fleet owners or Government accounts". Wholesale trade is defined in Section 4 (4) (a) to mean, "sales to dealer, industrial consumers, Government, Local authorities and other buyers, who or which purchase their requirements otherwise than in retail". On a comparison of these two, it becomes difficult to appreciate the contention of the petitioner that their sales are only to retail dealers.

43. In my view, the rules give proper guidelines for the officers to determine the value of excisable goods. The petitioner admits that value of their goods has to be determined u/s 4 (1) (b). The petitioner admits that their case cannot come u/s 4 (1) (a). All that the Departmental Officers have done is only to determine the value under the rules. The petitioner can succeed only if it can be held that notwithstanding the amendment to Section 4, and notwithstanding the rules framed pursuant to Section 4 (1) (b), valuation for the purposes of excise, duty can and should be restricted to the manufacturing cost and manufacturing profit. This, according to me, would be to ignore the amended section and the rules. The new section enables the Departmental Officers to take into account certain post-manufacturing expenses also while determining the value for the, purpose of excise duty. In a given case, it will be for the assessee, if aggrieved, to satisfy the authorities that the inclusion of a particular item in the valuation for the purposes of duty of excise is bad. *Voltas*" case is the law of the land in interpreting the scope of the old Section 4. The amended Section 4 is wider in scope. It cannot be said that Section 4 is in excess of the legislative power of Parliament. Item 84 in List I of the Seventh Schedule does not limit the power of Parliament from laying down the method of valuation for the purposes of duty of

excise. In my view Section 4 is not ultra vires to Section 3; nor is it in excess of the legislative competence of Parliament.

44. Two decisions, one of the Allahabad High Court and the other by the Patna High Court were brought to my notice in support of the petitioner's case. Both these decisions related to the interpretation of the new section. A Division Bench of the Allahabad High Court had to consider the mode of valuation of the goods manufactured by the petitioner-company (in that case, electric lamps and fluorescent lamps) for the purpose of levy of excise duty under the Central Excises and Salt Act, 1944. The officer did not accept the price-list submitted by the petitioner-company but directed the petitioner to submit the price-list in Form IV containing the prices at which the five companies to which it sells its entire output. That direction was challenged in the writ petition before the Division Bench. The assessee-company took the stand that though Section 4 was altered, the legal position regarding the determination of value has not been altered and the decision of the Supreme Court should govern the determination even after the section has been amended. The crux of the controversy between the parties in that case, to borrow the expression used by the learned Judge who decided the case is, "whether the five customer-companies can be regarded as "related persons" as defined in Section 4 (c)". The Court held with reference to the Articles of Association of the Companies, whether the buyer-companies were related persons or not. The matter in controversy before me is not the same as the one that arose in that case. That case was disposed of with a direction to the Central Excise Authorities to examine whether or not the five-customers companies are favoured customers and whether the prices at which the petitioner-company sells its products to them are the normal prices at which such goods are ordinarily sold by a manufacturer in the course of wholesale trade for delivery at the time and place of removal. Accordingly, a mandamus was issued to consider the price lists submitted by the petitioner-company in accordance with the enunciation of law contained in that judgment. The petitioner here cannot get any support from that decision, [Civil Miscellaneous Writ No. 179 of 1976 of the Allahabad High Court : 1977 E.L.T. (J1) for the purpose of this case.

45. In Civil Writ Jurisdiction Case No. 704 of 1976 E.L.T (14) the Patna High Court had also to consider the content of the expression "related person", in the new section. In that case, the petitioner prayed for an appropriate writ to quash the order of the Assistant Collector of Central Excise, Jamshedpur, asking the petitioner to furnish price lists in part IV of the Proforma treating the regional sales office of the petitioner as "related persons". There was a further prayer to issue necessary directions to the respondents therein to treat the wholesale cash price exworks at Jamshedpur as the value for levying excise duty and to refund the excess amount realised from the petitioner. The grievance of the petitioner in that case was that the excise officer concerned while allowing deduction of transport charges only, refused to deduct other post-manufacturing expenses from the gross price arrived at the assessable value. The Excise authorities were

of the view that "transfer of vehicles from the factory to the various regional sales offices for sale cannot be said to be sales as postulated u/s 4 (1) (a) of the Act. There, the learned Judges considered the effect of the new Section 4, and the Supreme Court cases referred to above. The discussion about the new section begins from para 11 onwards. There, the case was with reference to Section 4 (1) and 4 (2). In that case, it was not disputed that the petitioner's vehicles were sold to buyers in the course of wholesale trade and that it was the wholesale cash price which should be the normal price under the new section. Counsel for the Union of India submitted that the transfer by the petitioner to the regional sales office is not sale within the definition of that expression given in Section 2 (h) of the Act, and therefore, Section 4 (2) will apply and not Section 4 (1). What was considered there was the applicability of Section 4 (1) (a) and Section 4 (2). None of the contentions raised before me relating to the applicability of the rules or the legislative competence of Section 4 appears to have been discussed, considered or adjudicated in that case. Nor do we find any support for the contention now put forward that in all cases of duty of excise only the manufacturing cost and manufacturing profit can be taken into account. The question centred round the regional sales offices and the refusal to deduct post manufacturing expenses in arriving at the assessable value for the purpose of levy of excise duty. The facts of the instant case are dissimilar to that case. According to me, this case be easily distinguished from the Patna case referred to above. If the Allahabad and Patna cases are authority for the position that even after the amendment of Section 4, the value for purposes of levy of duty to excise should be manufacturing cost and manufacturing profit alone, then, with great respect, I have to disagree.

46. The only other question that survives for consideration is the point raised in para 14 of the original petition that the petitioner has no other effective or expeditious remedy that to approach this Court under Article 226 of the Constitution of India. It was submitted that the orders passed by the officers were nullities and therefore resort to alternative remedy is an exercise in futility. Reference was made to the decisions reported in *Raghvan v. Executive Officer, Tripunithura Panchayat* 1977 KLT 749 and *Prakash Match and Plywood Works and Ors. v. Assistant Collector of Central Excise and Ors.* [I.L.R. 1977 Ker 295. In my view, the orders passed by the officers cannot be called nullities since they are passed in compliance with the section and the rules prescribed. The officers may have erred. They can be corrected by resort to alternative remedies. However, I do not want to dismiss this writ petition on that short ground. The challenge against Exts. P 2, P/2 (a), (b) and P 2 (c) cannot therefore be upheld.

47. To sum up, my conclusions on the points raised are as follows : (1) Section 4 is not ultra vires to Section 3. Section 4 implements what Section 3 directs, Section 4 contains the guidelines to departmental officers to determine the value for the purposes of duty of excise. This value is not limited by Section 3 and therefore both the sections can co-exist. (2) Nor is Section 4 in excess of the legislative competence of Parliament. Entry 84 in List I of the Seventh Schedule

of the Constitution reads:

"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 toilet preparations containing alcohol or any substance included in subparagraph (b) of this Entry."

The expression "duty of excise" has not been defined. Eminent Judges have given different shades of meaning to this expression. Gwyer C.J, in 1939 F.C. 1 observed that in theory an excise duty could be imposed even on the retail sale of an article if the taxing Act so provides and at another place, observed that "no wonder, therefore, that the term "excise" is freely used in England in very general and comprehensive sense" ; Sulaiman J., as " "taxes on sale of goods", is perfectly plain, the ambiguity if any, lies in the interpretation of the words "duties of excise", which have not been defined under the Act", in AIR 1942 F.C. 33, duty of excise "as wide enough to include a tax on sales"; in 1945 P.C. 98 "duty of excise as a somewhat flexible one ; it may, no doubt, cover a tax on first and perhaps on other sales; it may in a proper context have an ever wider meaning" ; in 1973 S.C. 1760 Sinha CJ., as "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 sales-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 on property and income". From the above observations, it is clear that the expression "duty of excise" is wide in scope. That being so, the contention that the value for the purposes of excise should be confined only to the value as laid down by the Supreme Court before the amendment of Section 4 does not appear to me to be well founded. Section 4 is of a wider import. Neither Section 3 nor item 84 in List I of the Seventh Schedule limits its scope. Therefore, the mode prescribed by Section 4 for determination of the value of goods manufactured or produced in India for purpose of excise duty as laid down in new Section 4 is well within the competence of Parliament and is not in excess of the powers conferred by Parliament, it is not necessary to read down Section 4 to bring it in conformity with Section 3 as was faintly suggested by the learned counsel for the petitioner. On my finding that there is no conflict between the two sections. Section 4 need not be struck down nor read down.

48. One fails to understand the anxiety on the part of the petitioners to get the value for the purpose of excise duty determined as low as possible as though they are the sufferers. The excise duty forms part of the cost structure which the manufacturer or the dealer, passes on to the consumer and it is he who bears the burden. The real object appears to be to inflate the post-manufacturing expenses detailed above and thereby swell the pockets of the manufacturer. Not, without

justification, is it suggested by the Department that the post-manufacturing expenses like selling and administrative expenses, salaries, wages paid to the selling staff, advertising expenses, godown charges, freight and distribution expenses are so grossly exaggerated Only to benefit the manufacturers so that they can make undue profit.

49. The orders, Exts. P 1. P 2 (a), P 2 (b) and P 2 (c) as also Ext. P 9 are not bad in law. They have been passed by the officer concerned in conformity with the Act and the rules. As to extent what all Items of expenditure should enter the determination of the value for the purpose of excise duty is a matter which the officers should consider. I am here concerned only with the validity of section and the orders.

50. In my judgment therefore, the writ petition has to fail, and is dismissed, The petitioner will be at liberty to challenge the orders before the appropriate statutory authority, if so advised.