
(1954) 08 BOM CK 0012

In the Bombay High Court

Case No : O.C.J. Appeal No. 45 of 1954 and Suit No. 246 of 1950

S.S. Miranda, Ltd.

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 12-08-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 82

Citation : (1955) 57 BOMLR 29

Hon'ble Judges : M.C. Chagla, C.J.;Shah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Desai, J.—The plaintiffs sue the State of Bombay for a refund of a sum of Rs, 2,64,968-15-0 and interest on the same on the ground that they paid that amount under protest when additional duty was levied on foreign liquor by a notification issued on December 16, 1948.

2. There is no dispute about the facts having bearing on the case. The plaintiffs were holders of a Trade and Import License which continued till March 31, 1949. In view of the policy of prohibition which was being inaugurated by the defendant the Excise Officer in charge addressed a letter to the plaintiffs on April 2, 1948, asking the plaintiffs to keep their goods in bond in their own duty-paid godown after paying excise duty on the same. Prior to this the Government in accordance with the provisions contained in Section 15 of the Bombay Abkari Act, 1878, used to maintain established or licensed warehouses at various places in the State. In pursuance of that letter the plaintiffs paid a sum of Rs. 2,17,355-14-0 to the defendants. Transport permits were thereupon issued to the plaintiffs authorising the plaintiffs to transport their stock of foreign liquor from their private bonded warehouse at No. 3, Rose Cottage, Mazagaon, to the licensed premises of the plaintiffs in the same building. This was done, as learned Counsel for the plaintiffs stated, because the defendant wanted to introduce the policy of prohibition and discontinue the system of bonded warehouses where foreign

liquor could lie without payment of duty. Learned counsel also stated that what was really done was that the bonded warehouse was converted into licensed premises for storing duty-paid foreign liquor. Some of the goods on which duty was paid were sold by the plaintiffs. On December 16, 1948, a notification was issued by the Government of Bombay in exercise of the powers vested in it u/s 19 of the Bombay Abkari Act, 1878, whereby Government inter alia doubled the duty on foreign liquor which necessarily included the stock of foreign liquor owned by the plaintiffs. The plaintiffs thereafter wanted to transport their stock of foreign liquor from their godown where they kept their stock but could not do so without paying additional duty as the notification referred to by me had already come into force. Therefore, in December 1948 and January 1949 they paid to the defendant under protest an aggregate sum of Rs. 2,64,968-15-0 as being the amount of the difference between the excise duty on the increased scale and the duty originally paid by the plaintiffs.

3. The case of the plaintiffs was that what was done by the notification of December 16, 1948, was imposition of additional duty. This was denied by the defendant who contended that there was no imposition of any additional duty but all that was done by the notification was that a new and enhanced rate of duty was fixed by it. The case of the plaintiffs was that the additional excise duty paid by the plaintiffs and received by the defendant was an illegal exaction by the treasury of the defendant. The principal contention raised in the plaint was that the notification was ultra vires the provisions of the Bombay Abkari Act and in particular went beyond the scope of Section 19 of that Act.

4. The Bombay Abkari Act consolidates and lays down the law relating to the import, export, transport, manufacture, sale and possession of liquor and intoxicating drugs in the State of Bombay. In the present case I am only concerned with the provisions of that Act so far as they relate to transport of liquor and intoxicating drugs. The expression "to transport" has been defined in Section 3, Sub-section (10), to mean "to move from one place to another place within the Province." Sections 10 and 19 of the Act are as follows :?

10. No intoxicant and no hemp shall be exported or transported unless :?

(a) the duty, if any, payable under Chapter VI, or

(b) if the article was previously imported, the duty, if any, imposed on its importation under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878, has been paid, or a bond has been executed for the payment thereof.

19. An excise duty or countervailing duty, as the case may be, at such rate or rates, as the Provincial Government shall direct may be imposed, either generally or for any specified local area, on any excisable article?

(a) imported in accordance with the provision of Sub-section (i) of Section 9 ; or

(b) exported or transported in accordance with the provisions of Section 10 ; or

(c) manufactured under a licence granted in accordance with the provisions of Section 14 or Section 15:

Provided that:?

(1) duty shall not be so imposed on any article which has been imported into British India and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878.

Explanation ;?Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption or according to the varying strengths and quality of such article.

5. It may be observed that Section 19 is one of the sections in Chapter VI of the Act which deals with "Duties".

6. Mr. N.A. Mody, learned Counsel for the plaintiffs, referred to Section 19, Section 10 and Section 3(20) of the Act which I have already set out above. He also referred to Sections 15 and 15A of the Act. As I have already observed Section 15 authorises the Government to establish licensed or bonded warehouses for storing liquor and intoxicating drugs. Section 15A lays down inter alia that no intoxicating drug shall be removed from a warehouse or other place of storage unless duty, if any, imposed u/s 19 has been paid or a bond executed for the payment of the same. Learned counsel for the plaintiffs principally relied on Section 19A of the Act, the relevant part of which is as follows":?

19A. Subject to any rules to regulate the time, place and manner of payment made by the Commissioner in this behalf, the duty referred to in the foregoing section may be levied in one or more of the following ways :?

(c) in the case of excisable articles transported in accordance with the provisions of Section 10,?

(1) by payment in the district from which they are transported;

(ii) by payment upon issue for sale from a warehouse established or licensed u/s 15

Provided that where payment is made upon issue for sale from a warehouse established or licenced u/s 15 such payment shall be at the rate of the duty in force at the date of the issue from the warehouse.

7. The crucial argument was founded on the proviso already set out by me. The argument was that Section 19 authorised the Provincial Government to impose excise duty at such rate or rates that it may direct and Section 19A lays down the provisions relating to the manner of levying such duty. It was said that full effect should be given by the Court to the provisions of law contained in Section 19A of the Act and particularly to the proviso to which reference has already been made. The argument ran that in the present case payment was made upon issue for sale of the plaintiffs' stock of foreign liquor from bonded warehouse and

it was at the rate which was in force on the date of the issue. In such a case, so it was urged, it was not competent to the defendant subsequently to charge excise duty at any rate which was not in force on the date of the issue of the goods from the warehouse. Now there might have been some force in this contention if the law were that excise duty on particular goods could be enforced only once. But that, as I shall point out later on, is not the strictly accurate legal position. But even apart from that the argument was that the proviso as well as the other provisions contained in Section 19A of the Act control the power vested in the Provincial Government u/s 19 of the Act. The argument of Mr. Mody proceeded that Section 19A laid down not merely rules regulating the time, place and manner of payment to be made to the Government or the manner of levying duty but also laid down incidents of taxation. Now a plain reading of Sections 19 and 19A to my mind shows that it is Section 19 which is the section which empowers the Provincial Government to levy duty on import, export, transport, manufacture, sale and possession of liquor and intoxicating drugs. That section is, what may be conveniently described as, the charging section. Section 19A merely lays down rules to regulate the time, place and manner of the payment of the duty which may be levied by the Provincial Government u/s 19 of the Act. It merely deals with the manner or mode of collecting the duty and does not in my judgment lay down any incidents of taxation. If that be so, then the proviso to Section 19A cannot in any manner control or affect the provisions laid down in Section 19 which contains the vital and crucial provisions of law, dealing with the incidents of taxation. Section 19 empowers the Provincial Government to impose duty on excisable articles either generally or for any specific local area at such rate or rates as may be fixed by the Provincial Government. The crucial question which I am called upon to determine, therefore, is whether having been vested with the power to levy duty on any of the excisable articles by virtue of the provisions of the Act at such rate or rates as it may fix the Government had further the power to enhance the rate or rates already fixed by it. But before I proceed to consider that question I shall refer to the power of the Legislature to increase an excise once levied by it. In *Pattern v. Brady* (1902) 184 U.S. 608 a case decided by the Supreme Court of the United States of America, tobacco, which had already paid excise duty, had been sold to the plaintiff, While it was still in his hands an Act was passed doubling the current rate of duty and (no doubt lest persons in possession at the moment of duty-paid tobacco should get an unearned profit on its sale) imposing a special duty on all tobacco which had paid excise duty in force at the date of the Act and was at that date held and intended for sale. The Act was challenged as unconstitutional on the ground that the Legislature having once excised an article could not excise it a second time. The Supreme Court upheld the Act on this particular point and referred to the observations on excise duties given in Blackstone and Story and to definitions in various standard dictionaries and then stated (p. 628):

...Within the scope of the various definitions we have quoted there can be no doubt that the power to excise continues while the consumable articles are in the

hands of the manufacturer or any intermediate dealer, and until they reach the consumer.

Our conclusion, then, is that it is within the power of the Congress to increase the excise...and that such increase may be made at least while the property is held for sale and before it has passed into the hands of the consumer.

This case, as was observed by Gwyer C.J. in *In Re The Central Provinces and Berar Act No. XIV of 1938* (1938) 1 F.C.R. 18 is a decision on the scope and extent of the power of Legislature to impose excise duty. That the Legislature in the present case had the power to increase the rate of duty already levied under the Act was not seriously disputed before me. But what was urged before me was that the power of the Provincial Government in the matter had been circumscribed by the provisions of Section 19 of the Act and the Provincial Government having once levied the excise duty had no authority or power to increase that duty and particularly in a case where duty had already been collected before the increase had been levied. Now as I read Section 19, it empowers the Provincial Government to impose a duty on excisable articles at such rate or rates as it may fix in its sole judgment and discretion. The right has no doubt to be exercised within the power conferred by Section 19, but these powers are to my mind very wide, and not restricted as urged on behalf of the plaintiffs. Once that power to fix duty is delegated to the Provincial Government, that power would include in my judgment the power to reduce the rates of duty or to enhance the same. In this respect as I read Section 19, the powers of the Provincial Government are commensurate with the powers of the Legislature as the Legislature was competent to delegate those powers to the Provincial Government and has done so. The only delimitations on these powers are to be found in Section 19 itself and they are, so far as levying of duty on transport of excisable articles is concerned, in Clause (b) of that section. Duty can be imposed on any excisable articles transported in accordance with the provisions of Section 10. Section 19(6) must, therefore, be read along with Section 10 of the Act. Reading the two sections together it seems to me that the Provincial Government has been empowered to impose duty on excisable articles on transport from one place to another within the State and prevent such transport unless duty has been paid. The question that must, here, arise is: Duty at what rate? It was urged by learned Counsel for the plaintiffs that once duty has been paid on excisable articles, there can be no further tax levied when any transport of excisable articles takes place thereafter. It was strenuously urged that once duty is paid on an excisable article, the prohibition or control enforceable u/s 10 of the Act must disappear. The argument proceeded that once duty was paid on an excisable article, its transport from one part of the State to another should remain free and unfettered in the absence of any specific provision of law in that behalf, and it was stated that there was no such specific provision of law anywhere in the Act. I am unable to read Section 10 in the manner urged before me by learned Counsel. The restriction or disability imposed by Section 10 comes into operation when an excisable article is to be transported. It is at that stage or

that point of time that Section 10 comes into operation so far as transport of liquor or intoxicants has to be effected. And if that be the crucial time, then the authority whose duty it is to see that the provisions laid down in Section 10 are complied with is bound to see that duty has been paid on the article intended to be transported. Now the duty which he has to consider must in my judgment be the duty imposed by the Provincial Government and then in force and which can only be at the rate then fixed by the Provincial Government. On this view of the construction of Section 19 read with Section 10 the result must be that there is nothing in Section 10 which prevents the Provincial Government from levying and recovering duty at any enhanced rate on excisable articles which had already been taxed before. The language similar to that of Section 10 is to be found also in Section 15A of the Act. That section deals not with transport but with removal from a distillery, brewery, warehouse or other place of storage established under the Act. In such a case there can be no removal unless duty imposed u/s 19 has been paid or a bond has been executed for the payment of the same. Here also question may arise whether duty to be considered as paid is the duty in force and in operation at the time of removal. I have referred to Section 18A only because learned Counsel for the plaintiffs sought to derive some support for his argument from the language used by the Legislature in that section. I am unable to read anything in Section 15A which can help me in construing Section 10 differently from the manner in which I am inclined to construe it.

8. Another argument pressed before me on behalf of the plaintiffs was that the definition of "to transport" in Section 3(10) was wide and vague. I do not agree that there is any vagueness about the definition of the expression given by the Legislature. But I do agree that the definition is wide. But after all it was for the Legislature to give to the word "transport" wherever used in the Act a wide meaning or a restricted meaning, and if the Legislature has thought it fit to give a wide import to that expression, I am bound to give effect to the definition enacted by the Legislature. The argument on this head was that the word "transport" in the Act and particularly in Sections 19 and 10 should mean transport only on one occasion. The argument ran that there was already a transport of the goods when they were notionally removed from the bonded warehouse to the godown of the plaintiffs after paying duty. It was pointed out that in fact transport permits were issued by the defendant to the plaintiffs on April 5, 1948. These permits have been exhibited before me. It was also urged that the scheme of the Act showed that the word "transport" should have a restricted meaning and should be understood to mean transport only on one occasion. In the light of the decision of the Supreme Court of America to which I have already adverted and of the wide definition given by the law-maker to the word "transport" and of the plenary powers of the Legislature which in the matter under consideration is sovereign, I am unable to see my way to give a restricted meaning to the expression "to transport" as very strenuously urged before me, both by Mr. Mody and by Mr. Jhavery who have argued the case on behalf of the plaintiffs. The view I take of the matter is that it was competent under the Act to

the Provincial Legislature to impose tax on excisable articles whenever they were transported from one place to another and that power, so far it related to the fixing of the rates at which the duty was to be levied and some other allied matters having been delegated by the Legislature to the Provincial Government, the Provincial Government became vested with the powers to impose duty on excisable articles which fell within the purview of the Act not only when they were transported in the beginning but even thereafter whenever they were transported from one place to another within the State.

9. The same argument was presented before me in a somewhat different garb by Mr. Jhavery. It was urged that once the power of fixing the rate had been exercised by the Provincial Government and duty had been collected at the former rate by the Government, that power became exhausted and there remained no power or authority in the Government to increase the rate of the duty imposed on the excisable articles in question. This argument has already been considered by me and it is not necessary to reiterate the conclusion already arrived at by me on the same point.

10. Based on all these considerations the conclusion I have reached is that it was within the power of the Provincial Government to issue the notification impugned before me and to increase the duty which had already been levied on the stock of foreign liquor belonging inter alia to the plaintiffs.

11. Another aspect of the same argument urged before me by learned Counsel was that the notification goes far beyond the powers conferred on the Provincial Government by the Legislature because it puts what was described by learned Counsel as a clog on the rights of the subject. The expression "clog" has been found more appropriate to the question of equity of redemption which at times arises for consideration and arose in the leading case of a publican relating to supply of beer. But leaving publicans and beer alone what I have to consider is whether there is anything in the notification which puts any illegal restriction on the rights conferred by the Act on the subject. I am unable to accept the argument that the construction which I am inclined to place on the notification will have the effect of recognising powers in the Government which go beyond those conferred on it by Section 19. The powers conferred by that section are in my judgment wide enough to include the power to impose duty on excisable articles at any stage when they are being transported from one place to another. Of course that stage must be before the goods have passed into the hands of the consumer.

12. There was some further argument urged before me about the injustice of imposing enhanced duty on goods, duty on which had already been collected from the plaintiffs. This argument raises questions which do not relate to the purpose or nature of the tax. Where the purpose or nature of the tax is not assailable, it is not the function of the Court to inquire into the motives of the Legislature or of the Authority to whom those powers may have been delegated; nor is it within the competence of the Court to concern itself with the salutary or

injurious effect of the tax which the subject may have to pay. Taxation is an attribute of sovereignty and the remedy of the subject who wants to protest against the use, or abuse, of that power, where that power exists, is not by an approach to the Court but by other constitutional means.

13. There remains for consideration the argument that by the notification challenged before me the Provincial Government in substance and in effect levied what was called double taxation. Now it is true that it is against the principle of the scheme of taxation that there should be double taxation and, therefore, there can be double taxation only where the Legislature has in terms of sufficient clarity, and width so expressed its will. It has often been observed by the highest tribunals that even when there are no specific words in a statute preventing receipt of revenue or tax twice over, it would be clearly injustice and obviously unfair that the Government should have the same tax paid twice over to it by the same person in respect of the same article. This principle has long been assumed in cases of taxing statutes which do not prohibit double taxation. But there can be a different tax upon the same subject matter where there is legislative competence in that behalf. So also there can be an enhanced tax in respect of the same subject-matter and the circumstance that the tax has already been levied and collected does not deprive the Legislature from enacting a law increasing that tax. There may be practical difficulties in the way of recovering the enhanced taxation, but with that the Court cannot be concerned when it is called upon to consider the powers of the Legislature or of the Authority to whom those powers have properly been delegated. And on the same principle there is nothing to prevent the Legislature from laying down that a tax of the nature of the excise duty shall be collected at every stage when goods are transported from one place in the State to another. One of the submissions urged before me by Mr. Mody was that if the definition under consideration were given full meaning, a person who removes an excisable article from one room in his house to another room would be liable to pay additional tax or further tax of the same nature or increased tax under that same head of duty. The Court cannot interfere on the ground of the consequences of a law enacted in clear and unambiguous terms. The argument as presented emphasized the inconvenience that may be caused by subsequent enhancement of a tax already collected. This is an argument which the Court accepts, if at all, in very rare cases. As a rule it does not find favour with and is shunned by the Court. I am not inclined to accept the argument of inconvenience in construing the provisions of the Bombay Abkari Act with which I am dealing in this case.

14. To turn to the question of double taxation I do not think this is a case of double taxation. What was done by the notification was not to levy another tax on the same person in respect of the same subject matter but to increase the rate at which the duty had already been levied and recovered. In this view of the matter I do not think it is necessary for me to further examine the principle against double taxation which was relied on by learned Counsel for the plaintiffs. I may. Also observe that it is an accepted principle that a tax which should have

been authorised originally could be authorised retro-actively.

15. In my judgment, therefore, the notification impugned before me is not illegal, invalid or ultra vires the provisions of the Abkari Act nor does it go beyond the scope of Section 19 of that Act.

M.C. Chagla, C.J.

16. This is an appeal against a judgment of Mr. Justice Desai and it arises out of a suit filed by the plaintiffs for refund of a sum of Rs. 2,64,968-15-0 paid under protest as additional duty levied on foreign liquor by a notification issued by Government on December 16, 1948.

17. Now the facts really are not in dispute. The plaintiffs were the holders of a Trade and Import Licence of foreign liquor until March 31, 1949, and up till that date they used to keep the liquor in a bonded warehouse. On April 2, 1948, Government informed the plaintiffs that they were launching the policy of prohibition and therefore they would not be able to keep their goods in licensed warehouses, but that they should keep these goods in their own godowns after paying the necessary excise duty on them. In pursuance of this letter the plaintiffs paid the duty and obtained a transport licence from Government. The transport was only notional in the sense that, though the goods remained in the same premises, the premises ceased to be a licensed warehouse and became the private warehouse of the plaintiffs. The transport permit makes it clear that authority is given to the plaintiffs to transport the foreign liquor from the bonded warehouse to their own private premises and that the goods have been cleared in full to trade. The transport permit was issued on April 5, 1948. Thereafter the plaintiffs sold some of these goods. On December 16, 1948, a notification was issued by the Government of Bombay whereby Government doubled the duty on foreign liquor and Government insisted upon charging the additional duty upon the goods which were still lying in the godown of the plaintiffs, and the plaintiffs were not permitted to transport these goods unless this additional duty was paid. Thereupon the plaintiffs paid the additional duty under protest and filed the present suit as already pointed out. The learned Judge has held that the additional duty was properly levied by Government and has dismissed the plaintiffs' suit. It is against that decision that this appeal is preferred.

18. In order to understand the contentions of the parties, it is necessary to look at the Bombay Abkari Act, 1878, as amended. It is not disputed by the State of Bombay that the charging section is Section 19 and that section provides as follows :?

An. excise duty or countervailing duty, as the case may be, at such rate or rates as the Provincial Government shall direct may be imposed, either generally or for any specified local area, on any excisable article?

(a) imported in accordance with the provision of Sub-section (1) of Section 9 ; or

(b) exported or transported in accordance with the provisions of Section 10 ; or

(c) manufactured under a license granted in accordance with the provisions of Section 14 or Section 15:

Therefore, by this section the Legislature has delegated to the State Government the power to impose an excise duty. It has also delegated to the State Government the power to determine at what rate the duty should be imposed and also the power to determine in which particular area the duty should be imposed and upon which article. Now, we are concerned here with the power of Government to impose a duty on an excisable article transported in accordance with the provisions of Section 10 ; and when we turn to Section 10, it provides that no intoxicant and no hemp shall be exported or transported unless the duty has been paid, or a bond has been executed for the payment thereof. Therefore, Section 10 imposes a prohibition against the export or transport of an intoxicant unless the proper duty has been paid. Section 19 delegates to the State Government the power to impose a duty with regard to transport or export of excisable goods. But what is important and material to note is that, reading Sections 10 and 19 together, it is clear that, once the duty mentioned in Section 19 has been paid, the prohibition contained in Section 10 must disappear. In other words, if a person who wishes to transport an excisable article pays the duty at the rate fixed by Government u/s 19, then he has a right to transport that excisable article and he cannot be faced any further with the prohibition contained in Section 10. It is necessary to look at the Explanation to Section 19 : it provides that duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article. Therefore, it is open to the Government to say that, if goods are to be transported to a particular place, then the duty will be "x", and if they are to be transported for consumption to another place, then the duty shall be "y", and it is also open to the Government to vary the rates according to the strength and quality of the liquor on which the duty is imposed.

19. Then comes Section 19A which deals with the mode of collecting the excise duty which can be imposed u/s 19, and the opening words of the section are :?

Subject to any rules to regulate the time, place and manner of payment made by the Commissioner in this behalf, the duty referred to in the foregoing section may be levied in one or more of the following ways :?

and turning to the case of transport, which is dealt with in Sub-clause (c), it provides :?

in the case of excisable articles transported in accordance with the provisions of Section 10?-

(i) by payment in the district from which they are transported;

(ii) by payment upon issue for sale from a, warehouse established or licensed u/s 15;....

Therefore, in this case the Government adopted the second mode of collecting excise duty on the articles under transport. They imposed the duty at the point of time when the excisable articles were issued for sale from a licensed warehouse. Now, licensed warehouses are dealt with u/s 15 and the relevant sub-clause is Sub-clause (d), which provides that the Commissioner may establish or license a warehouse wherein any intoxicant or hemp may be deposited and kept without payment of duty. It was such a licensed warehouse where the goods of the plaintiffs were lying without payment of duty, and when a notice was given to the plaintiffs that licensed warehouses ceased to exist and they must now keep the goods in their own private warehouse, there was an issue of these articles from the licensed warehouse to their own private warehouse, and it is at this point of time that the duty was levied by the Government and it is this mode of collecting the duty that was adopted by the Government.

20. Now, there is a very important proviso to Section 19A and it lays down that, where payment is made upon issue for sale from a warehouse established or licensed u/s 15, such payment shall be at the rate of the duty in force at the date of issue from the warehouse. Logically this proviso should not have found a place in Section 19A at all; it should have found a place in Section 19 because this proviso does not deal with the mode of collection, but it deals with the quantum of tax which the subject has to pay and therefore it is more concerned with the question of charge rather than with the procedural question of how the tax is to be collected. The proviso is mandatory in its terms and it lays down that, if the second mode is adopted by the State u/s 19A(c)(ii), namely, levying duty when the goods are issued from a licensed warehouse, then the liability of the owner of the goods is to pay such tax as would be calculated by the rate prevailing at the date of issue. It is, therefore, clear that this proviso determines and decides the liability of the owner of the excisable articles to the payment of duty and it provides not only what is the rate at which he must pay tax, but it must follow logically that it also determines the quantum of tax he must pay if the particular mode is availed of u/s 19A.

21. There is one other section to which reference might be made and that is Section 15A, which provides that?

No intoxicant or hemp shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed under this Act, unless the duty, if any, imposed u/s 19 has been paid or a bond has been executed for the payment thereof.

To a considerable extent this section seems to overlap Section 10 and it may have been enacted for greater caution. But it is impossible to read this section as imposing a different liability to pay duty than the one contained in Section 19. Section 15A is not the charging section, but it provides for greater caution that an intoxicant cannot be removed unless the duty imposed u/s 19 has been paid. Therefore, really we must come back to Section 19 in order to decide what is the power of Government to impose excise duty and what is the liability of the citizen

to pay that duty.

22. It was contended before the learned Judge below that the Legislature has the competence to impose excise duty at more points than one. It was pointed out that the very nature of excise is that an article is liable to pay that type of duty at all stages?from the stage where the article is manufactured till it is ultimately consumed by the consumer?and it is perfectly competent to the Legislature, not only to impose excise duty at one point of time, but to impose it at several points of time. Now, that proposition is undoubtedly correct and it is beyond challenge. But what the learned Judge below has overlooked?with very great respect to him? is that we are not concerned in this case with the competency of the Legislature, but with the question as to whether the Legislature being competent it has delegated the power to the State Government to impose excise duty more than once. What Mr. Bhabha wants us to hold is that, if we assume that there is competency in the Legislature, then we must infer that that power has been conferred upon the Government. Now, such an inference would be contrary to all canons of interpretation of a taxing statute. It is elementary?and it need not be repeated?that a taxing statute must always be construed in favour of the subject; and if Government claims any power of taxation, it must satisfy the Court that such a power is clearly conferred upon it by the Legislature. The mere fact that the Legislature was competent to impose a particular type of tax cannot lead to the necessary or inevitable inference that that power was conferred upon the delegated authority. We must, therefore, find in Section 19 any indication?and the indication must be clear and beyond doubt?that the Legislature delegated to the State Government the very important power of levying excise duty more than once and at more than one point during the progress of the excisable goods from the time that they left the bonded warehouse till the time that they reached the consumer. Now, there is absolutely nothing in Section 19 which justifies any such suggestion about the power of the State Government. Section 19 in terms does not empower the Government to levy an excise duty upon an excisable article more than once ; and reading Sections 19 and 10 together, as they indeed must be read, it is again equally clear that there is nothing in the statute which re-imposes a prohibition upon the owner of excisable goods when that prohibition has been removed by his paying the requisite duty u/s 19. Take this very case. The plaintiffs paid the requisite duty at the rate prevalent on April 5, 1948, by reason of the proviso to Section 19A and they got a transport permit for trading in these goods and thereby the prohibition u/s 10 was removed. What is there in the statute which justified the attitude of Government that that prohibition was re-imposed because Government, by a later notification (Bom. Govt. Gaz., Part IV-B, No. 10504/45 dated December 16, 1948) raised the rate of duty and imposed it upon this particular excisable article?

23. Now, turning to the notification which has been issued u/s 19, as already pointed out, it raises the duty by doubling it. That power undoubtedly the Government has u/s 19. But the difficulty arises by reason of the second proviso to Clause (a) of this notification, and that second proviso is in the following

terms :?

Provided further that if excise or countervailing duty has already been paid on such excisable articles for their import, issue or transport for consumption into, to or within any place in the Province, the amount of duty to be imposed shall be the difference between the amount of duty leviable at the rates specified in the said Schedule and that already paid on such articles....

In other words, this part of the notification confers upon the Provincial Government the right to claim from a person, who has already paid the duty u/s 19 at the rate indicated in the proviso to Section 19A, an additional duty because u/s 19 the Government has varied the rate of excise duty to be charged on a particular article. Now, no one disputes the power of Government to increase the duty. The question is whether, having already collected the duty on a particular article, the Government could re-impose an additional duty upon that very article although that article no longer suffered from the prohibition u/s 10 and the owner of that article was entitled in law to transport it, having already paid the duty. Mr. Bhabha says that the expression "transport" is very widely defined in the statute and "transport" means to move from one place to another within the Province ; and, therefore, the argument is that, although duty was paid when the goods were issued from a license warehouse, there is still a liability upon the plaintiffs to pay duty when they seek to transport it from the warehouse to any part in the State of Bombay. In other words, it is contended that there is a power in Government to impose a duty at every stage of transport if the goods are transported from place to place and from time to time. Now, a definition of a word used in a taxing statute cannot be permitted to enlarge the liability of the tax-payer or to increase the power of the State to impose tax. However wide the definition of "transport" may be, the power to tax is still confined to the ambit of Section 19, and, as we have already pointed out, that power to impose excise duty on transport is a power that can be exercised at one point of time and with regard, to one transport. In this particular case, the transport was looked upon as having taken place when notionally the goods of the plaintiffs ceased to be in a licensed warehouse and were in a private warehouse. That was the duty on transport as far as the plaintiffs were concerned. There is nothing in Section 19 which permits Government to impose a further tax or an additional tax upon these very goods when the plaintiffs want further to transport it from their own private warehouse to some part in the State of Bombay. It has also been suggested by Mr. Bhabha that the proviso to Section 19A would be controlled by the rules or regulations made by the Commissioner and therefore Mr. Bhabha wants us not to attach such importance to this proviso as to make it a part of the charging section. Now, Section 19A is subject to any rules to regulate the time, place and manner of payment made by the Commissioner. In our opinion, the proviso to Section 19A neither deals with time of payment, nor place of payment, nor the manner of payment. Mr. Bhabha rather faintly suggested that the rate at which the payment was to be made was the manner of payment. That, in our opinion, is entirely an untenable contention. As we have already pointed out, the

proviso to Section 19A deals really with the incidence of taxation, the liability of the tax-payer, the rate at which the tax-payer is liable to pay the tax, and the quantum of the tax ; and therefore the proviso to Section 19A could not be affected or modified by any rules made by the Commissioner.

24. It is then suggested that there is nothing retrospective in the notification which is being challenged?the notification dated December 16, 1948. It is pointed out that what is attempted to be taxed are goods which are sought to be transported after they have been issued from a licensed warehouse. Now the objection to the notification is not that it is retrospective ; and, in our opinion, it is entirely immaterial whether it is retrospective or prospective. The objection to the notification is that the State Government has no power u/s 19 to impose a second or additional excise duty on articles which have already been subjected to tax u/s 19. If the State Government has the power, then undoubtedly the notification would have been good, however retrospective in its character it might have been. If the State Government has no power, then the notification is bad, however prospective it may be in its character. Reliance was placed on a judgment of the American Supreme Court reported in *Patton v. Brady* (1902) 184 U.S. 609. That decision emphatically lays down that it was within the power of the American Congress to impose an additional excise upon manufactured tobacco on which the excise theretofore imposed by law had been paid, even though such tobacco had passed from the hands of the manufacturer, where it had not reached the consumer, and was, at the time of the passage of the Act, held and intended for sale. Now, really two questions arose for the determination of the American Supreme Court: one was whether the nature of the tax imposed by the Congress was excise, and the other was whether the goods having already been subjected to excise tax, the Congress had the competence to tax them over again. On the second point, the Supreme Court held that the Congress had the competence. Now, as we have ourselves pointed out, it is equally true that our State Legislature, which is a sovereign Legislature within the ambit of its own powers, has got every competence to levy an excise duty upon goods which have already been subjected to that tax, and therefore that question is not of much assistance in deciding the question as to whether in fact the Legislature has exercised its power. On the other point as to what is the excise duty, it was pointed out that the nature of the excise or the tax on manufactured tobacco is a tax on an article manufactured for consumption, and imposed at a period intermediate the commencement of manufacture and the final consumption of the article. Therefore, looking at the various definitions given by various authorities, the Supreme Court came to the conclusion that, till the point of time was reached when the article was finally consumed, excise could be levied upon that article ; and, with respect, we accept that view of excise duty taken by the American Supreme Court. Therefore, if the State Legislature has the competence to impose an excise duty, that competence could be exercised upon goods at any point of time from the time they were manufactured till the time they were consumed, and Mr. Bhabha is right that the point of time at which the State

Government seeks to impose the duty which is challenged was a point of time when the goods had not yet been consumed. Therefore, undoubtedly, if the State Government had the power to impose an excise duty, that power was properly exercised, because the duty that the Government is seeking to impose is an excise duty.

25. But that again does not carry the matter any further. We come back to the very narrow and simple question that is raised in this case, which is whether u/s 19, which is the charging section under the statute, the State Government has the power to impose an excise duty on excisable articles having already imposed the duty and having removed the prohibition with regard to transport u/s 10 of the Abkari Act ; and in view of the scheme of the Act and the principles to which we have drawn attention, it seems to us that the State Government has no such power.

26. In the result, we must allow the appeal and set aside the judgment of the learned Judge. There will, therefore, be a declaration that the notification dated December 16, 1948, is bad to the extent that it seeks to impose an additional excise duty upon the goods of the plaintiffs in suit, and there will be a decree against the State for payment of the sum of Rs. 2,64,968-15-0 and costs of the suit, with interest from the date when the statutory notice was given, which is December 22, 1949, Interest to be at 6 per cent, till the date of the suit, 4 per cent, from the date of the filing of the suit, and 4 per cent, on judgment. Appeal allowed with costs.

27. Time for payment u/s 82, Civil Procedure Code, fixed at three months.

28. Liberty to the appellants' attorneys to withdraw the sum of Us. 500 deposited by them.