(1983) 12 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 8297, 8899, 9230 and 9444/81, 6268, 6658, 6660, 6661, 7052 and 7648/82 and 856, 8328, 8336 and 8392/83

Nellimerla Jute Mills Co. Ltd. APPELLANT

Vs

Appellate Collector, Central Excise, Madras and Others RESPONDENT

Date of Decision : 22-12-1983

Acts Referred:

Central Excise Rules, 1944 — Rule 3, 5, 6
Industries (Development and Regulation) Act, 1951 — Section 2, 3, 9(1)

Citation : (1984) 1 APLJ 309 : (1984) 16 ELT 100

Hon'ble Judges : Ramachandra Rao, J;P.A. Choudary, J

Bench : Division Bench

Advocate : V. Jagannadha Rao, for the Appellant; K. Nagaraja Rao for Central Government, for the Respondent

Judgement

Ramachandra Rao, J.—In this batch of writ petitions, the petitioners who produce jute products challenge the validity of imposition of cess on jute yarn produced by their mills.

2. The cess is levied under the provisions of Section 9(1) of the Industries (Development and Regulation) Act, 1951 (hereinafter called ''the Act''). This Act is enacted to provide for development and regulation of certain industries. u/s 2, it is declared that it is expedient in public interest that the Union should take under its control the industries specified in the First Schedule. u/s 3(i), "Scheduled industry" means any of the industries specified in the First Schedule. The First Schedule to the Act contains 38 industries and the preamble to the First Schedule reads :

"Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings."

Item 23, which deals with textiles reads as follows :

"23. Textiles (including those dyed, printed or otherwise processed) :

(1) made wholly or in part of cotton including cotton yarn, hosiery and rope;

(2) made wholly or in part of jute, including jute, twine and rope;

(3) made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and ruggets;

(4) made wholly or in part of silk, including silk yarn and hosiery;

(5) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

Explanations 1 and 2 to the First Schedule read as follows :-

"Explanation 1. - The articles specified under each of the headings Nos. 3, 4, 5, 6, 7, 8, 10, 11 and 13 shall include their component parts and accessories.

Explanation 2. The articles specified under each of the headings Nos. 18, 19, 21 and 22 shall include the intermediates required for their manufacture."

3. The relevant statutory provision under which cess is levied is Section 9, which reads as follows :

"9(1). There may be levied and collected as a cess for the purposes of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by notified order a duty of excise at such rate as may be specified in the notified order, and different rates may be specified for different goods or different classes of goods :

Provided that no such rate shall in any case exceed 13 paise per cent of the value of the goods.

Explanation. - In this Sub-section, the expression ''value'' in relation to any goods shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of their removal therefrom, without any abatement or deduction whatever except trade discount and the amount of duty then payable.

(2) The cess shall be payable at such intervals, within such time and in such manner as may be prescribed, and any rules made in this behalf may provide for the grant of a rebate for prompt payment of the cess.

(3) The said cess may be recovered in the same manner as an arrear of land revenue.

(4) The Central Government may hand over the proceeds of the cess collected under this section in respect of the goods manufactured or produced by any scheduled industry or group of scheduled industries to the Development Council established for that industry or group of industries, and where it does so, the Development Council shall utilise the said proceeds -

(a) to promote scientific and industrial research with reference to the scheduled industry or group of scheduled industries in respect of which the Development Council is established;

(b) to promote improvements in design and quality with reference to the products of such industry or group of industries;

(c) to provide for the training of technicians and labour in such industry or group of industries;

(d) to meet such expenses in the exercise of its functions and its administrative expenses as may be prescribed."

4. Section 9(1) provides for levy and collection as a cess for the purposes of the Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by a notified order, a duty a excise at such rate as may be specified in the notified order, and different rates may be specified for different goods or different class of goods. But the proviso to the said section imposes a restriction on the rate of cess to be levied u/s 9(1) that the rate shall not exceed 13 paise per cent of the value of the goods. The explanation to the said section provides for the method of ascertaining the value of the goods for imposing the cess at the rate notified by the Central Government in the notified order.

5. In exercise of the powers conferred by sub-section (1) of Section 9 of the Act, the Central Government issued trade notice No. 35/80, dated 4-3-1980 with regard to jute manufacturers specifying the class of goods manufactured or produced wholly or in part of the jute in the scheduled industry of textiles on which duty of excise shall be levied and collected as a cess at the rates mentioned in Column (3). The said notice reads as follows :-

"Trade Notice No. 35/80 - Jute Manufactures No. 1/80, dated 4-9-1980. S.O. 102(E). - In exercise of the powers conferred by sub-section (1) of Section 9 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby specifies the classes of goods manufactured or produced wholly or in part of jute in the scheduled industry of textiles as mentioned in Column (2) of the Table below on which a duty of excise shall be levied and collected as a cess for the purposes of the said Act for a period of one year commencing on the 1st March, 1980 at such rates as are specified in the corresponding entry in Column (3) of the said Table.

TABLE --- S. No. Description of Class of Goods -- (1) (2) -- 1. Carpet Backing 2. Hessian and Jute fabrics other than sacking, carpet backing and cotton bagging 3. Sacking 4. Yard 5. Twine 6. Cotton bagging 7. The manufactures (other than those specified at S. No. 1 to 6 above) containing 50 per cent or more of jute by weight. --

--- Rates of duty of excise per tonne --- (3) --- Rs. 10.00 (Rupees ten only) Rs. 9.00 (Rupees nine only) Rs. 6.25 (Rupees six and paise twenty-five only) Rs. 6.25 (Rupees six and paise twenty-five only) Rs. 3.75 (Rupees three and paise seventy-five only) Rs. 2.50 (Rupees two and paise fifty only) Rs. 6.25 (Rupees six and paise twenty-five only) ---

6. Section 30(1) of the Act empowers the Central Government to make rules for carrying out the purposes of the Act. Under Clause (c) of sub-section (2) of the said section, the rules may provide for;

"the intervals at which the time within which, and the manner in which the cess leviable u/s 9 shall be payable and the rebate for the prompt payment of such cess."

6A. In exercise of the said rule making power u/s 30 the Central Government made rules called "the Jute Manufacturers Cess Rules, 1976". Rule 2(b) of the Rules defines ''cess'' as meaning cess levied and collected under sub-section (1) of Section 9 of the Act. Clause (f) of Rule 2 defines "jute manufacturers" which reads as follows :

"2(f). ''Jute Manufacturers'' means manufacturers of Jute or Bimlipatam Jute or of Mesta Fibre of all sorts including -

(1) twist, yarn, thread, rope and twine, all sorts, containing more than 50 per cent by weight of jute (including Bimlipatam Jute or Mesta Fibre) calculated on the total fibre contents in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power."

7. Rule 3 provides for the method of levy of cess and it reads as follows;

"3. Application of Central Excises and Salt Act and Rules made thereunder :- Save as otherwise provided in these Rules, the provisions of the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refund of duty, shall, so far as may be, apply in relation to the levy and collection of the duty of excise on the jute manufactures under the Act."

8. Rule 5 provides for filing of monthly Returns in the specified form of all stocks of jute manufactured in and removed from the factory during the previous month. Rule 6 provides that the proceeds of the cess shall first be credited to the Consolidated Fund of India and the Central Government, may after due appropriation made by Parliament in that behalf, hand over to the Development Council such sums as it may consider necessary.

9. Sri V. Jagannadha Rao, the learned Counsel for the petitioners submitted that Item 23(2) of the First Schedule to the Act refers only to textiles made wholly or in part of jute, including jute, twine and rope and it does not specify jute yarn

and, therefore the Central Government has no power to levy cess on jute yarn, and that the notification issued by the Central Government u/s 9(1) imposing cess on jute yarn is ultra vires the powers of the Central Government. But, we are unable to agree with this submission. Firstly, the First Schedule merely contains industries which the Central Government declares as expedient in public interest to take under its control. The First Schedule mentions the industries by heading as well as sub-headings. This enumeration of the industries is only for the purpose of identification of the industries which the Central Government declares it expedient in public interest to take them under its control. u/s 9(1), cess can be levied on all goods manufactured or produced in any industry mentioned in the First Schedule. The petitioner-Mills are all jute mills manufacturing or producing textiles. The main heading of Item 23 is ''Textiles'' and it contains five sub-headings of which Item (2) refers to an industry engaged in the manufacture or production of textiles made wholly or in part of Jute including jute, twine and rope.

10. According to Webster''s Dictionary "textile" means - (1) Cloth especially a woven or knit cloth, and (2) a fibre, filament or yarn used in making cloth. Therefore, any industry producing yarn will also be an industry engaged in the manufacture or production of textiles. The mere fact that cotton yarn, woollen yarn, silk yarn and synthetic yarn are expressly mentioned in sub-heading (1), (3), (4) and (5) of sub-Item (2) of Item 23 will not give rise to the inference that in industry engaged in the manufacture or production of jute yarn is not an industry engaged in the manufacture or production of textiles.

11. As already mentioned, the First Schedule specifies the several industries manufacturing or producing any of the articles mentioned under the headings or sub-heading mentioned in the several Items 1 to 38, and the Explanations 1 and 2 further clarify that the articles specified under each of the headings include their component parts and accessories required for their manufacture in respect of the several articles specified under each of the headings mentioned in the said Explanations 1 and 2. The enumeration of the industries mentioned in the First Schedule is only for the purpose of identification of the industry which should be taken under the control by the Central Government u/s 2 in public interest for the purpose of development and regulation of the said industry. The main charging section with regard to levy of cess is Section 9(1) and the said section provides that cess shall be levied and collected for the purposes of the Act on all goods manufactured or produced in any of the industries mentioned in the First Schedule at the rates notified by the Central Government in the notified order. Therefore, cess can be levied on all goods manufactured or produced by the industries mentioned in the Schedule and the articles mentioned in the headings and sub-headings cannot be read as imposing any restriction or limitation on the powers of the Government to levy cess u/s 9(1) of the Act on all goods manufactured or produced by any industry engaged in the manufacture or production of the articles mentioned in the headings and sub-headings in the items mentioned in the said Schedule. The expression "all goods manufactured

or produced in any such Scheduled industry" takes in not merely the articles mentioned in the headings and sub-headings of the First Schedule but also all goods manufactured or produced by the industry engaged in the manufacture or production of the articles mentioned in the headings or sub-headings in the First Schedule. In the instant case, it cannot be disputed that jute yarn is produced by the petitioners who are engaged in the manufacture or production of textiles made wholly or in part of jute including jute twine and rope falling under Item 23 sub-item (2) of the First Schedule. Therefore, the petitioners are engaged in the manufacture of jute textiles which is an industry falling under Item 23 sub-item (2) and the said industry produces jute yarn which falls under the main heading ''textiles'' in Item 23 sub-item (2), and that even otherwise jute yarn is an article of goods, manufactured or produced by the petitioners who are all industries engaged in the manufacture or production of textiles made wholly or in part of jute including jute twine and wool. Therefore, we are unable to agree with the submission of the learned counsel that the notification issued by the Central Government u/s 9(1) of the Act providing for levy of cess on jute yarn in ultra vires the powers of the Central Government.

12. It is next contended by the learned counsel for the petitioners that u/s 9, cess can be levied only on goods manufactured or produced, and that jute yarn is not goods or articles, as jute yarn as such cannot be sold or marketed. In support of this contention, an affidavit has been filed by the Systems Manager of Chitavalsa Jute Mills, who is acquainted with the manufacture of jute goods in the Chitavalsa Jute Mills. In the said affidavit, he has set out the process of manufacture of jute goods. In paragraphs 17 and 18 of the said affidavit, it is stated as follows :-

"17. The yarn which is used in the manufacture of twine, sacking, hessian etc. is not marketable as such, but it has to be subjected to process of twisting containing two or more plies to make it marketable. Such yarn is a variety of twine and is termed as Sale Twine.

18. I submit that yarn which emerges in the process of manufacture of jute goods is not an end-product but it is an intermediary product in an uninterrupted process of manufacture. I submit that there is not jute mill in India which manufactures only yarn and sells it as such."

13. Sri K. Nagaraja Rao, the learned Central Government Standing Counsel, on the other hand, contended that jute yarn exists as a separate article or goods and therefore marketable or salable. He submits that jute yarn is mentioned as a separate goods in Section 2(b) of the Jute Licensing and Control Order and in Section 2(c) of the Jute Textile Control Order, 1956 and in Item 18(d) of Schedule I of the Central Excises Act and, therefore, jute yarn are goods which can be marketed or sold and, therefore, cess can be validly levied u/s 9(1) of the Act on jute yarn manufactured or produced by the petitioners who are engaged in the manufacture or production of jute textiles or the articles mentioned in the sub-heading (2) of Item 23.

14. Sri K. Nagaraja Rao has produced before us a supplementary manual of departmental instruction on excisable manufactured products on jute manufacture, which describes the manufacture, packing and storage of jute in Chapter 2. The relevant portion at page 12 reads as follows :-

"2.1. manufacturing Process :- Basic material for jute manufacture are jute, mesta and hemp. Fine yarn is spun and then from it fabric is woven.

Essentially the jute yarn manufacturing process is designed to separate the individual fibre filaments; to arrange these filaments in parallel order; to blend them for uniformity of colour, strength and quality; and to twist them into yarns that derive their strength in tension partly from the fibres themselves and partly from the frictional forces between them."

15. Thus, it is clear that jute yarn is manufactured or produced by industries engaged in the manufacture of jute textiles mentioned in the main heading Item 23 sub-item (2) and also of the articles mentioned in sub-item (2) of Item 23, and if so, the jute yarn is distinct and separate goods and, therefore, the impugned notification levying cess on jute yarn u/s 9(1) of the Act cannot be said to be illegal or ultra vires the powers of the Central Government.

16. It is next contended by Sri V. Jagannadha Rao, the learned counsel for the petitioners that under the provisions of Section 9(1) of the Act, Parliament intended that cess can be levied only on the goods which are end products and not intermediary goods produced by the industry which are used for manufacturing the end-product like sacking, carpet backing, hessian or twine or rope. The submission of the learned counsel is that the jute yarn produced by the petitioners is consumed within the factory premises for manufacturing other end-products, and that unless the jute yarn is removed from the factory or the mills, no cess can be levied u/s 9(1) of the Act read with Rule 3 of the Jute Cess Rules and Rules 9 and 49 of the Central Excise Rules. The contention of the learned counsel is that Rule 3 of the Jute Cess Rules provides that the provisions of the Central Excises and Salt Act and the Rules made thereunder including those relating to refund of duty shall, so far as may be, apply in relating to the levy and collection of the duty of excise on the jute manufactures under the Act. u/s 3 of the Central Excises Act, 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 at the rates set forth in the First Schedule.

17. Section 4 provides for the valuation of the excisable goods for the purposes of charging duty of excise. Item 18-D of the Schedule of the Central Excise Act provides for levy of excise duty on jute yarn. Rule 9 of the Central Excise Rules, 1944 while providing for the time and manner of payment of duty, reads as follows :

"9(1). No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for consumption, export, or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these rules or as the Collector may require and except on presentation of an application in the proper from and on obtaining the permission of the proper officer on the form;

Provided that such goods may be deposited without payment of duty in a store-room or other place of storage approved by the Collector under rule 27 or rule 47 or in a warehouse appointed or licensed under rule 140 or may be exported under bond as provided in rule 13 :

Provided further that such goods may be removed without payment or on part payment of duty leviable thereon if the Central Government by notification in the Official Gazette, allow the goods to be so removed under rule 49 :

Provided also that the Collector may, if he thinks fit instead of requiring payment of duty in respect of each separate consignment of good removed from the place or premises specified in this behalf, or from a store-room or warehouse duly approved, appointed or licensed by him keep with any person dealing in such goods in account-current of the duties payable thereon and such account shall be settled at interval, not exceeding one month and the account-holder shall periodically make deposit therein sufficient in the opinion of the Collector to cover the duty due on the goods intended to be removed from the place of production, during manufacture of storage."

(Rest omitted as not necessary for the purpose of this case.)

18. Rule 49 of the Central Excise Rules expressly provides that :

"Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under rule 9 or are about to be removed from a store-room or other place of storage approved by the Collector under Rule 47."

(Rest of the Rule omitted as not necessary.)

19. The contention of the learned counsel for the petitioner is, that the petitioners do not sell jute yarn nor do they remove jute yarn from the factory or the mill premises, but they are consumed in the manufacture of other jute articles and, therefore, by virtue of the provisions of Rules 9 and 49 of the Central Excise Rules which are made applicable to levy and collection of cess by Rule 3 of the Jute Cess Rules, no cess can be imposed on jute yarn which is consumed or utilised for manufacturing any other end product. But, we are unable to agree with the submission. Section 9(1) provides for the levy of cess on all goods manufactured or produced in a scheduled industry. Sub-section (2) provides that the cess shall be payable at such intervals within such time and in such manner as may be prescribed, and sub-section (3) provides for recovery of the said cess in the same manner as an arrear of land revenue. Section 30(2)(c)

empowers the Central Government to make rules with regard to the intervals at which, the time within which and the manner in which the cess leviable u/s 9 shall be payable and the rebate for the prompt payment of such cess. Therefore, the Rules made by the Central Government u/s 9 read with Section 30(2)(c) can only provide for the intervals at which and the time within which and the manner in which the cess leviable u/s 9 shall be payable and the rebate for the prompt payment of such cess. Therefore, the Rules made by the Central Government u/s 9 read with Section 30(2)(c) can only provide for the intervals at which and the time within which and the manner in which the cess leviable u/s 9 shall be payable and the Rules made by the Central Government u/s 30 cannot impose any further restrictions or limitations with regard to the levy of cess u/s 9(1) of the Act. The provisions of the Central Excise Act and Rules, in particular, Rule 49 cannot override the statutory provisions of Section 9(1) with regard to levy and collection of cess on the goods manufactured or produced by industries engaged in the manufacture of textiles, under Rule 3 read with sub-item (2) of Item 23 of the First Schedule to the Act.

20. Sri V. Jagannadha Rao did not therefore rightly pursue the contention that Rules 9 and 49 of the Central Excise Rules as amended by Section 51 of the Finance Act, 1982 can be invoked in the case of levy or collection of cess of jute yarn u/s 9 of the Act.

It is contended by Sri Jagannadha Rao that even assuming without conceding that jute yarn are goods, as the said goods are consumed within the factory for manufacture of other products, no cess can be levied on jute yarn which is so consumed or utilised in manufacturing an end-product. The learned counsel submits that Section 9(1) is a fiscal provisions and it should be strictly interpreted and the intention of Parliament is only to levy cess on the end-product and not on any intermediate goods produced or manufactured in the course of manufacturing an end-product, and that under the Central Excise Act, excise duty is levied only on articles or goods manufactured or produced and removed or capable of being removed from the factory, and the object of the Central Excise Act was to levy excise duty only on an end-product salable or marketable, and which is removed or capable of being removed from the factory and the same principle should also be applied to levy of cess u/s 9(1) of the Act. But, we are unable to agree with this submission. The Central Excise Act is a taxing enactment and the object of the said Act is wholly different from the object of the Industries (Development and Regulation) Act under which cess is levied for the purposes of the development and regulation of the industries. The cess collected has to be handed over by the Central Government to a Development Council constituted u/s 6 of the Act and the said amount has to be utilised for the purposes mentioned in clauses (a) to (d) of Section 9(4) i.e., for promotion of Scientific and industrial research with reference to scheduled industries, to promote improvements in design and quality with reference to the product of such industry, to provide for training of technicians and labour and to meet the administrative expenses of the development council. As already observed, the basic material for jute manufacture is jute out of which yarn is spun which is thereafter used for manufacturing or producing different goods or articles.

21. u/s 9(4), the Development Council may utilise the funds for making scientific and industrial research with reference to jute and jute products including jute yarn and also to promote improvements in design and quality with reference to the same and, therefore, the contention of the learned counsel that jute cess can be levied only on end-products and not on jute yarn cannot be accepted.

22. In the Fort William Co. Ltd. v. Inspector, Central Excise and Others - (1) 1979 Excise Law Times, J 23 - a similar question with regard to the validity of levy of cess on certain jute products including jute yarn under the Act arose for consideration. The petitioner therein, a public limited company, was engaged in the manufacture of jute products consisting of carpet backing, hessian sacking, bagging cloth including jute yarn and jute twine. With regard to the levy of cess under the Act on jute twine and yarn consumed within the factory for conversion into jute manufactures, the Central Government issued a clarification stating that jute twine and jute yarn consumed within the factory for manufacturing of jute goods though exempted from payment of Central Excise Duty were liable for levy of cess under the Jute Manufacturers Cess Rules, 1976. When the department required the petitioner therein to pay the cess on jute twine and jute yarn utilised for captive consumption within the factory, the petitioner challenged the said levy. On behalf of the petitioner therein, it was contended that u/s 9(1) of the Act, the Central Government had no competence or authority to levy cess on jute twines, thread, rope or yarn inasmuch as the said articles were not ''textiles'' within the meanings of Item No. 23(2) of the First Schedule, and that the said articles were not included in the Explanations to the First Schedule either as components or intermediates required for the manufacture of Item No. 23.

23. The learned Judge held that the levy of cess u/s 9(1) was not restricted to textiles but on all goods manufactured or produced in the textile industry which is a scheduled industry, and that jute twine and rope were manufactured or produced in the petitioner''s mill and, therefore, the Central Government was competent to impose cess on jute twine, yarn and rope, and that the Explanations to the First Schedule were only intended to exercise control over the industries which manufacture the components and intermediates, and that the Explanations were not relevant with regard to levy of cess u/s 10 of the Act. The learned Judge further held that the excise duty levied under the Central Excises and Salt Act and cess levied u/s 9(1) of the Industries (Development and Regulation) Act were quite different and they did not constitute the same thing, and merely because exemptions were granted with respect to excise duty under the Central Excises and Salt Act with regard to goods and articles, it could not be said that no cess could be levied with respect to those identical goods under a different enactment. The learned Judge further observed that the proviso to

Section 9(1) and the Explanation thereto only fix the maximum limit of rate of such cess and the said limit was expressed in terms of the value of the goods, and that the fixation of the rate on the value of the goods on the basis of weight was not in conflict with the proviso, as the proviso could not control the main part of the section. With respect, we agree with the aforesaid view expressed by the learned Judge.

23A. Sri V. Jagannadha Rao relies upon a decision of the Patna High Court in Rameshwar Jute Mills Ltd. v. Inspector of Customs and Central Excise and Others - (2) 1981 Excise Law Times 30. In that case also, the levy of cess on jute twine and yarn under the Act was challenged. The learned Judges held that in view of the proviso and the Explanation to Section 9(1), cess could be levied when the manufactured goods were delivered at the place of manufacture and at the time of removal from the factory and not before that stage. The learned Judges further held that it was clear from the Explanation that cess should be levied in respect of goods sold or capable of being sold and the words ''capable of being sold'' envisaged a notional sale and, therefore, if the goods were delivered at the place of manufacture and removed from the factory, although the goods were not actually sold to the transferee, such removal would also come within the purview of the levy of cess. In that case, it was conceded on behalf of the petitioner therein that if the jute twine and yarn admittedly manufactured by their factory were intended to be sold, and for that purpose, goods were delivered and removed from the factory, cess could be levied on the goods. But, it was contended that as the said goods were put into the process of manufacturing sacking goods in their plant within the precincts of the same factory, such goods were not leviable for cess as such goods would not come within the purview of the Explanation to Section 9(1) of the Act. That contention was accepted by the learned Judge G.P. Jha, J. The learned Judge M.P. Varma, J observed as follows :

"Nobody disputed the proposition that twines and yarns manufactured are also subject to imposition of cess, provided such products are finished goods capable of being sold and at the time of their removal from the place of manufacture for marketability."

24. But, the learned Judge observed that the jute twine and yarn manufactured by the mills in that case were mere bye-products and were not marketed, and that the yarn and twine manufactured directly go to the weaving section for weaving and hamming the hessians and sacks, and such yarn and twine used in the process of manufacture of sacks and hessians could not be treated as manufactured goods or products so far as the said industry was concerned, and that cess could be imposed only on such goods which were exchangeable and had got marketability as well and at a point of time of their removal from the place of manufacture for such value. The learned Judge further observed that in the said case, transferring a product from one plant to another amounted to consumption for the purpose of production and such sub-standard goods or

products could not be deemed to be marketable goods for commercial value nor they were so, and that cess could be levied only on the manufacture of sacks and hessians by utilising the intermediary goods like twine and yarn. But, with respect we are unable to agree with the aforesaid view for the reasons already mentioned by us, and we are inclined to agree with the view taken in The Fort William Co. Ltd. v. Inspector, Central Excise and others - (1) supra.

25. Sri V. Jagannadha Rao relied upon the rulings in D.C. & G. Mills v. Union of India - 1978 Tax LR 2094, Modi Carpets Ltd., Modinagar v. Union of India - 1981 TaxLR 2733, and P.R. & A. Industries v. Union of India - 1982 TaxLR 2905 in support of his contention that where goods manufactured by an industry are consumed within the factory itself for manufacturing another end-product and there being no removal of the intermediate goods from the factory, no excise duty could be levied on the intermediate goods which are captively consumed within the factory itself for manufacturing other goods. The aforesaid rulings are based upon interpretation of the provisions of Sections 3 and 4 of the Central Excise Act read with Rules 9 and 49 of the Central Excise Rules which expressly provide for levy of excise duty only when the excisable goods are removed from the factory premises. As already mentioned by us, the provisions of Central Excises Act and the Rules made thereunder with regard to levy of excise duty are different from the provisions of the Section 9 of the Industries (Development and Regulation) Act with regard to levy of cess on goods manufactured or produced by a scheduled industry. Therefore, the principles laid down in the aforesaid ruling with regard to levy of excise duty under the Central Excise Act and the Rules made thereunder cannot be applied to the cases of levy of cess u/s 9 of the Industries (Development and Regulation) Act.

26. In Union of India (UOI) Vs. Delhi Cloth and General Mills, , their Lordships of Supreme Court held that :

"As the raw oil though purified in the process of manufacturing vanaspati, is not deodorised before its hydrogenation, it does not become at any stage ''refined oil'' as is known to the consumers and the commercial community and no excise duty is leviable on it under Item 12 (old Item 23) of Schedule I as ''refined oil''."

In that case, their Lordships further observes as follows :

"Moreover, the definition of ''goods'' make it clear that to become ''goods'' an article must be something which can ordinarily come to be market to be bought and sold."

In that case, their Lordships held that the processed raw oil was not covered by the expression ''available non-essential oil'' or by all sorts as no new substance known to the market was brought into existence at that stage and, therefore, there was no legal basis for the demand of excise duty thereon under Item 12 (Old Item 23) of Schedule I.

27. In the instant case, the jute yarn cannot be said to be ''goods'' which is not

known to the consumers or to the commercial community nor can it be said that it is an article which cannot be brought to the market for sale. Therefore, there is no force in the contention of the learned counsel for the petitioners that no cess can be levied on jute yarn u/s 9(1) of the Act read with Item 23(2) of the First Schedule to the Act.

28. The object of the Industries (Development and Regulation) Act is to provide for development and regulation of the scheduled industries and levy and collect cess for the purposes mentioned in Section 9(4) of the Act, and the entire amount collected has to be handed over to the Development Council for utilisation for the purposes mentioned in Section 9(4). Rule 6 of the Jute Cess Rules framed u/s 30 of the Act provides that the amount of cess collected should be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament in that behalf, hand over to the Development Council such sums as it may consider necessary. Whether the proceeds of cess can be diverted in the manner provided by Rule 6 which is contrary to the provisions of Section 9(4) is a matter for consideration of the Central Government and the Development Council. Further, when cess is being levied on intermediate product like jute yarn and when the same is again consumed or utilised within the same mills for manufacturing or producing other end-product of products and cess is being levied on the end-products also on the basis of weight of the jute yarn which has already suffered cess and whether such levy of cess at multiple points on the same weight of the intermediary product untilised or consumed within the mills for manufacturing or producing other end-product or products is onerous and not justifiable, is a matter for consideration of the Government. But, as the constitutional validity of the Act is beyond challenge, we do not think any relief can be given to the petitioner in these proceedings.

29. In the result, the writ petitions fail and are dismissed with costs.

30. Learned Counsel for the petitioners makes an oral request for grant of leave to appeal to the Supreme Court of India against this judgment, under Article 133 of the Constitution of India. It is represented that appeals are pending in the Supreme Court, in which similar questions of law are raised. We also feel that the proposed appeal involves substantial questions of law of general importance which, in our opinion, needs to be decided by the Supreme Court, and therefore, leave is granted under Article 133(1) of the Constitution.

31. There has been stay of collection of the cess demanded on condition of the petitioners in each of Writ Petitions furnishing bank guarantee for the amount of cess demanded every month. There shall be stay of collection of the cess demanded or to be demanded for a period of two months, on the petitioners furnishing bank guarantee for the amounts so demanded, to enable each of the petitioners to move the Supreme Court of India for appropriate direction with regard to stay of collection of the cess levied and demanded.

