
(1970) 08 BOM CK 0006

In the Bombay High Court

Case No : Misc. Petition No. 324 of 1964

Prakash Cotton Mills Private Ltd. and Others

APPELLANT

Vs

B.N. Rangwani and Others

RESPONDENT

Date of Decision : 26-08-1970

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 43, 44, 45, 46
Central Excises and Salt Act, 1944 — Section 2, 33, 6, 9
Constitution of India, 1950 — Article 226

Citation : AIR 1971 Bom 386 : (1971) 73 BOMLR 225 : (1971) MhLj 566

Hon'ble Judges : Nain, J;K.K. Desai, J

Bench : Division Bench

Advocate : F.S. Nariman, P.R. Mridul and P.R. Kedia, for the Appellant; K.H. Bhabha, R.J. Joshi and R.L. Dalal, for the Respondent

Judgement

K.K. Desai, J.—In this petition under Article 226 of the Constitution, the 1st petitioner Company and the 2nd petitioner, who is the Director of the 1st petitioner Company, have challenged the legality of five notices of demand (for recovering excise duty) respectively dated June 17, 1964, June 26/29, 1964, June 30, July 1, 1964, July 23/24, 1964, and August 18, 1964, as also an order of detention dated June 17, 1964.

2. The case of the petitioner is that the 1st petitioner Company carries on business of manufacturing cloth. On March 18, 1963, the officers of the Central Excise Department seized from the office premises of the petitioner Company books of account, documents, vouchers and other papers. This seizure of documents was challenged in a writ petition filed on April 8, 1963, being Misc. Petn. No. 127 of 1963 (Bom). The officers of Central Excise had also raided premises of different trading firms mentioned in paragraph 3 of the petition between March and May 1963 and seized articles and things. In connection with this seizure, petition challenging the seizures were filed in this Court. By a show cause notice dated March 5/6, 1964, the 1st petitioner Company was called upon to show cause in connection with the alleged removal by the petitioner Company

of the cotton fabrics mentioned in the notice without payment of excise duty and also to show cause as to why the said cloth should not be confiscated under Rules 9 (2) and 210 of the Central Excise Rules, 1944. The petitioners have referred to this notice in paragraph 4 of the petition and contended that the notice has not been issued in accordance with the provisions of law. Between March and April 1964, 35 notices of demand calling upon the petitioners to pay the aggregate sum of Rupees 92,12,775.75 were served on the 1st petitioner Company. In connection with recovery of the amounts mentioned in those notices, 8 different detention orders were also served on the 1st petitioner Company. These notices of demand were challenged by several writ petitions which are mentioned in paragraph 5 of the petition. The matters of these petitions were settled between the parties by an agreement dated June 19, 1964. A copy of the agreement is annexed as Ex. C to the petition. The 1st petitioner Company agreed to execute a deed of mortgage in connection with the excise duty which may be held to be payable by the 1st petitioner Company. The department agreed to revise the demands made by the above notices of demand and on the withdrawal of the notices of demand, the petitions were agreed to be withdrawn. Thereafter, the department issued 5 notices of demand challenged in this petition. The language in each of the notices of demand is similar. The notice of demand dated June 17, 1964, runs as follows:--

"Take notice that on behalf of Central Government I hereby demand under Rule 9(2) of the Central Excise Rules, 1944, payment by you of the sum of Rs. 49,86,444.39. nP. x x x x x being the Basic Excise duty. Additional Excise duty and Handloom Cess immediately.

PARTICULARS OF DEMAND

Being the duty on cotton fabrics manufactured on your behalf on powerlooms situated at Madanpura, Bhiwandi, Worli Centre, Malad Centre, Kurla and Curry Road during the period 1-7-1960 to 5-3-1963. 1-1-1962 to 31-3-1963, 18-1-1963 to 28-2-1963, 1-8-1961 to 7-3-1963, October 1962 & October, 1952, respectively and cleared in contravention of Rules 9, 52, 52-A of the Central Excise Rules, 1944, without payment of duty. The details of the cloth manufactured and cleared and the duty involved are as per Annexure "A" to this Demand Letter."

3. The other notices of demand the contents whereof are of similar nature are respectively dated 26-29th June 1964, 30th June, 1st July 1964, 23rd/24th July 1964 and August 18, 1964, and are for the respective amounts of Rs. 21,16,582.47. Rs. 3,15,279.72. Rupees 5.42.063.16 and Rs. 12,09,157.81. The petitioners have challenged the demands made by these notices on several grounds mentioned in paragraph 14 of the petition.

4. We have heard Mr. Nariman for the petitioners in the first instance on the grounds mentioned in sub-paragraphs (m) and (n) of paragraph 14 of the petition and as it appeared to us that the contention made in those sub-

paragraphs was correct, we called upon Mr. Bhabha to reply to the arguments advanced by Mr. Nariman. We have, therefore, not heard Mr. Nariman for the petitioners on the contentions contained in other sub-paragraphs of paragraph 14. Before referring to the grounds made in sub-paragraphs (m) and (n), for convenience, what is stated in sub-paragraphs (g) and (ch) requires to be noticed. The contention in that sub-paragraph is towards pleading that the 1st petitioner Company, hereinafter referred to as the Mills Company, had not engaged any powerloom owners and/or weavers either in Madanpura sector or in Worli and Malad sector or in Kurla and Curry Road Sector or any other Sector at Bombay and/or any powerloom owners and/or weavers at Bhiwandi for the manufacture of cloth in respect whereof duty was demanded under the above 5 notices of demand. The contention was that the Mills Company had not got produced or manufactured cloth in any of the above sectors on its own account or on any one else's account. The Mills Company being not manufacturers of any cloth in any of the sectors mentioned in the above 5 impugned notices of demand was not liable for payment of excise duty as claimed in these notices of demand. Further specific contention was that "x x x x x there is no finding x x x x in the x x demand notices x x x x that the petitioners are the manufacturers of the x x cloth. The said notices are vitiated and disclose error apparent on the face of the record." In sub-paragraph (h), it is contended that the notices of demand related to cloth produced by weavers in their respective factories wherein not more than four powerlooms in all were worked. The cloth was exempt from payment of excise duty under notification dated January 5, 1957. As the Mills Company was not manufacturer of the cloth, the notices of demand were ultra vires the powers of the Excise Authorities.

5. The substance of the contentions raised in sub-paragraphs (m) and (n) is that the impugned notices of demand were issued without giving any hearing or opportunity to the Mills Company to show cause against the conclusion arrived at by the 1st respondent that cotton fabrics mentioned therein were manufactured by the Mills Company or on its behalf. The action of the 1st respondent in arriving at the aforesaid decision ex parte and without giving to the mill Company any notice and prior opportunity of being heard or having any in the matter was in flagrant disregard of the principles of natural justice. The notices did not indicate the basis or evidence or the material on the basis whereof the 1st respondent had come to the above conclusion. The conclusion had been arrived at without any evidence on record and was result of speculation, surmises and conjectures and suspicion. Even if there was some basis or evidence or material in the possession of the 1st respondent for coming to his above conclusion, that conclusion had been arrived at behind the back of the petitioners on information illegally obtained and such material was being utilised to the detriment of the Mills Company without giving any opportunity of rebutting and/or controverting the same. For this reason also the impugned notices of demand were issued in complete violation of principles of natural justice.

6. The reply of the 1st respondent to the contentions made in sub-paragraphs

(m) and (n) is in paragraphs 36 and 37 of his affidavit in reply dated January 18, 1965. The 1st respondent submitted that the Mills Company was not entitled to any hearing in connection with the matter of issuance of the above five impugned notices of demand. The amounts mentioned in the notices were merely assessment of duty and the assessment was administrative act. In connection with these assessments, there was a right of appeal in the Mills Company and in the matter of appeal hearing would have been afforded to the Mills Company. The case of the Mills Company that no hearing was given or an opportunity to show cause had not been afforded was not correct. In fact, I.B. Palit, the General Manager of the Mills Company had been summoned and various documents seized from the business premises of the Mills Company were shown to the General Manager. He was asked to explain the contents of these documents, as these documents clearly showed that the Mills Company was manufacturing cotton fabrics on about 1400 powerlooms at Madanpura, Bhiwandi, Malad and Worli sectors by supplying raw-materials such as yarn and getting back finished products, i.e., cloth, on payment of weaving charges. The documentary evidence showed that in respect of the cloth manufactured at Worli and Malad the powerlooms were owned by the Mills Company. The General Manager had admitted that the account books contained entries pertaining to the manufacture of cloth on powerlooms at Madanpura, Bhiwandi, Malad and Worli sectors and had stated that the books shown to him did not belong to the Mills Company. The 1st Respondent emphasised that the documentary evidence in his possession showed that all the Powerlooms located at Malad and Worli sectors and some powerlooms located at Bhiwandi were owned by the Mills Company, whilst the powerlooms at Madanpura, Bhiwandi, etc., were owned by different individuals, but at all these sectors the cloth was being manufactured on behalf of the Mills Company which was supplying raw-materials and getting back the finished products on payment of manufacturing expenses. He denied that the decision in issuing the demand notices was arrived at ex parte or that proper opportunity of being heard had not been afforded to the Mills Company. His case was that since the notices had been issued on the basis of the contents of the books seized from the premises of the Mills Company and since the General Manager had disowned the ownership of these books, the 1st Respondent was completely justified in issuing the notices of demand. He denied that it was necessary to mention in or indicate in the notices of demand the evidence or the material on the basis whereof the notices were issued. He further submitted that since the demand notices indicated that the cloth for which duty was demanded had been manufactured on behalf of the Mills Company in the sectors mentioned in the notices, the submission that the notices had resulted from suspicion, surmises and conjectures was not correct.

7. On the question that the Mills Company was entitled to an opportunity of a hearing and give explanations to all the questions that could be raised on behalf of excise authorities, Mr. Nariman has relied upon the scheme for levy and collection of excise duty in the Central Excises and Salt Act and the Rules made

thereunder. He has also relied upon the decisions of the Supreme Court in *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, , and Civil Appeals Nos. 1362 and 1363 of 1967 *Collector of Central Excise and Land Customs, Shillong v. Sansawarmal Purohit* decided on 16-2-1968 (SC). Relying upon the observations in these cases, he has submitted that in taxation laws assessing authorities exercise quasi judicial functions and they have duty cast on them to act in a judicial and independent manner. Before completing assessments in the circumstances appearing in the present case, the 1st respondent was bound to hold an inquiry and in that connection to serve a notice on the Mills Company enabling the Mills Company to give explanation in respect of each of the circumstance on which he depended for his conclusions. It was wrong for the 1st respondent to act upon information collected by him which had not been completely disclosed to the Mills Company. He also relied upon the decision of the Supreme Court in the case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , and on the basis of observations in that case argued that it is now well settled that principles of natural justice must not be violated even when administrative orders made visit evil consequences on a defaulting citizen.

He drew pointed attention to the statements given by I.B. Palit, General Manager of the Mills Company, to the 1st respondent on January 21 and February 21 and 24, 1964, to prove that the statement made by the 1st respondent in paragraph 36 of his affidavit in reply that the General Manager had been shown the documents on which reliance had been placed by the 1st respondent and was asked to explain the same was entirely incorrect. He relied upon the statements of Gulam Pastagir, R.K. Sharma and Mohamed Salim Mahamed Yusuf recorded by the 1st respondent respectively on February 18, 1964, April 20, 1963, and July 20, 1964, and contended that on the basis of the information given by these witnesses which was all contrary to the interest and the case of the Mills Company, the 1st respondent had proceeded to issue the impugned notices of demand. The 1st respondent had arrived at his own conclusions on the basis of information given by these witnesses. Having regard to the nature of the case sought to be made against the Mills Company and the serious nature of the material consisting of the information contained in the statements of these witnesses, rules of natural justice required that an opportunity should have been afforded to the Mills Company to cross-examine these witnesses. His contention was that having regard to the serious nature of the questions which were intended to be raised and the conclusions which were arrived at by the 1st respondent, to satisfy the principles of natural justice, it was obligatory on the 1st respondent to disclose all the materials on which he was relying to the Mills Company and to call upon it to explain these circumstances and to show cause why the intended notices of demand and levy of duty should not be made against the Mills Company. He, therefore, submitted that the impugned notices were issued in violation of principles of natural justice and were liable to be struck off.

8. In reply, having regard to the decisions of the Supreme Court on which reliance had been placed, without giving up the contention that the proceedings

leading to the issuance of the above impugned notices were not quasi-judicial proceedings, Mr. Bhabha contended that in fact there had been no violation of principles of fairplay in the matter of the issuance of the 5 impugned notices of demand. The burden of his argument was that the facts about the nature of the charge against the Mills Company had been disclosed to the Mills Company in adequate time prior to the issuance of the impugned notices of demand. It was thus disclosed to the Mills Company that during the relevant period the Mills Company had evaded payment of excise duty by getting cotton fabrics manufactured on 1400 powerlooms at the centres mentioned in these notices on its own account. As this fact was disclosed to the Mills Company, the burden of proving that the Mills Company was not manufacturer of cotton fabrics on these powerlooms had shifted to the Mills Company. In that connection, instead of producing materials to show its innocence, the Mills Company wholly obstructed the investigations which were being held by the 1st respondent. He strongly relied upon the fact that three officials of the Mills Company viz.:--the General Manager, I.B. Palit, the Director Mohanlal Jalan and the Legal Adviser Banwarilal had been summoned and had given statements. These witnesses were put material questions on the very same charge which was being investigated. These high officials of the Mills Company refused to disclose any material facts and even refused to admit that the documents on which the 1st respondent was relying and which were shown to them were documents of the Mills Company. As these high officials refused to give correct information and as the burden in respect of the charge had shifted to the Mills Company, the 1st respondent was entitled to make his own conclusions on the basis of the documents belonging to the Mills Company. These documents had been seized from the premises of the office and factory of the Mills Company. These documents were of the ownership of the Mills Company. These documents disclosed particulars of the cotton fabrics produced and manufactured on behalf of the Mills Company through its nominees, weavers and/or by the use of power-looms of its ownership. These documents were known to the Mills Company. Reference to these documents was made when the above high officials were summoned to give their statements. Having regard to the failure of these officials to explain these documents and failure of the Mills Company to make any representation as regards the contents of these documents and towards proof of the innocence of the Mills Company, the 1st respondent was justified, without formally calling upon the Mills Company, to explain its conduct to issue the impugned notices of demand. He strongly relied upon the fact that in spite of the knowledge of all the relevant facts the Mills Company had not made any representation and had not made even a claim for being heard before any conclusions were made in its matters. All the material that was in the possession of the 1st respondent and on the basis whereof the impugned notices of demand were issued were the documents of the Mills Company itself. It was not necessary to draw attention of the Mills Company to diverse contents of these documents and call upon it to explain these documents before issuance of the impugned notices of demand. He accordingly submitted that principles of natural justice had not been violated in this case.

9. He supported his above submission by arguing that the demand for fairplay did not come well from the mouth of the Mills Company whose highly placed officials indulged into obstruction and falsehoods and refused to disclose any relevant materials to the 1st respondent. He further submitted that there was a right of appeal in the Mills Company to question the correctness of the impugned notices. In the matter of the appeal the Mills Company could raise all the questions which are raised in this petition. The Mills Company could prove its innocence and prove that it was not the manufacturer of cotton fabrics in respect whereof excise duty was claimed by the impugned notices of demand. He submitted that in the matter of facts in dispute between the Department and the Mills Company this Court would have no power of investigation. Having regard to the right of appeal, he submitted that the Mills Company can have no relief in the present petition. He, therefore, submitted that the petition should be dismissed.

10. According to Mr. Bhabha observations of Supreme Court in the case of Orient Paper Mills Ltd. Vs. Union of India (UOI), on which reliance was placed were casual and have no effect.

11. Now, in connection with these rival contentions, it is convenient first to refer to the provisions in Rule 9 and the general scheme of the rules relating to enforcement and collection of excise duty. In that very connection, it is necessary to refer to Sections 6, 9 and 33 of the Central Excises and Salt Act, hereinafter referred to as "the Act".

12. u/s 6 of the Act, duty of excise is charged on all excisable goods produced or manufactured in India. The word "manufacture" is defined in Clause (f) of Section 2 to include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. Under Rule 7, it is incumbent on every person who manufactures excisable goods to pay excise duty. In that connection, under Rule 9, there is prohibition against removal of excisable goods from the place of their manufacture or any premises appurtenant thereto specified by the Collector until excise duty is paid under Rule 10, provision is made for recovering short-levied excise duty. The rules in Chapter V provide for what might be called a watertight scheme for recovering duty before the excisable goods are removed from the place of manufacture and/ or any other place fixed for storing of the excisable goods after taking licence and the authority of the Collector. The scheme of Rules 43 to 56 in this chapter makes it impossible for any manufacturer to remove excisable goods except upon payment of duty. Any evasion of payment of excise duty of necessity involves contravention of these rules in Chapter V. Sub-rule (2) of Rule 9 provides:

"If any excisable goods, are in contravention of Sub-rule (1) x x x x removed from, any place specified therein, the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made x x x x and shall also be liable to a penalty which may extend to two thousand rupees, and such goods shall be liable to confiscation."

This sub-rule was inserted in Rule 9 by a notification dated November 27, 1948. Section 9 of the Act relates to offences and penalties and evasion of payment of duty payable under the Act is made an offence and is punishable with imprisonment for a term extending to six months and fine extending to two thousand rupees or with both. u/s 33, power of adjudication penalty and confiscation is vested in the officers mentioned in that section. Jurisdiction of Civil Court is withdrawn in respect of matters arising under the Act. Having regard to the scheme in the rules and the above provisions in Sections 9 and 33 the nature of the investigations which will take place for imposing liability to pay excise duty under Sub-rule (2) of Rule 9 becomes evident. Without wilful and fraudulent breach of the rules relating to storing and non-removal of goods without payment of excise duty, no manufacturer would be able to evade payment of excise duty. Inquiry under Sub-rule (2) is towards proving fraudulent and wilful evasion of Payment of duty and upon arriving at a positive finding that a manufacturer had by such wilful and fraudulent breach of rules evaded payment of duty. On the very same finding, penalty and confiscation can be adjudged against him. On the very same finding, though by a different Tribunal, the offending manufacturer can be held to be guilty of offence u/s 9 and can be sentenced to imprisonment and fine. The findings to be made for imposing excise duty under Sub-rule (2) of Rule 9 thus will be of extremely serious kind and character. Having regard to these facts, it is difficult to hold that investigations which must be made before imposing duty under Sub-rule (2) cannot be of quasi judicial character and are of administrative character. Now, in this connection- the department may be considered to be one party to the lis wherein its claim is that the manufacturer has wilfully and fraudulently evaded payment of duty, and has for the purpose illegally committed breach of statutory rules. The other party to that lis would be the offending manufacturer. The result of the findings made in the inquiry under Sub-rule (2) would be levy of (i) heavy excise duty and (ii) penalty and confiscation. It would be difficult to hold that in such an inquiry conclusions can be made and findings can be arrived at without giving an appropriate opportunity to shown cause to the offending manufacturer. The nature of the opportunity to be afforded to such a manufacturer cannot be stated in detail in this judgment. It is, however, sufficient to state that the materials on the basis whereof conclusions and/or findings are intended to be arrived at against him should be in clearest terms and in all detailed particulars disclosed to the offending manufacturer. This would be necessary, so that in connection with these materials he can give explanations and if he so chooses tender evidence and make a case that the material was insufficient for the necessary conclusions and findings and/or that the material was not reliable.

13. In this connection, it may be stated that in the case of Orient Paper Mills Ltd. Vs. Union of India (UOI), duty was levied by excise officers under sub-item (1) of item 17 in the First Schedule to the Act merely because they were directed to do so by the higher authorities. The Supreme Court held that it was not proper for the excise officers to proceed to levy duty merely because directions were given.

The observation was:

"It is apparent from the judgment referred to above and numerous other decisions of this Court delivered in respect of various taxation laws that the assessing authorities exercise quasi-judicial functions and they have duty cast on them to act in a judicial and independent manner."

Mr. Bhabha has submitted that these are casual observations and are of no effect.

14. In the case of (Civil Appeals Nos. 1362 and 1363 of 1967) the Supreme Court, *inter alia*, observed:

"If a tribunal receives from a third party a document relevant to the subject-matter of the proceedings it should give both parties an opportunity of commenting on it -- vide Halsbury's Laws of England, Vol. 11, page 66. It was the duty of the Collector of Customs to inform the persons charged before him of the charges against them with full details and the evidence in support of the charges and to give them an opportunity to meet those charges and the offences against them. A quasi-judicial authority would be acting contrary to the rules of natural justice if it acts upon information collected by it which has not been disclosed to the party concerned and in respect of which full opportunity of meeting the inferences which arise out of it has not been given."

These cases go to show that the Supreme Court was of the view that assessment of excise duty involved determination of issues in a quasi-judicial manner. Inquiries in connection with imposing of excise duties must be held upon giving information to the person charged with full details of the evidence in support of the charges and an opportunity to meet those charges must always be afforded to the offending party.

15. In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, reference is made to the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . In that one dealing with an inquiry as regards the correct age of a Government servant, Shah, J., speaking for the Court observed:

"We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves evil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State x x x x".

The Court proceeded to decide the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, on an assumption that the power of selection that was exercised was an administrative power. In that connection, the above observations in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, were cited. The Court referred to the observation of Lord Parker. C. J., in *re H. K. (An Infant)* 1967-2 QB 617. The Court observed;

"Enquiries which were considered administrative at one time are now being

considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry, x x x x x Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of the rule was necessary for a just decision on the facts of that case".

Having regard to the above discussion, in our view, inquiries held under Sub-rule (2) of Rule 9 would be quasi-judicial and not merely administrative inquiry. Even if the inquiry is held to be administrative inquiry, having regard to the evil consequences which would be visited on the offending manufacturer, the inquiry would have to be without breach of rules of fairplay and natural justice. The description of the nature of the inquiry would not make any difference to the situation.

16. In paragraph 16 of his affidavit in reply the 1st respondent has stated that:

"x x x on the material I had with me and consisting of the several books of accounts and documents seized and the statements of several officers of the 1st petitioners recorded, assessed the excise duty so evaded and the demand letters were issued to the 1st petitioners by me".

The findings which he made on the basis of the books of accounts and documents seized appear from the statements made by him in paras 30, 32 and 36 of the affidavit. In paragraph 30 he has stated that the documentary evidence showed that the Mills Company was supplying yarn to several power-loom factories in various sections and was getting back the cloth duly manufactured on its behalf from these powerloom factories from the yarn supplied by the 1st petitioners on payment of manufacturing expenses to the power-loom factories. One set of account books showed that the Mills Company through the instrumentality of various bogus or benami firms floated by them had supplied yarn to several hundred power-loom factories. The other set of account books showed that the Mills Company had prepared bogus purchase invoices and through the instrumentality of the bogus or benami firms floated by them had purchased the powerloom fabrics from several powerloom factories. Owners of several powerloom factories were asked to sign on two types of vouchers which were bogus through the instrumentality of bogus firms floated by the Mills Company. The owners of these powerloom factories had delivered the cotton fabrics through the instrumentality of various bogus or benami firms floated by the Mills Company on payment of manufacturing expenses. The documentary evidence showed that all the powerlooms located at Malad and Worli centres and some powerlooms located at Bhiwandi were owned by the Mills Company, whilst the powerlooms located at Madanpura, Bhiwandi, etc., were owned by different individuals, but at all the above centres the cloth was being manufactured on behalf of the Mills Company. Apparently, it is on the basis of these findings that the 1st respondent issued the impugned notices of demand. These findings are

relevant to the question of the right of the Mills Company to have an opportunity to show cause.

17. But Mr. Bhabha submits that about this case of the 1st respondent the Mills Company had complete notice if not by the contents of the letters dated April 1, 1963 addressed by the 1st respondent to the Solicitors of the Mills Company in any event, by the contents of the affidavit of the 1st respondent dated July 1, 1963, filed in the matter of petition No. 127 of 1963. In the second letter dated April 1, 1963 the statement was that,

"in fact a number of important documents have been seized from the various places of M/s. Jalan Group of concerns. These documents show active association of M/s. Jalan Group of concerns in manufacturing cloth on 1400 powerlooms without payment of any Central Excise Duty."

In the first letter the statement was that

"the documentary evidence seized from the head office of M/s. Prakash Cotton Mills Private, Ltd. shows that this Mill had interest in the running of the powerlooms in contravention of the provisions of the Central Excise Rules. The matter is under investigation x x x x ".

In the above referred affidavit the statement was that

"in fact it appears that no central excise duty was paid on the powerloom fabrics brought into processing factory of M/s. Jalan Dyeing and Bleaching Mills x x x x x. This concern of the 1st petitioners (Mills Company) had produced bogus documents in order to show that the goods bought by the said Mills as aforesaid were exempt from payment of the central excise duty."

The submission of Mr. Bhabha was that from April 1963, the Mills Company was aware and had notice of the fact that inquiry and investigations were being held by the 1st respondent in respect of the case of the Excise that the Mills Company was manufacturing cloth on 1400 powerlooms and had evaded payment of excise duty during the relevant period. Mr. Bhabha further contends that this very charge was brought home to the Mills Company when the General Manager, I.B. Palit, and the Director, Mohanlal Jalan, were summoned by the 1st respondent to give information. He also relies upon the statement given by Banwarilal who was legal Adviser of the Mills Company. I.B. Palit gave his statements on January 21, February 21 and 24, 1964, Mohanlal Jalan gave his statement on May 8, 1964, after the first three impugned notices of demand had been issued. Banwarilal gave his statement on February 22, 1964. It requires to be noticed that the statements given by these three officers are all in response to the queries and/or questions addressed to them by the 1st respondent and are not by way of general information or evidence tendered in defence of any charge levelled against the Mills Company. I.B. Palit stated that he could not give any information as to why books of different concerns were found in the office and factory premises of the Mills Company. He was not connected with M/s. Loknath

Tolaram and he had not seen Kekre who was Textile Expert, Powerlooms, Government of Maharashtra, Industrial Cooperative Societies, or Rakshit in connection with supply of yarn by M/s. Loknath Tolaram to various co-operative societies. He was falsified in this connection when he gave his statement at a later stage. On February 21, 1964, he was shown books of accounts, papers and vouchers itemized as 1 to 84 in connection with the query that these books had been seized on March 7, 1963, from the premises of the Mills Company. He admitted that fact, but added that so far as his knowledge went, these books did not belong to the Mills Company. On February 24 he was shown again books and documents itemized as 85 to 164 and 1 to 11. With reference to the query that these documents and books had been seized from the premises of the Mills Company on March 7, 1963. he admitted that fact, but added that these documents and books did not belong to the Mills Company. Now, it is true that the General Manager must have become aware when he was being asked questions by the 1st respondent on these three days that investigations were being made by the 1st respondent towards finding out facts about powerloom cotton fabrics delivered by the Mills Company for processing to, amongst others, Jalan Dyeing and Bleaching Mills. He might have become also aware that the intent and purpose of inquiry was to fix liability of the Mills Company for payment of excise duty in respect of powerloom goods that came into its possession. It first requires to be stated that the statement made by the 1st respondent in paragraph 36 of his affidavit in reply and the argument advanced by Mr. Bhabha that I.B. Palit was shown these Books of accounts and documents and was called upon to explain them (as the documents clearly showed that the Mills Company was manufacturing cotton fabrics on 1400 powerlooms) is not correct. We have already summarised above, the first of the statements given by I.B. Palit. In his statement he was asked about his having approached Kekre and Rakshit in connection with supply of cotton yarn by M/s. Loknath Tolaram to various cooperative societies and as regards the documents and files that were seized from the premises of the Mills Company, the only question put to him was that the documents were in fact seized from the premises of the Mills Company. No further questions regarding the contents of the documents were at any time addressed to I.B. Palit. Mohanlal Jalan gave his statement on May 8, 1964. The first part of his statement relates his connection with Messrs Loknath Tolaram and Messrs Bharat Barrel and Drum Manufacturing Company Private Ltd. He then admitted that Laxmiprasad Goenka was giving certain information to the Mills Company and that he was not an employee. Laxmiprasad Goenka was partner of Mohanlal in the firm of Messrs, Loknath Tolaram. He was shown loose sheet cash books contained in file No. 74 signed by Gyarasilal Agarwal. He stated that the Mills Company had not got branch office or godown at Bhiwandi as far as he knew. He also stated that Gyarasilal Agarwal had no connection with the Mills Company and he had no business connection with Gyarasilal and had not seen him. He admitted that the Mills company was sending powerloom cloth for processing to Messrs Jalan Dyeing and Bleaching Mills and certain facts about the pledge of the cloth. He was shown a statement in his own handwriting containing

certain figures. He stated that he did not remember under what circumstances he had prepared the statement and that such types of statements he usually prepared in connection with his business activities. He also explained that he was a share-holder in the companies mentioned in the statement and he had accordingly prepared the statement. Banwarilal gave 11 names of Jalan group of concerns. He attended to the work of these concerns as legal adviser. He stated that Agarwal Yarn Agency and Textile Trading Company were not in the group of Jalan group of concerns. He stated that employees of different sister concerns were withdrawn and employed in other concerns. He was shown a letter dated August 30, 1961, addressed by Megharaj Patodia to him and asked about the endorsement made by him at the foot of that letter. He admitted that he had made the endorsement "Make separate file for powerlooms". He was shown letter dated March 26, 1963, addressed by him to I. B. Palit. This letter referred to the applications made to the Textile Commissioner for issuing of Tex-mark numbers and he was asked to contact the Textile Commissioner for issuing the numbers. He was also shown page 93 from a file and he admitted that the page showed list of powerlooms located in Bombay Talkies" compound Malad. and the challan submitted to the Reserve Bank for regularisation of powerlooms licence numbers, etc., the list pertained to 41 persons. He admitted that he was attending to the work of regularisation of powerlooms located in Bombay Talkies" compound. Malad. and Jalan Industrial Estate. The question is, whether, having regard to the queries addressed by the 1st respondent to these three high officials of the Mills Company in the matter of inquiries made under Sub-rule (2) of Rule 9, the 1st respondent can be said to have offered an opportunity to the Mills Company to show cause against the action proposed to be taken. The further question is whether the 1st respondent was bound to serve a formal notice offering opportunity to the Mills Company in this connection in spite of the fact that the Mills Company had come to know by reason of the letter of the 1st respondent to the Solicitors of the Mills Company addressed on April 1, 1963, and the statements made in the affidavit dated July 1, 1963, and by reason of the questions addressed to these high officials of the case of the department that the Mills Company had by dubious methods set cotton fabrics produced on 1400 powerlooms and evaded payment of excise duty in respect thereof. It may at once be stated in this very connection that Mr. Bhabha relied upon the documents which had come into the possession of the 1st respondent in March 1963. These documents are at Exhibits 2, 8, 11, 13, 19, 21 and 26 of the affidavit in reply in this case. It is not necessary to refer to the contents of these documents which contain relevant statements in connection with the finding of the 1st respondent that diverse goods, manufactured by the Mills Company had been cleared without payment of excise duty. In this petition we are not concerned to investigate the effect of these documents. The question is as to whether in respect of these documents and the ultimate finding that the Mills Company was manufacturer of all these goods, adequate opportunity for defending has been offered to the Mills Company.

18. It is clear that the statements which were recorded by the 1st respondent and on which reliance has now been placed by Mr. Bhabha were in the nature of investigations in the inquiry to be held under Rule 9 (2) for ultimate findings against an offending manufacturer. Because these investigations were carried on an impression must have been formed in the Mills Company that there was a possibility that provisional conclusions may be made for holding the Mills Company liable in respect of certain lots of powerloom goods of its ownership. Possibly, a claim to payment of excise duty might provisionally be formulated against the Mills Company. The question is whether under those circumstances it was necessary for the Mills Company voluntarily by making representations to come forward and prove its positive case that it was not the manufacturer of any powerloom goods. The question is whether before taking the ultimate decision and action of issuing the impugned demand notices, it was not necessary for the 1st respondent to address a communication to the Mills Company pointing out the diverse materials on which reliance was placed for a finding that the Mills Company was manufacturer of powerloom goods and had evaded payment of excise duty. Now, it appears to us that having regard to the various questions which were being raised against the Mills Company and the fact that voluntary representations might involve the Mills Company into complicated inquiries, it cannot be held that the Mills Company was bound to make a representation and prove its innocence even before it came to know that provisional conclusions and findings had been made so as to impose on the Mills Company excise duty in respect of cloth manufactured on 1400 powerlooms. This was so in spite of the fact that the above three high officials of the Mills Company were summoned by the 1st respondent and had given their statements as described above. We are not prepared to accept Mr. Bhabha's submissions that under the above circumstances the burden had already shifted and unless the Mills Company had made representations and clarified its position, the 1st respondent was entitled to proceed to issue the impugned notices of demand. We are unable to accept Mr. Bhabha's submission that it was not necessary for the 1st respondent to indicate in all particulars to the Mills Company the materials on which he relied for his provisional conclusion that the Mills Company was a manufacturer of goods on particular 1400 powerlooms. The fact that the documents on which reliance was placed belonged to the Mills Company and could best be explained by the Mills Company was not sufficient to avoid disclosing of these materials to the 1st petitioner Company and informing it that on the basis of these materials a provisional conclusion had been arrived at. Having regard to the seriousness of the charges levelled, the evidence in possession of the 1st respondent on the basis whereof he proposed to act was in all particulars liable to be disclosed to the Mills Company. In terms of the judgment of the Supreme Court in the Civil Appeals Nos. 1362 and 1363 of 1967 (SC). It was necessary for the 1st respondent "to hold an inquiry in which due notice of those circumstances was given and the offenders (Mills Company) were given an opportunity to meet the inferences arising therefrom and to comment thereon x x x x x." It was the duty of the 1st respondent to inform the Mills Company of the charges against it with

full details of the evidence in support of the charges and to give them an opportunity to meet those charges and the offences alleged against it.

19. It requires to be stated that we have come to the above conclusion reluctantly, because, since the date of the issuance of the impugned notices much time has lapsed. Several documents which are exhibits to the affidavit in reply contain substantial material for investigation of the fact that the powerloom cloth in respect whereof these notices are issued might have been got manufactured by the Mills Company. This, however, does not mean that we have formed any opinion at all on the questions involved which are complicated questions of law and fact.

20. In our view, the impugned notices having been issued without giving any proper opportunity to the Mills Company are invalid and liable to be struck off. The impugned detention order dated June 17, 1964, was the result of the impugned notice of demand dated June 17, 1964. As all the notices of demand are set aside, the detention order also is liable to be struck off.

21. In the result, the rule is made absolute in terms of prayer (a) of the petition. The order setting aside the detention order dated June 17, 1964, not to operate for six weeks. There will be no order as to costs.

22. Order accordingly.