Supreme Court of India
Empire Industries Limited & Ors. ... vs Union Of India & Ors. Etc on 6 May, 1985
Equivalent citations: 1986 AIR 662, 1985 SCR Supl. (1) 292
Author: A Varadarajan
Bench: Varadarajan, A. (J)

PETITIONER:
EMPIRE INDUSTRIES LIMITED & ORS. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS. ETC.

DATE OF JUDGMENT06/05/1985

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
FAZALALI, SYED MURTAZA
MUKHARJI, SABYASACHI (J)

CITATION:
1986 AIR 662 1985 SCR Supl. (1) 292
1985 SCC (3) 314 1985 SCALE (1)1269
CITATOR INFO :
RF 1987 SC 874 (1,3,5,6)
R 1988 SC 113 (4,5)
RF 1988 SC 871 (4)
R 1988 SC2237 (6)
F 1989 SC 516 (2,3,5,13,14,16,19,20,21,23,24
R 1989 SC1019 (6)
E 1990 SC1893 (5)
R 1991 SC 407 (6)
F 1991 SC1784 (7)

ACT:
Central Excise and Salt Act, 1944, (Act I of 1944), section 2 (f) (v) (vi) and (vii)-Definition of `Manufacture' as amended by the Central Excise and Salt and Additional Duties of Excise (Amendment) Act, (Act vi of 1980)-Legislative competency to make amendment-Whether the Amendment Act is violative of Articles 14,19(1) (g) and Entry 84 of List I of the Seventh Schedule of the Constitution-Concept of "Manufacture"-Whether the various processes of bleaching, mercerising, dyeing, printing etc. of cotton fabrics and woolen fabrics man-made fabrics as mentioned in items 19 and 22 of the Schedule to the Central Excises and Salt Act amount to "Manufacture", as the Act stood prior to the Amendment Act, so as to attract levy of duty under section 4 of the Act-Whether the Amendment Act in

any event is valid under Entry 97 of List I of the Seventh Schedule of the Constitution-Retrospective legislation whether permissible - Evidence not produced clear but that sought to be produced in the Supreme Court, acceptance of-Passing of Interim orders, aviation/vaction by the Court in fiscal matters, causing of.

HEADNOTE:

In Vijay Textile Mills v. Union of India reported in (1979) 4 E.L.T.J. 181, the Gujarat High Court by its decision dated 21-1.1979 held that cotton fabrics subjected to bleaching, dyeing and printing could not be subjected to excise duty under Item 19 (1) (b) of the First Schedule to the Central Excises and Salt Act, 1944 is at twenty per cent ad-valorem these activities not being taxable event in the light of section 3 read with 2(d) of the Act. The Gujarat High Court proceeded on the footing that the processes of bleaching, dyeing and printing were manufacturing processes and held that excise duty would at least be leviable under residuary Item No. 68 of the First Schedule and therefore, liable to levy at eight per cent ad-valorem, the High Court directed the "Excise authorities to calculate the ad valorem excise duty during the period of three years immediately preceding the institution of each petition before the Court and calculate the excise duty payable by each of these petitioners under Item 68 only in respect of the value added by each of the petitioners by the processing of the fabric concerned. The excise duty paid in excess of such ad valorem duty under Item 68 during the period of three years immediately preceding the institution of the respective Special Application is ordered to be refunded to the petitioners concerned in each of their petitions."

In Real Honest Textiles and Ors. v. Union of India (now in appeal) the Gujarat High Court passed similar directions after declaring that the levy and collection of excise duty and additional duty on processed man-made fabrics
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under Tariff' Item 22(1) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was ultra vires. Since the decisions of the Gujarat High A Court on 24.1.1979 in these two cases, the petitioners and the processing houses like the petitioners have been claiming refund.

The President of India promulgated an Ordinance being Central ordinance No. 12 of 1979 called the Central Excises and Salt and Additional Duties of Excise (Amendment) Ordinance 1979. The said Ordinance was replaced by the Act VI of 1980 called the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980, giving retrospective effect to the Act from 24th February 1979. By section 2 of the Act, section 2(f) of the Excise Duty Act was amended by adding three sub items in the definition

"manufacture" so as to include the activities like bleaching, dyeing, printing etc. covered by the two decisions of the Gujarat High Court. Similar amendments were made in items 19(1), 21 (1) and 22 (1) of the First Schedule with retrospective effect. Section 5(2) (b) of the Amending Act provided "no suit or other proceedings shall be maintained or continued in any other Court for the refund of the duty collected and no enforcement shall be made by any Court of any decree or order directing the refund of such duties of excise which have been collected and which may have been collected." as if the provisions of section 5 of the Act VI of 1980 had been in force on and from the appointed day as defined in the Act VI of 1980.

After the Act VI of 1980 was passed, the same was challenged before the Bombay High Court by several writ petitions. Dismissing W.P. 623/1979 titled New Shakti Dye Works Pvt. and Mahalakshmi Dyeing and Printing Works v. Union of India along with 24 other writ petitions on 16117 June, 1983, the Bombay High Court upheld the Constitutional validity of the impugned Act as well as the levy of duty on certain goods. Special Leave was granted in this case as in the two earlier Gujarat High Court's cases.

Empire Industries Limited also filed a petition under Article 226 of the cases though Indian Textile Processor Association withdrew it from the file of the Bombay High Court and by the writ petition under Article 32 of the Constitution has challenged the Constitutional validity of the Act VI of 1980 and the validity of the levy of excise duty under section 4 of the Act. Some other petitioners similarly situated have also filed their petitions under Article 32 of the Constitution.

In these petitions and appeals the following main points fell for consideration:

1. Whether cotton fabrics subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing etc. specially the processes conducted and carried out by the petitioner company in respect of cotton fabrics and woolen fabrics/man-made fabrics as mentioned under Items 19 or 22 of the Schedule to the Central Excises and Salt Act amount to 'manufacture' as the Act stood prior to the impugned Act of 1980. In other words whether these various processes carried out by the petitioners

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company amount to bringing into existence different and distinct goods, A commercially known as such, to attract levy of duty under section 4 of the Central Excises and Salt Act, 1944.

2. Whether and in any event after the impugned Act, the levy is valid. In connection with the said contention it has to be examined whether the impugned Act is intra vires entry 84 of List I of the Seventh Schedule to the Constitution and if not, whether the said impugned Act can be said to be valid in any event under entry 97 of List I of the Seventh

Schedule to the Constitution.

3. Whether the impugned Act violates Article 14 or Article 19(1)(g) of the Constitution.

Allowing the Revenue appeals in C.A. Nos. 586 to 592 of 1979 and dismissing all the petitions and other appeals, the Court,

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HELD: 1. In view of the amendments made in section 2(f) of the Central Excises and Salt Act, 1944 by Amending Act VI of 1980 as well as the substitution of new Item 19(1) and 22(1) in Excise Tariff in place of the original items, the activities of the petitioner company, namely, as an independent processing unit engaged in job activities of dyeing, printing and finishing of man made/cotton fabrics attract the exigibility to excise duties under section 3 and 4 of the Act. Excise duty will be charged on processed printed material.

[328 D-E]

Section 3 of the Central Excises and Salt Act clearly indicates that the object of the entries in the First Schedule is firstly excisable goods and secondly to specify rates at which excise duty will be levied. Under sub-rule 2 of Rule 56A, a manufacturer will be given credit of the duty which is already paid on the articles used in the manufacture, subject to certain conditions. Therefore, the processors will be entitled to credit for the duty already paid on the grey cloth by the manufacturers of the grey cloth. [328 E-P]

New Shakti Dye Works (Pvt.) Ltd v. Mahalakshmi Dyeing and Printing Works v. Union of India & Anr. (W.P. Nos. 622 and 623 of 1979 dated 16 and 17 June 1983 Bombay) approved.

2.1 Excise duty is a duty on the manufacture of goods and not on sale. Manufacture is complete as soon as by the application of one or more process, the raw material undergoes some change. If a new substance is brought into existence or if a new or different article having a distinctive name, character or use result from particular processes, such process or processes would amount to manufacture. Therefore, the taxable event under the Excise Law is `manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes `manufacture' takes place and liability to duty under section 4 is attracted. [312 C-D; 316 B-C]

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Union of India v. Delhi Cloth & General Mills, [1963] 1 Supp. S.C.R. 586; Union of India v. H.U.F. Business known as Ramlal Mansukhnai, Rewari &; Anr. A [1971] 1 S.C.R. 937; Allenburry Engineers v. Ramakrishna Dalmia & Ors., 11933] 2 S.C.R. 257; Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) Ernakulam v. Pio Food Packets, [1980] 3 S.C.R. 1271 and Chowgule and Co. Pvt. Ltd. and Anr. v. Union

of India and Ors. 11981] I S.C.C. 653 referred lo.

Commissioner of Sales Tax, U.P. Lucknow v. Harbilas Rai and Sons [1968] S.T.C. Vol. 21 p. 17 (S.C.) followed.

Hiralal Jitmal v. Commissioner of Sales Tax , [1957] S.T.C. Vol. VIII 325 (MP); East India Cotton Manufacturing Company Pvt. Ltd. v. The Assessing Authority- cum-Excise and Taxation Officer, Gurgaon and Anr., [1972] S.T.C. Vol. 30 p. 489 (Punjab and Haryana); Kores (India) Ltd v. Union of India and Ors., [19821 E.L.T. Vol. 10, p. 253 and K. Venkataraman and Company and Ors. v. Deputy Commercial Tax Officer, Coimbatore IV and Ors., [1972] S.T.C. Vol. 10 p. 57 (Mad) approved.

Extrusion Process Pvt. Ltd. v. N.R. Jadhav, Superintendent of Central Excise, 119791 4 F.. L.T. J. 380 (Gujarat); Swastik Products, Baroda v. Superintendent of Central Excise, [1930] 6 E.L T. 164 (Gujarat) and Kailash Nath and Anr. v. The State of U.P. and Ors., [1957] S.T.C. Vol. VIII p. 358 (SC) distinguished.

Mc Nicol and Anr. v. Pinch, [1906] 2 K.B. 352 quoted with approval.

2.2 Etymologically the word "Manufacture" properly construed would doubtless cover the transformation. Here, in the light of several decision of the Supreme Court and the High Courts and on the construction of the expression, the process of bleaching, dyeing and printing etymologically means manufacturing process. The processes of the type which have been incorporated by the Act VI of 1980 were not so alien or foreign to the concept of `manufacture' that these could not come within that concept covered by entry 84, of List I of the Seventh Schedule. After the Act VI of 1980 was passed these processes indubitably fall within the expression `manufacture'. [323A,E-H]

2.3 The question whether the impugned Act is covered by entry 84 can be looked from another point of view namely the actual contents of entry 84. The word `produced' appearing in entry no. 84 of List I of the Seventh Schedule is used in juxtaposition with the word `manufactured' and used in connection with the duty of excise and consequently it contemplates same expenditure of human skill in bringing the goods concerned into the condition which would attract the duty. It was not required that the goods would be manufactured in the sense that raw material should be used to turn out something altogether different. It would still require that these should be produced in the sense that some human activity and energy should be spent on them and these should be subjected to some processes in order that these might be brought to the state in which they might become fit for consumption. Here, expenditure

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of human skill and material have been used in the processing and it may not be that the raw material was first transformed but over the transformed material, further transformation was done by the human labour and skill making

this fit for human consumption. In any event under entry 97 of List I of the Seventh Schedule this would apply if it is not under entry 84. [324 A, G]

Aluminium Corporation of India Ltd. v. Coal Board AIR 1959 Cal. 222, approved.

The King v. Caledonian Collieries, Ltd. [1928] A,C. 358 referred to.

2.4 To contend that if the legislation was sought to be defended on the ground that it is a tax on activity like processing and would be covered by the a powers enumerated under entry 97 of List I of the Seventh Schedule there was no charging section for such an activity and as such the charge must fail and there cannot be any levy is wrong and misconceived. The charging section is the charging section 3 of the Central Excises and Salt Act, 1944. It stipulates the levy and charge of duty of excise on all excisable goods produced or manufactured. `Manufactured' under the Act after the amendment would be the 'manufacture' as amended in section 2(f) and Tariff Item 19(1) and 22 and the charge would be on that basis. [324 ;325 A-B]

3.1 Imposition of tax by legislation makes the subjects pay taxes. It is well recognised that (i) tax may be imposed retrospectively; and that by itself would not be unreasonable restriction on the right to carry on business and (ii) the Parliament has powers to make retrospective legislation including fiscal legislation and such legislation per se is not unreasonable. [326 D-F]

3.2 Here there is no particular feature of this legislation which can be said to create any unreasonable restriction upon the petitioners. The concept of process being embodied in certain situation in the idea of manufacture, the impugned legislation is only making 'small repairs' and that is permissible mode of legislation. [326 E-F]

3.3 Nor does the impugned legislation act harshly nor there is any scope for arbitrariness or discrimination. It is clear from the objects and reasons wherein it was stated that the Central Excise Duty was levied for the first time on cotton fabrics in 1969, on man-made fabrics (rayon of artificial silk fabrics) in 1954 and on woolen fabrics in 1955. From the very early stages of the textile tariff, with a view to achieving progression in the rate structure and to aligning excise control with the demands of different producing sectors duties has been levied not only on grey fabrics but also at the stage of processing such as bleaching, dyeing and printing. The Judgment of the Gujarat High Court in Real Honest Textiles and Ors. v. Union of India (under appeal) according to the statement of objects and reasons of the Act VI of 1980 had upset the arrangements regarding levy of excise duties of textile fabrics. The judgment also had the effect of disturbing the balance evolved between different sectors of the textile industry. Furthermore, it was made clear that in so far as past

assessments were concerned, refund of excise duties to manufactu-
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rers as ordered by the High Court would have only meant a fortuitous windfall so as to benefit such persons without any relief to the ultimate consumers A who had purchased the fabrics and had borne the burden of the duties. In order to avoid this, the Act was passed. [325 E-H; 326 B-C; 327 C]

Krishnamurthi & Co. etc. v. State of Madras & Anr., [1973] 2 S.C.R. 55, referred to.

3.4 Where for the purpose of calculating assessable profits, a notional and conventional sum is laid down by the legislature to be arrived at on a certain basis, it is not permissible for the courts to engraft into it any other deduction or allowance or addition or read it down on the score that the said deduction or allowance or addition was authorised elsewhere in the Act or in the Rules. A conventional charge should be measured by its own computation and not by facts relating to other method of computation. The circumstances that thereby the benefit of any exemption granted by the legislation may be lost and that in some cases hardship might result are not matters which would influence courts on the construction of the statute. A tax payer subject is entitled only to such benefit as is granted by the legislature. Taxation under the Act is the rule and benefit and exemption, the exception. And in this case there is no hardship. [327 E-G] D

3.5 When the textile fabrics are subjected to the processes like bleaching, dyeing and printing etc. by independent processes, whether on their own account or on job charges basis, the value of the purposes of assessment under section 4 of the Central Excise Act will not be the processing charges alone but the intrinsic value of the processed fabrics which is the price at which such fabrics are sold for the first time in the wholesale market. That is the effect of section 4 of the Act. The value would naturally include the value of grey fabrics supplied to the independent processors for the processing. However excise duty, if any, paid on the grey fabrics will be given proforma credit to the independent processors to be utilised for the payment on the processed fabrics in accordance with the Rules 56 A or 96 of the Central Excise Rules, as the case may be. [327 G-H; 328 A-B] F

3.6 Read in that context and in the context of the prevalent practice followed so long until the decision of the Gujarat High Court in Real Honest case, there is no hardship and no injustice to the petitioners or the manufacturers of grey fabrics. The fact that the petitioners are not the owners of the end product is irrelevant. Taxable events is manufacture-not ownership. [328 B-D] G

4. Documentary evidence not produced earlier cannot be admitted at the late stage of final hearing of the case by the Supreme Court [308 E]

(Per majority Varadarajan J. dissenting).

1. Different Courts sometimes pass different interim orders as the courts think fit. The interim orders passed by particular courts on certain considerations arc not precedents for other cases may be on similar facts. To contend

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that once an interim order has been passed by the Supreme Court on certain A factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there by any variation with that kind of interim order passed. In as much as that such variance creates discrimination is an unfortunate approach. [329C-E]

2. Every bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have right to vary or alter such interim orders. The court made the following suggestions (i) A consensus, however, should be developed in matters of interim orders in fiscal matters specially in cases involving indirect taxes where normally taxes have been realised from the consumers but have not been paid over to the exchequer or where taxes are to be realised from consumers by the dealers or others who are parties before the court, interim orders staying the payment of such taxes until final disposal of the matters should not be passed. It is a matter of balance of public convenience Large amounts of taxes are involved in these types of litigations Final disposal of matters unfortunately in the present state of affairs in our courts takes enormously long time and non-realisation of taxes for long time creates an upsetting effect on industry and economic life ceasing great inconvenience to ordinary people. Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigations, it becomes difficult for the governments to run and become oppressive to the people. Government's expenditures cannot be made on bank guarantees or securities. In that view of the matter the Supreme Court shall refrain from passing any interim orders staying the realisations of indirect taxes or passing such orders which have the effect of non-realisation of indirect taxes. This will be healthy for the country and for the courts. [329 E-H; 330 A-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 11728 y) of 1984.

Under Article 32 of the Constitution of India.

WITH Writ Petitions Nos. 13556, 13788, 13792, 15438 and 15439 Of 1984 and Civil Appeals Nos. 6414 of 1983 and 3564 of 1984.

AND Civil Appeals Nos. 586 to 592 of 1979.

From the Judgment and Order dated 24.1.1979 of the Gujarat High Court in Special Civil Appln. Nos. 1552, 1553/77 with Nos. 249,1292,1293,1294 and 1295 of 1978.

S. J. Sorabjee, A. J. Rana, S. Parekh, Mrs. J. Wad, and Miss Aruna Mathur for the Petitioners in W.P. Nos. 11728, 15438 and A 15439 of 1984.

S.J. Sorabjee, A.N. Haskar and S.A. Shroff for the Petitioner in W.P. No. 13788 of 1984.

S.S. Shroff and S.A. Shroff for the Appellant in C.A. No. 3564/84 and Petitioner in W.P. Nos. 13556, 13792 and 13788 of 1984.

S.J. Sorabjee and A. Grover for the Appellant in C.A. No. 6414 of 1983.

K.G. Bhagat Additional Solicitor General and R.N. Poddar for the Appellants in C.A. Nos. 586-92 of 1979.

K.G. Bhagat, Additional Solicitor General, Girish Chandra, Miss Halida Khatun, Uma Nath Singh and R.N. Poddar for the Respondents. (Union of India) S.K. Dholakia, R.C. Bhatia and P.C. Kapur for the Respondents, in C.A. Nos. 589-92 of 1979.

Y.S. Chitale, Anand Haskar, P.H. Parekh and Miss Indu Malhotra for the Respondents in C.A. No. 586 of 1979.

A.K Sen, P.H. Parekh and Miss Indu Malhotra for the Respondents in C.A. No. 587 of 1979- F F.S. Nariman, P.H. Parekh and Miss Indu Malhotra for the Respondent in C.A. No. 588 of 1979.

The following Judgments were delivered VARADARAJAN J. I agree with my learned brother Sabyasachi Mukharji, J. that Writ Petitions Nos. 11728 of 1984 and 13556, 13788 13792, 15438 and 15439 of 1984 and Civil Appeals Nos. 6414 of 1983 and 3564 of 1984 have to be dismissed with costs, and that Civil Appeals Nos. 586 to 592 of 1979 have to be allowed with costs, and interim orders, if any, passed should stand vacated, and arrears of excise duties should be paid forthwith and future excise duty should be paid as and when the goods are cleared or otherwise as per law and rules. But I regret my inability to subscribe to the views expressed by him in the last two paras of his judgment regarding interim orders.

SABYASACHI MUKHARJI, J. This first petition herein under Article 32 of the Constitution arises under the following circumstances.

The President of India promulgated an Ordinance being Central Ordinance No. 12 of 1979 called the Central Excises and Salt and Additional Duties of Excise (Amendment) Ordinance, 1979. The said Ordinance was replaced by the Act called the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980 (hereinafter referred to as the 'impugned Act'). The said impugned Act received the assent of the President on 12th February, 1980 and under section 1(2) of the impugned Act, retrospective effect to the Act was given from 24th February, 1979.

It may be mentioned that the Gujarat High Court in the case of Vijay Textile Mills v. Union of India rendered its decision on 24th January, 1979 on this aspect of the matter. This decision will have to-be examined in little detail later. As a result of the said decision and with a view to overcome the said decision, the Ordinance mentioned hereinbefore was promulgated on 24th November, 1979 which has since been replaced by the said Central Excises and Salt and Additional Duties of Excise (Amendment) Act. 1980.

After this impugned Act was passed, the same was challenged before the Bombay High Court by several writ petitions, Writ Petition No. 623 of 1979 along with others were disposed of by the Bombay High Court by judgment delivered by the Division Bench on 167/17th June, 1983 in the case of New Shakti Dye Works Pvt. Ltd. & Mahalakshmi Dyeing and Printing Works v. Union of India Anr. By the said judgment, the Bombay High Court disposed of 24 writ petitions as the question involved in all those petitions was identical. In that case the constitutional validity of the impugned Act as well as the levy of duty on certain goods identical to the present goods involved in this application under Article 32 of the Constitution was involved. The Bombay High Court dismissed the said writ petitions. We will refer to the said decision later. We may, however, state that we are in respectful agreement with the conclusions as well as the reasoning of the decision of the Bombay High Court in the said petitions. Special leave to appeal to this Court has been granted from the said decision in the case of New Shakti Dye Works Pvt. Ltd.

In order to appreciate the contentions raised, it is necessary to state that the petitioner company is an independent processing unit carrying on its activities at Bombay and as an independent processing unit was engaged in job activities of dyeing, printing and finishing of man- made/cotton fabrics. The petitioner company further states that in respect of the said processing activities, the petitioner company holds licences required under the laws for the time being in force including a licence under the Excise Act and the Central Excise Rules which hereinafter will be referred to as the 'said Rules'.

The petitioners in writ petition No. 11728 of 1984 were two in number-one being the petitioner company and the other being the Taxation Executive of the petitioner company.

The petitioners state that the processing operations of the petitioner company in the said factory are job work operations of dyeing, bleaching and printing of the said fabrics which are cotton fabrics and man-made fabrics. When the said fabrics are received in the factory of the petitioner, company the same are fully manufactured and are in a saleable condition and are commercially known as grey fabrics i.e. unprocessed fabrics which are cleared after payment of the excise duty under Tariff Item Nos. 19 and 22, as the case may be. The petitioners further state that the said grey fabrics i.e.

unprocessed, undergo various processes in the factory of the petitioner company. The grey fabrics are boiled in water mixed with various chemicals and the grey fabric is washed and thereafter the material is taken for the dyeing process, that is imparting of required shades of colours. The next stage is printing process, i.e. putting the required designs on the said fabrics by way of screen printing on hot tables. The final stages the finishing process, that is to give a final touch for better appearance According to the petitioners, they do not carry out any spinning or weaving of the said fabrics. The machinery installed by the petitioner company in its factory is only for the purpose of carrying out one or more of the aforesaid four processes and cannot be used for the purpose of either spinning or weaving of yarn for manufacture of 'fabric' i.e. 'woven material'. For spinning or weaving of yarn, one requires, according to the petitioners, looms and petitioner company is merely a processing house. The petitioner company's case is that the petitioner company A begins with man-made or cotton fabrics before it starts the said processes and also ends with man-made or cotton fabrics after subjecting the fabrics to the various processes. The petitioner company receives fully manufactured man-made fabrics and cotton fabrics from its customers only for the purpose of carrying out one or more of the aforesaid processes thereon as per the requirement and instructions of the customers and after the necessary processes are carried out, the same are returned to the customers. According to the petitioners, what is received by the petitioner company is known as cotton/man-made fabrics and what is returned is again known as cotton/man-made fabrics. The petitioner company states that it has no discretion or choice of shades or colours or designs and the same are nominated or prescribed by the customers. The finally processed fabric is not and cannot be sold by the petitioners in the market as the petitioner company's product. The petitioner company merely collects from its customers charges only for job work of processing done by it. The petitioner company further states that it has no proprietary interest in the fabrics either before or after the same is processed. The manufacture of the fabrics and sale in the market of the processed fabrics are effected by the petitioner company's customers and not by the petitioners. Further the processed as well as the unprocessed fabric, whether cotton or man-made, can be put to the same use.

The petitioner company, is required to file classification list for approval of the concerned Excise Authorities as prescribed by Rule 173-B of the said Rules for approval of Tariff items in the First Schedule to the excise Act in respect of the processed fabrics. As per approval granted there-on in respect of man-made fabrics and cotton fabrics, the petitioner company classifies all the processed fabrics under Tariff Items 19 and 22, as the case may be. So far as man-made fabrics are concerned under Tariff Item 22, the petitioner company was required to pay certain duties as mentioned in the petition. The petitioners state that the petitioner company has paid such duties.

The petitioners further state that such classification list of cotton fabrics has been approved under Tariff Item No. 19 and the petitioner company was required to pay certain duties which the petitioner company has mentioned that it has paid the same. The petitioners further state that for the purpose of determination of value under section 4 of the Excise Act, the petitioner company was required to file a price list in the form prescribed under the said Rules for approval. The respondents-government authorities, according to the petitioners, although being aware of the fact that the petitioner company was carrying out and or performing merely the processing work and collecting the processing charges only, had directed the petitioner company to file a price list on the

basis of the sale price of its customers and for this purpose had required the petitioner company to file along with the said price list letters of its customers certifying the price at which the said customers sell the goods in the markets. The petitioners state that price list includes the selling expenses and selling profits of the said customers in which the petitioner company has no interest or share.

According to the petitioners, the respondents approve the price list and as a consequence thereof the petitioner company becomes liable to pay to the respondents additional Excise duty calculated on ad-valorem basis on the said approved sale price that is the sale price of its customers. The petitioners have annexed a copy of the delivery note and a copy of the invoice issued by the petitioner company. It is further the case of the petitioners that both in respect of cotton fabrics and man-made fabrics which are merely processed by the petitioner company, the respondents were levying and collecting excise duty and additional duty respectively under Tariff Items 19 and 22, as the case may be, at rates stipulated against the respective entries read with relevant exemption notification, as if the petitioner company was the manufacturer of cotton fabrics/man-made fabrics, as the case may be.

The petitioner company further states that it bad filed a writ petition in the Bombay High Court which was admitted. The said writ petition was filed through Indian Textile Processors Association. The petitioners stated thereafter the circumstances under which the said petition was withdrawn and why the present petition under Article 32 of the Constitution is being filed. For our present purpose, it is not necessary to set out these details.

The petitioners challenge the impugned Act mentioned hereinbefore. Before the contentions are dealt with, it would be appropriate to deal with the relevant provisions of the impugned Act. Section 2 of the impugned Act amends section 2(f) of the Excise Act by adding three sub-items in the definition of 'Manufacture' which were included by Act 6 of 1980 being the impugned Act which came into effect from 24th November, 1979 which are sub- clauses (v), (vi) and (vii). These read as follows:- "(v) in relation to goods comprised in Item No. 19 I of the First Schedule, includes bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink proofing, organdie processing or any other process or any one or more of these processes;

(vi) in relation to goods comprised in Item No. 21(1) of the First Schedule, includes milling, raising, blowing, tentering, dyeing or any other process or any one or more of these processes;

(vii) in relation to goods comprised in Item No. 22(1) of the First Schedule, includes bleaching, dyeing, printing, shrink-proofing. tentering, heat- setting, crease resistant processing or any other process or any one or more of these processes;" Similar amendments we made in Items 19(1), 21(1) and 22(1) of the Central Excise Tariff, and also similar amendments were effected in relation to Act of 1957. These amendments were effected retrospectively from different dates for different fabrics, as mentioned in the impugned Act. According to section 5(2) (b) of the impugned Act, no suit or other proceedings shall be maintained or continued in any other court for the refund of the same and no enforcement shall be made by any court of any decree or order directing the refund of such duties of excise which have been collected and which may have been collected as if the provisions of

section S of the impugned Act had been in force on and from the appointed day as defined in the impugned Act. It may, however, be mentioned that the original unamended definition of the word "manufacture" in section 2(f) contained a general definition of the word "manufacture" which was and still continues to be an inclusive definition to say that the manufacture includes any process incidental or ancillary to the completion of a manufactured product.

According to the petitioners, the impugned Act had been enacted and brought into force because of the judgment of the Gujarat High Court dated 24th January, 1979 given in the case of Real Honest Textiles and others v. Union of India-a decision which is also subject matter of appeal before this Court and has been heard A along with this petition. The Gujarat High Court had declared that the levy and collection of excise duty and additional duty on processed cotton fabrics under Tariff Item No. 19 I of the Schedule to the Excise Act and additional duty on processed man-made fabrics under Tariff Item 22(1) of the Additional Duties of Excise (Goods of Special Importance) Act, 195, was ultra vires and the processing houses were liable to pay duty of excise on processed fabrics ad-valorem under Tariff Item 68 of the Schedule to the Excise Act only on value added by way of process charges on cotton or manmade fabrics, as the case may be, and not on the full value of such fabrics. As mentioned hereinbefore, an application for special leave to appeal to this Court had been filed from the said decision of the Gujarat High Court, these appeals are pending and would be disposed of by this judgment.

It may be mentioned that so long as the respondents had been collecting and the petitioners had been paying excise duty and/or additional duty as the petitioner company was manufacturing cotton fabrics under Tariff Item Nos. 19 and 22, as the case may be. Since the decision of the Gujarat High Court in New Shakti Dye Works Pvt. Ltd., and the petitioners and the processing houses like petitioners have been claiming refund- The material portions of the amendments of the Act have been set out hereinbefore in the definition of section 2(f). The second part of the impugned Act by which amendments were effected is found in section 3 of the impugned Act by which original item No. 19 in the First Schedule to the Excise Act was substituted by new Item No. 19 I and for the original item No. 22, a new item No. 22(1) was substituted. These are:

" 1. Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials

(a) cotton fabrics, not subjected to any process Twenty per cent ad-valorem

(b) cotton fabrics, subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink- proofing, organdie processing or any other process or any two or more of these processes.

		Twenty per cent ad-valorem
XXX	XXX	XXX

22(1) Man-made fabrics other than (i) embroidery in the piece, in strips or in motifs, (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials-

(a) man-made fabrics, not subjected to any process.

Twenty per cent ad-valorem plus rupees five per square metre.

(b) man-made fabrics, subjected to the process of bleaching, dyeing, printing, shrink proofing, tentering, heat-setting, crease resistant processing or any other process or any two or more of these processes.

Twenty per cent ad-valorem plus rupees five per square metre.

It may be pointed out that the original Item No. 19 I referred to "cotton fabrics". It provided that "cotton fabrics means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed- spreads, counter-panes, table cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials."

The proviso is not relevant for the issue now. The original Item 19 I read as follows:

"I. Cotton fabrics other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials".

Thus, Item No. 19 I is now substituted by the new item referred to above and the effect of this substitution is that for the purposes of excise duty cotton fabrics have been categorised into two classes, namely (a) cotton fabrics not subjected to any process and (b) cotton fabrics subjected to any process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes. The duty on each one of them is twenty per cent ad-valorem. Substantially the same is the nature of the substitution of old Item No. 22(1) by new Item No. 22(1).

This item referred to man-made fabrics and by the amendment, man-made fabrics have again been divided into two categories, namely, (a) man-made fabrics, not subjected to any process, and (b) man-made fabrics subjected to different processes referred to in clause (b).

Cotton fabrics and man-made fabrics were also subjected to the additional duties of excise as a result of the amendments of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as "the Additional Duties Act"). By section 4 of the amending act, Item Nos. 19 I and 22(2) of the First Schedule to the Excise Act were also similarly amended by making an identical substitution of Item No. 191 and 22(1) in the First Schedule to the Additional Duties Act. The Amendment Act has been made retrospective in operation, and so far as cotton fabrics are

concerned, it became operative from 1st March, 1955 and so far as man-made fabrics are concerned, it became operative from 18th June, 1977. Now, it has been provided by clause (iv) of sub-section (1) of section 5 of the Amendment Act that amendments of clause (f) of section 2 of the Excise Act should be treated as having been in force at all relevant times subject to the modifications that the reference in the Excise Act to the "goods comprised in Item No. 19 I of the First Schedule" shall be construed as a reference to such "cloth", "cotton cloth",or, as the case may be, ' cotton fabrics", and reference to the A "goods comprised in Item No. 22(1) of the First Schedule" shall be construed as a reference to such "rayon or artificial silk fabrics" or, as the case may be, "man-made fabrics". Section 5(2) of the Amendment Act also validates duties of excise already levied, assessed, or collected on cloth, cotton cloth, cotton fabrics, woollen fabrics, rayon or artificial silk fabrics and man-made fabrics subjected to any process. It provides that all duties of excise levied, assessed or collected or purported to have been levied, assessed or collected, before the date of commencement of the Amendment Act, on (i) "cloth", "cotton cloth" and "cotton fabrics" subjected to any process, (ii) "woollen fabrics", subjected to any process,

(iii) "rayon or artificial silk fabrics" and "man-made fabrics" subjected to any process, under any Central Act shall be deemed to be, and shall be deemed always to have been as validly levied, assessed or collected as if the provisions of section 5 had been in force on and from the appointed day. It is also expressly enacted in section 5 of the Amendment Act that every Central Act as in force at any time during the period commencing with the appointed day and ending with day immediately preceding the date of commencement of the Amendment Act and providing for or relating to the levy of duties of excise on "(a) 'cloth', 'cotton cloth' or, as the case may be, 'cotton fabrics', (b) 'woollen fabrics', (c) 'rayon or artificial silk fabrics', or as the case may be, 'man-made fabrics', shall have and shall be deemed to have always had effect during the said period as if (i) such 'cloth' or as the case may be, 'cotton fabrics' comprised for the purpose of the duty leviable under the Excise Act- (A) a sub-item covering such 'cloth', 'cotton cloth' or 'cotton fabrics' not subjected to any process mentioned in sub-clause (v) of clause (f) of section 2 of the Central Excise Act, as amended by this Act; and (B) a sub-item covering such 'cloth' 'cotton cloth' or 'cotton fabrics' subjected to any such process or any two or more such processes and the rate or duty specified in such Act with respect to such cloth, cotton cloth, or 'cotton fabrics' had been specified separately with respect to each of the aforementioned sub-items thereof". Similar provision was also made in clause (iii) of sub-section (1) of section 5 in respect of "rayon or artificial silk fabrics" or "man- made fabrics". It is common ground that the effect of various amendments inserted in the Excise Act by the Amendment Act was to include the processes of bleaching, dyeing and printing, in so far as the present petitions are concerned, within the definition of the word "manufacture". It is also common ground that by making amendment to Tariff Item No. 19 I and by creating two separate categories of cotton fabrics, that is, (1) not subjected to any process, and (2) subjected to the A processes and by making these amendments retrospective recoveries which have so far been made from the processors in question were sought to be legalised. If these amendments can stand the test of challenge of Article 19(1)(g) and 14 and if the amendments in section 2(f) are within the legislative competence of the Parliament, and the process of bleaching, dyeing and printing and other processes mentioned in the newly introduced clause (v) o section 2(f) were manufacturing processes, then the processors would become liable to pay excise duty, and there cannot be any question of refund. This is not disputed.

The amending Act has, however, been challenged and various submissions on behalf of the respective parties were made and numerous decisions were referred to us.

The following main points fall for consideration in these applications and appeals:

1. Whether cotton fabrics subjected to the process of bleaching, mercerising, dyeing, printing, water proofing etc. specially the processes conducted and carried out by the petitioner company as enumerated before in respect of cotton fabrics and woollen fabrics/man-made fabrics as mentioned under Items 19 or 22 of the Schedule to the Central Excises and Salt Act amount to 'manufacture' as the Act stood prior to the impugned Act of 1980. In other words whether these various processes carried out by the petitioner company amount to bringing into existence different and distinct goods, commercially known as such, to attract levy of duty under section 4 of the Central Excises and Salt Act, 1944.

2. Whether and in any event after the impugned Act, the levy is valid. In connection with the said contention it has to be examined whether the impugned Act is intra vires entry 84 of List I of the Seventh Schedule to the Constitution and if not, whether the said impugned Act can be said to be valid in any event under entry 97 of List I of the Seventh Schedule to the Constitution,

3. Whether the impugned Act violates Article 14 or Article 19(1)(g) of the Constitution.

If the impugned Act is valid, then no other question need be examined except the question as to what should be the actual levy of the duties.

It is therefore necessary to examine the amendment of the definition of 'manufacture' in section 2(f) of the Central Excise and Salt Act, 1944 and Tariff Items 19(1) and 22(1) of the First Schedule to the Central Excise Tariff.

The main contention of the petitioner is that the impugned Act is ultra vires of entry 84 of List I of the Seventh Schedule. It is not necessary to set out in extenso entry 84 of List I of the Seventh Schedule to the Constitution. It deals with duties of excise on tobacco and other goods manufactured or produced in India. It may be mentioned that the charging section i e. section 3 of the Central Excises and Salt Act, 1944 empowers the levy and collection in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as they apply in respect of goods at rates set forth in the First Schedule to the said Act. "Excisable goods" under section 2(d) means goods specified in the First Schedule as being subject to a duty of excise and includes salt. It was urged in support of this application that Parliament was incompetent under entry 84 to enact the impugned Act whereby an artificial meaning to the word 'manufacture' was given. The word 'manufacture' must be given its etymological meaning. It was urged that process of bleaching, dyeing and printing are not processes which could properly be described as

manufacturing processes. Therefore it was submitted that by making the said amendment to the word 'manufacture' and by including such processes in the definition of manufacture and in effectuating the consequential amendments in Tariff Item Nos. 19 I and 22(1), Parliament has gone beyond the scope of entry 84 of List I of the Seventh Schedule to the Constitution and as such is ultra vires. It was submitted that all that was being done was that fully manufactured cotton fabrics is subjected to further process of bleaching, dyeing and printing and therefore the article still continues to be cotton fabric and no different article having distinctive features, character and use comes into existence. It was submitted that grey cloth before it is processed is cotton fabric and after it is processed, continues to be cotton fabrics. As such it cannot be said that there A was any manufacture involved. Numerous decisions on the question whether a particular process was a manufacturing process or not were referred to. On the other hand on behalf of the revenue it was urged that the processes of bleaching, dyeing and printing were essentially manufacturing processes inasmuch as a result of these processes, a new substance known to the market is brought into being. In support of this contention, several decisions were also referred to. Though it is not necessary to refer to all these decisions, some of these may be noted.

In Union of India v. Delhi Cloth & General Mills,(l) this Court was concerned with the question as to whether manufacture of 'refined oil' from raw materials undertaken by the manufacturers of Vegetable products known as Vanaspati was liable to excise duty. The manufacturers purchased ground-nut and til oil from open markets and the oils thus purchased by them were subjected to different processes in order to turn these into Vanaspati. Their contention was that at no stage they produced any new products which could come within the items described in the Schedule as "vegetable non-essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The contention of the revenue was that the manufacturers in the course of manufacture of Vanaspati which was a vegetable product from the raw ground-nut and til oil, brought into existence what is known in the market as 'refined oil, after carrying out some process with the aid of power and it fell within the description of "vegetable non-essential oils" and as such was p liable to duty. And in that context it was pointed out by this Court that excise duty was a duty on the manufacture of goods and not on sale. After referring to the arguments of respective parties, this Court noted at page 596 of the report the contention on behalf of the revenue that manufacture was complete as soon as by the application of one or more process, the raw material underwent some change. It further stated-

> "To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally (1) 11963]1 SUPP, S.C.R. 586.
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> under stood to mean as "bringing into existence a new A substance" and does not mean merely "to produce some change in a substance", however, minor in consequence the change may be. The distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus:

"Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use." Hence according to this decision, if a new substance is brought into existence or if a new or different article having a distinctive name, character or use results from particular processes, such process or processes would amount to manufacture. This view point has been reiterated in numerous decisions. Reference in this connection may be made to the decision in the case of Union of India v. II.U.F. Business known as Ramlal Mansukhrai, Rewari & Anr.(') This Court at pages 941-942 of the report observed as follows:- "The word "manufacture" is defined in Section 2(f) of the Act as including any process incidental or ancillary to the completion of a manufactured product. The rolling of a billet into a circle is certainly a process in the course of completion of the manufactured product, viz., circles. In the present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word used in Item 26A(2). In the other two cases which came before this Court, the articles mentioned in the relevant items of the First Schedule were never held to have come into existence, so that the completed product, which was liable to excise duty under the First Schedule, was never produced by any process. In the case before us, circles in any form are envisaged as the completed product produced by manufacture which are subjected to excise duty. The process of conversion of billets into circles (1) [l971] I S.C.R. 937.

was described by the legislature itself as manufacture of circles."

The question of 'manufacture' was also considered by this Court in the case of Allenburry Engineers v. Ramakrishna Dalmia Ors.(1) It may be noted in the case of Hiralal Jitmal v. Commissioner of Sales Tax(2), a Division Bench of Madhya Pradesh High Court in considering the meaning of the expression `manufacture' for the purpose of the Madhya Bharat Sales Tax Act, 1950, was of the view that it was not necessary that there must be a transformation in the materials and that the transformation must have progressed so far that the manufactured article became commercially known as a different article from the raw materials and all that was required was that the material should have been changed or modified by man's art or industry so as to make it capable of being sold in an acceptable form to satisfy some want, or desire, or fancy or taste of man. It is apparent that the concept of 'manufacture' in that decision has been given a wide meaning. It is not necessary to go into this aspect any further. It may be mentioned that this Court in the case of Commissioner of Sales Tax, U.P. Lucknow v. Harbilas Rai and Sons(3) pointed out that the word 'manufacture' has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour was applied remained essentially the same commercial article, it could not be said that the final product was the result of manufacture. Referring to the Madhya Pradesh High Court decision in the case of Hiralal Jitmal (supra), this Court observed at page 20 as follows:

"....The decision of the Madhya Pradesh High Court might perhaps be justified on the ground that a printed or dyed cloth is commercially a different article from the cloth which is purchased and printed or dyed. This is precisely the position here. On behalf of the revenue, great emphasis was laid on the view that even according to this Court, printed or dyed cloth was a commercially different article from the cloth which is purchased and printed or dyed.

(l) [1973] 2 S.C.R. 257.

(2) [1957l S.T.C. Vol. VIII, 325 (M.P.).

(3) [1968] S.T.C. Vol. 21 p. 17 (S.C.), A similar view was taken by the Punjab and Haryana High Court in the case of East India Cotton Manufacturing Company Private Limited v. The Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and Another.(l) The Division Bench in that case positively took the view that sizing, bleaching or dyeing of raw cloth turns it into a different marketable commodity, and, as such, amounted to "manufacture" of a commercially new product. Reference may also be made to a decision of the Bombay High Court in Kores (India) Limited v. Union of India and Others(2), where the Division Bench was considering the question whether the process of cutting large rolls of paper into specific sizes can dimensions and to roll these into teleprinter rolls with the aid of power driven machines amounted manufacture under section 2(f) of the Central Excise Act. The Division Bench held that teleprinter rolls are different commodities or articles from the one used as the base material which is large size or jumbo rolls writing or printing papers.

Fabric itself means woven materials. It was contended that processing the manufactured fabric does not bring into existence any new woven material but the question is: does new and different goods emerge having distinctive name, use and character ? The Madras High Court in the case of K Venkataraman and Company and others v. Deputy Commercial Tax Officer, Coimbatore IV and others(8) had to consider that cinders do not fall within the expression "coal, including coke in all its form" in item I of the Second Schedule of the Tamil Nadu General Sales Tax Act, 1959. Where the words used in an entry are comprehensive or wide enough to include all kinds or types of particular goods falling within the description, the question was whether their scope should be restricted and in that context it was held that mere change in form or colour of the goods by reason of any processing cannot be held to be sufficient ground for removing it from its original classification.

In the case of Commissioner of Sales Tax, U.P. Lucknow v. Harbilas Rai and Sons (supra), it was held that the word 'manufacture' has various shades of meaning, and in the contest of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the

(l) [1972] S.T.C. Vol. 30 p. 489 (Pb. & Har.). (2) [1982] E.L.T. Vol. 10, p. 253.

(3) [1972] S.T.C. Vol. 30 p. 57 (Mad.).

final product is the result of manufacture. There the assesses,dealers in pig bristles, bought bristles plucked by Kanjars from pigs, A boiled them, and washed them with soap and other chemicals, sorted them out according to their sizes and colours, tied them in separate bundles of different sizes and despatched them to foreign countries for sales. It was held that the sales made to foreign countries were not taxable as the bristles were not manufactured goods within Explanation II(ii) to section 2(h) of the U.P. Sales tax Act, 1948.

In Deputy Commissioner, Sales Tax (Law) Board of . Revenue (Taxes) Ernakulam v. Pio Food Packers(') arising out of Kerala General Sales Tax Act 1963 where the expression used under section 5-A(l)(a) was "consumes such goods in the manufacture of other goods for sale or otherwise", and meaning of the expression under section 5-A(1) (a) fell for consideration for exigibility to tax of pineapple fruit when processed into slices for the purpose of being sold in sealed cans. Though in the facts of that case in the context of Sales Tax Law, it was held that there was no manufacture, the principles enunciated by this Court are in the following terms:

"There are several criteria for determining whether a commodity is consumed in the manufacture of another The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes, through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been (1) [1980] 3 S.C.R. 1271.

consumed in the manufacture of another. Although it A has undergone a degree of processing, it must be regarded as still retaining its original identity." It may be noted that the taxable event in the context of Sales Tax Law is 'sale'. The taxable event under the Excise Law is 'manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted. Though in the facts of that case perhaps it was not necessary and as such the attention of the Court was not drawn to the definition of the term 'manufacture' under section 2(f) of the Central Excise Act nor was the Tariff Item IB placed before the Court.

This decision was referred to and followed in the case of Chowgule & Co. Pvt. Ltd. and Another v. Union of India & Others.(l) Whatever may be the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process which will be part of 'manufacture Any process or processes creating something else having a distinctive name, character and use would be manufacture.

It is appropriate now to refer to Gujrat High Court's decision in the case of Vijay Textile, y. Union of India.(2) Gujarat High Court held that cotton fabrics subjected to bleaching, dyeing and printing could not be subjected to excise duty under Item 19 (1). The Gujarat High Court proceeded on the footing that the processes of bleaching, dyeing and printing were manufacturing processes and held that excise duty would be leviable under residuary Item No. 68 of the First Schedule. This decision has two aspects one which was emphasised on behalf of the revenue i.e. that Gujarat High Court accepted the position that processes of bleaching, dyeing and printing were manufacturing

processes and such on the strength of that decision, it could not be said that these processes do not amount to manufacture and on the other, which was stressed on behalf of the petitioners, was that such processes could not transform the cloth (1) [1981] I S.CC.. 653.

(2) [1979] 4 E.L.T. J. 181.

into item 19(1). The Gujarat High Court's decision which is reported at page 193 of the report is as follows:- "In the instant case, the excise duty claimed on the basis of the market value of the processed cotton fabrics or man-made fabrics cannot be levied because, assuming that process amounts to manufacture, all that they have done is to manufacture processed cloth, processed fabric, either cotton or man-made and that not being a taxable event in the light of Section 3 read with section 2 (d) of the Act and Items 19 and 22 levy of excise duty on this basis was ultra vires and contrary to law. Therefore, the petitioners are entitled to the refund of the excess of excise duty paid by them during the period of last three years immediately preceding the filing of the Special Civil Application over what they were bound to pay on the footing that processing of cotton fabrics is an excisable activity covered by Item 68. Item 68 refers to "All other goods not specified elsewhere manufactured in a factory." Therefore, processed cotton fabrics and processed man made fabrics were manufactured in the factories of the petitioners and since they are not covered by Item 19 or 22 of the Schedule, they are liable to pay ad valorem duty only in respect of the value added by them at the time of processing because the only manufacturing activity which they have done is the manufacturing of processed fabrics from fabric which was already in existence. The Excise authorities are therefore directed to calculate the ad valorem excise duty during the period of three years immediately preceding the institution of each petition before us and calculate the excise duty payable by each of these petitioners under Item 68 only in respect of the value added by each of the petitioners by the processing of the fabric concerned. The excise duty paid in excess of such ad valorem duty under Item 68 during the period of three years immediately preceding the institution of the respective Special Application is ordered to be refunded to the petitioners concerned in each of their petitions." The main question that fell for consideration before the Gujarat High Court was whether the articles fell within Tariff Entry 19 or 22 as contended by the revenue or under residuary Entry 68.

It appears in the light of the several decisions and on the construction of the expression that the process of bleaching, dyeing and printing etymologically also means manufacturing processes. In support of this contention reliance on behalf of the petitioners was also placed on the case of Extrusion Process Pvt. Ltd. v. N.R. Jadhav, Superintendent of Central Excise (1) where the Gujarat High Court had held that printed and lacquered aluminium tubes did not have, in relation to a plain extruded tubes any distinctive name, character or use as both could be used for the same purpose, both enjoy the same name, and therefore, these could not be said to be new substance distinguishable from plain extruded tubes. This decision, however, cannot be of assistance in the instant case. The petitioners in that case had been printing and lacquering only plain extruded tubes and the question was whether by printing and lacquering the plain extruded tubes of aluminium the petitioners firstly applied any further process of extrusion to these and there by manufactured tubes. It was held that printing and lacquering were not even remotedly connected with the manufacture of aluminium tubes. It was a process independent of the manufacture of aluminium tubes. The

question whether a particular process is a process of manufacture or not has to be determined naturally having regard to the facts and circumstances of each case and having regard to the well-known tests laid down by this Court. Similarly the facts of the decision in the case of Swastic Products, Baroda v. Superintendent of Central Excise(2) are also distinguishable.

The decision of this Court in the case of Kailash Nath and Another v. The State of U.P. and Others(3) was on the question of interpretation of a notification issued by the U.P. Government exempting sale of manufactured cloth or yarn with a view to export such cloth or yarn. The notification provided that with effect from 1st December, 1949, the provisions of the U.P. Sales Tax Act, 1948 did not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made on or after 1st December, 1949, with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn was actually exported and proof of such actual export was further furnished. This Court in that case held that although the colour of the cloth had changed by printing and (1) [1979] 4 E.L.T. J. 380 (Gujarat).

(2) [1980] 6 E.L.T. 164 (Gujarat).

(3) [1957] S.T.C. Vol. VIII p. 358 (S.C.).

processing, the cloth exported was the same as the cloth sold by the petitioners in that case and they were therefore not entitled to exemption under the notification. As would be apparent from the facts mentioned herein-before, the question for consideration before this Court was the identity of cloth purchased and exported having regard to the use of the words "cloth" in the notification. These words were construed by this Court to mean that the Legislature did not intend that the identical thing should be exported in bulk quantity or that any change in appearance would be crucial to alter it. It was also pointed out that the expression "such cloth or yarn" would mean cloth or yarn manufactured in Uttar Pradesh and sold and those words had nothing to do with the transformation by printing and designs on the cloth. It is implicit in the decision of this Court that by printing or designing, the cloth was in fact transformed. But since the decision turned on the construction of the notification in which any change in appearance or transformation of an article into another did not become relevant, the decision would not be of assistance in disposing of the present case. This question has been elaborately considered by the Bombay High Court in the case of x New Shakti Dye Works Private Ltd. and 24 other petitions heard along with the same and are under appeals to this Court by special leave. We are in respectful agreement with the conclusions reached by the learned Acting Chief Justice of the Bombay High Court in that decision.

In England, in the case of Mc Nicol and Another v. Pinch,(l) the "manufacture of saccharin" in the Finance Act, 1901 and the Revenue Act, 1903 was held to mean the "bringing into being as saccharin". There the appellants had subjected certain "330 saccharin" (i.e., saccharin 330 times as sweet as sugar) to a chemical process, the result of which was that in some cases "550 saccharin" (i.e., saccharin 550 times as sweet as sugar) was produced, in others a mixture sweeter than 330, but not so sweet as 550 saccharin, and in few cases a mixture less sweet than 330 saccharin was there. It was held by the Court of Appeal by Bray and Darling JJ., Ridley, J. dissenting that the appellants were not manufacturing saccharin within the meaning of the Finance Act, 1901, so as to be

compelled to take out the excise licence required by s. 9 of that Act and s. 2 of the Revenue Act, 1903, and to obtain from an officer of Inland Revenue a book such as was prescribed by the Regulation No. 633 of (1) [1906] 2 K.B 3s2.

the Statutory Rules, 1904, inasmuch as the substance with which the appellants dealt was always saccharin both before and after their treatment of it. Bray J. Observed at pages 359-360 of the report as follows-

"We have to determine whether upon the facts stated in the case the appellants did manufacture saccharin. Let us see what those facts are. One of the admitted facts is that saccharin is a substance produced from toluene sulphonamide. That is the definition of saccharin. This saccharin was not produced by the appellants from toluene sulphonamide; it was produced (if it can be said to have been produced) from saccharin itself. The appellants have not manufactured saccharin from toluene sulphonamide. The case states that 330 saccharin is produced without eliminating certain para products, or only eliminating them to a very small extent. Then, in order to convert 330 saccharin into 550, certain of the para compounds have to be eliminated. Then it states that "this mixture" (that is, the 330) "is known commercially as 330 saccharin " The other mixture is known commercially as 550 saccharine. In both cases it is saccharin, and as a dutiable article 330 saccharin does not differ in the smallest degree from 550 saccharin. The same duty is payable on 550 saccharin as on 330 saccharin. What the appellants do is stated thus: "The appellants subjected certain 330 saccharin to a chemical process . This amount of 330 saccharin was not treated in one bulk, but in separate quantities. The result of this treatment was that in some cases 550 saccharin was produced, and in some cases a mixture sweeter than 330 saccharin but not so sweet as 550 saccharin was produced," and in some cases less sweet. But it was always saccharin; it was saccharin before it was treated, and it was saccharin after it was treated." Darling J. at pages 361-362 of the report made the following interesting observations:-

"I do not say that to use the word "manufacture" as exactly synonymous with the word "make," or to use the words "to manufacture" as exactly synonymous with the words "to make" is strictly grammatical, but I think A that is what the statute has done. I think it possible that in a literary sense "to make" and "to manufacture" may not have precisely the same meaning. One can put cases where the word "manufacture" might be used in a somewhat strained way, but perhaps a little more scientifically. Take the case of a carpenter. A carpenter uses wood; he begins with wood; he makes the wood into boxes. What would you say if you wanted to talk of his manufacturing ? Ordinary people would not say that he manufactured wood; they would say he manufactured boxes. But I am not quite sure it might not be strictly said that he manufactures the wood. He applies a process to it. I suppose etymologically "to manufacture" is "to make by hand." Everybody knows that you cannot absolutely make a thing by band in the sense that you can create matter by hand, because in that sense you can make nothing: "Ex nihilo nihil fit." You can only make one thing out of another. I think the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made. Even if it could be strictly said that the carpenter "manufactures" wood it could not be said that he "makes" wood. The same with a man who makes boots; he takes leather, and he makes it into boots. If he simply made leather into leather nobody could possibly say that he was a leather manufacturer, hut it would be possible to say that a man took leather and make it into

boots manufactured leather but made boots. I think it would be possible to say that, and I am not sure it would not be strictly accurate but I cannot read this statute in that way. (emphasis supplied). Whether it would be possible to read "manufacture" etymologically as something very different from "make," I think the Act of 1901 uses "manufacture" and "make" as being convertible terms, and that a man who manufactures saccharin under s. 9 is doing the same thing as is called the making of saccharin under s. S or the manufacturing of glucose or saccharin under sub-s. 2 of s. 5, and that the appellants did not make saccharin, because they began and ended with saccharin. They did not "make" saccharin, and in my opinion, from the way in which the word is used by the statute, they did not manufacture A saccharin, and therefore did not require a licence." It may, however, be pointed out that when Darling J. dealt with the example of a carpenter, the learned judge thought it was right that it could not be slid that when 'box' is prepared that the carpenter was manufacturing 'wood' but transforming 'wood' into 'box' would certainly be manufacturing 'boxes' It is well-settled that one cannot absolutely make a thing by hand in the sense that nobody can create matter by hand, it is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and circumstances of the case. Plain wood is certainly different from 'box' made of wood. Rindley J. it may be pointed out, disagreed with the view and observed at page 362 of the report that where any process of art is used upon some substance, it is "manufactured." He observed as follows:-

> "To say that a person does not "manufacture." a thing because it has the same name after the process has been passed upon it as it had before seems to me- but T suppose I am wrong-to be simply a question of words. If there had happened to be another word for saccharin of the strength of 550, different from saccharin of the strength of 330, it would almost-I will not say quite follow from the reasoning of my learned brothers that this would have been a manufacture. I cannot think that is so. Take the case of the manufacture of steel; and let it be steel before it goes into works: apply some process to it and it become a particular short of steel. But it is steel both before and after, although steel of different qualities. Is not that the manufacture of steel? I should have thought so. Take the manufacture of wool, it is wool when it is on the sheep's back; it is wool when it has passed through the process of sorting and picking which it has to go through in the mill. Is not that the manufacture of wool ? I should have thought it most certainly was, although the name "wool" is applied to it both before the process begins and after it has ended"

The learned judge further observed that in that case saccharin was "manufactured" and manufacture of saccharin does cover a process that was done in that case.

In that view of the matter etymologically the word "manufacture" properly construed would doubtless cover the transformation. In support of the question whether actually there is manufacture or not various documents were attempted to be utilised at the hearing of the application before us. Most of these pieces of evidence cannot be admitted at this stage but indisputably in the Indian Standard Glossary of terms which deals with various expressions,

'Bleached Fabric' has been defined as a fabric which has undergone bleaching treatment and is treated by the India Standard Institution as something different from fabric which has not undergone the bleaching operations. Different standards are set out by the same and the views of the Indian Standard Institution can be looked into by the Court with certain amount of creditability. See in this connection Union of India v. Delhi Cloth & General Mills (supra). So far as other evidence is concerned, as mentioned, hereinbefore, it may not be safe to deal with the same as these were produced at a very late stage and all the materials are not on the record.

After the impugned Act was passed these processes in the present case indubitably fill within the expression "manufacture" if the impugned Act is valid, and within the competence of the Parliament. Arguments, however, were advanced on behalf of the petitioners that in entry 84 of List I of Seventh Schedule, the expression "manufacture" cannot be extended to include processes which were not "manufacture". Large number of decisions were cited at the Bar on this aspect of the matter. It is true that entries though should be widely construed, these should not be so construed as to bring in something which has nothing to do with the "manufacture". It was submitted that legal concept and connotation of "manufacture.' were well-settled. Reliance was placed on several decisions for this purpose.

As has been noted, processes of the type which have been incorporated by the impugned Act were not so alien or foreign to the concept of "manufacture" that these could not come within that Concept.

The question whether the impugned Act is covered by entry 84 can be looked from another point of view namely the actual contents of entry 84. In the case of Aluminium Corporation of India Ltd. v. Coal Board(1). a Division Bench of Calcutta High Court had to consider this question in the context of Coal Mines (Conservation and Safety) Act, 1952. The objection of the petitioner in that case was that although coal might be a material or a commodity, it was not something which was produced and therefore the entry which applied to the goods produced in India could not apply to coal. No question of manufacture obviously arose. It was submitted that the coal produced itself. This was rejected. The word 'produced' appearing in entry No. 84 of List I of the Seventh Schedule is used in just a position with the word 'manufactured' according to the Division Bench and used in connection with duty of excise and consequently it would appear to contemplate some expenditure of human skill and labour in bringing the goods concerned into the condition which would attract the duty. It was not required that the goods would be manufactured in the sense that raw material should be used to turn out something altogether different. It would still require that these should be produced in the sense that some human activity and energy should be spent on them and these should be subjected to some processes in order that these might be brought to the state in which they might become fit for consumption. To speak of coal, the Division Bench was of the opinion, as produced in the sense to its being made a material of Consumption by human skill and labour was entirely correct and had sanction of approved usage. Reference was made to the observations of the King v. Caledonian Collieries, Limited.(2) Where the Judicial Committee held that the respondents before them were 'producers of coal'. If that aspect of the matter is kept in mind then expenditure of human skill and material have been used in the processing and it may not be that the raw material was first transformed but over the transformed material, further transformation was done by the human

labour and skill making this fit for human consumption.

In any event under entry 97 of List I of the Seventh Schedule this would apply if it is not under entry 84. It was then argued that if the legislation was sought to be defended on the ground that it is a tax on activity like processing and would be covered by the (1) A.I.R. 1959 Cal. 222.

(2) [1928] A.C. 358.

powers enumerated under entry 97 of List I of the Seventh Schedule then it was submitted that there was no charging section for such an A activity and as such the charge must fail, and there cannot be any levy. This argument proceeds on an entire misconception. The charging section is the charging section 3 of the Central Excises and Salt Act, 1944. It stipulates the levy and charge of duty of excise on all excisable goods produced or manufactured. "Manufactured" under the Act after the amendment would be the manufacture' as amended in section 2 (f) and Tariff item 19 I and 22 and the charge would be on that basis. Therefore it is difficult to appreciate the argument that the levy would fail as there will be no appropriate charging section or machinery for effectuating the levy on the activity like the method of processing even if such an activity can be justified under entry 97 of List I of Seventh Schedule. We are, therefore, of the opinion that there is no substance in this contention As mentioned hereinbefore under each of these points several authorities were cited but in the view we have taken on principles which are well-settled, it is not necessary to multiply these authorities.

The validity of the impugned Act was challenged on the ground that by giving retrospective effect, unreasonable restrictions have been imposed on the petitioners' fundamental rights under Articles 14 and 19 (1) (g) of the Constitution. In this connection, it may be appropriate to refer to the statement of objects and reasons wherein it was stated that the Central Excise duty was levied for the first time on cotton fabrics in 1949, on man-made fabrics (rayon of artificial silk fabrics) in 1954 and on woollen fabrics in 1955. From the very early stages of the textile tariff, with a view to achieving progression in the rate structure and to aligning excise control with the demands of different producing sectors, duties had been levied not only on grey fabrics but also at the stage of processing such as bleaching, dyeing and printing. In the judgment of the Gujarat High Court in the case of Real Honest Textiles and others v. Union of India, it was held that 'fabric' as used in the tariff description "cotton fabric" would refer to something that was woven; hence it could relate only to cloth in the grey stage; processing of the grey cloth either by bleaching, dyeing or printing did not amount to manufacturing as both before and after processing it remained a fabric falling within the same item of Central Excise Tariff (Item 19-cotton fabrics, of the First Schedule to the Central Excises and Salt Act). The Court had arrived at a similar conclusion with regard to man-made fabrics falling under item No. 22 of the same Schedule. After the pronouncement of the above judgment, several writ petitions were filed in various courts. This decision of the Gujarat High Court, according to the statement of objects and reasons of the Act, had upset the arrangements regarding levy of excise duties on textile fabrics. The judgment also had the effect of disturbing the balance evolved between different sectors of the textile industry. Furthermore, it was made clear that in so far as past assessments were concerned, refund of excise duties to manufactures as ordered by the High Court would have only meant a fortuitous windfall so as to benefit such persons

without any relief to the ultimate consumers who had purchased the fabrics and had borne the burden of the duties. In order to avoid this, the Act was passed.

It has therefore to be borne in mind that the petitioners have already paid excise duty demanded of them from time to time and the present petitioners have gathered the duties from the consumers.

Imposition of tax by legislation makes the subjects pay taxes. It is well-recognised that tax may be imposed retrospectively. It is also well-settled that by itself would not be unreasonable restriction on the right to carry on business. It was urged, however, that unreasonable restrictions would be there because of the retrospectivity. The power of the Parliament to make retrospective legislation including fiscal legislation are well-settled. (See M/S. Krishnamurthi & Co. etc. v. State of Madras & Anr.(') Such legislation per se is not unreasonable. There is no particular feature of this legislation which can be said to create any unreasonable restriction upon the petitioners.

In the view we have taken of the expression 'manufacture', the concept of process being embodied in certain situation in the idea of manufacture, the impugned legislation is only making 'small repairs' and that is permissible mode of legislation. In 73rd volume of Harward Law Review p. 692 at p. 795, it has been stated as follows:- "It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right (1) [1973l 2 S.C.R. 55.

has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government out weighs the individual's interest in benefiting from the defect .. The Court has been extremely reluctant to over-ride the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government amount those who benefit from it".

The impugned legislation does not act harshly nor there is any scope for arbitrariness or discrimination.

It was contended on behalf of the petitioners that they are carrying on only the processing activity and the wholesale cash price is not theirs on the entire product. Section 4 of the Act is the section which deals with the valuation of excise goods for the purpose of charging duty of the same would be applicable. Where for the purpose of calculating assessable profits, a notional and conventional sum is laid down by the legislature to be arrived at on a certain basis, it is not permissible for the courts to engraft into it any other deduction or allowance or addition or read it down on the score that the said deduction or allowance or addition was authorised elsewhere in the Act or in the Rules. A conventional charge should be measured by its own computation and not by facts relating to other method of computation. The circumstances that thereby the benefit of any exemption granted by the legislature may be lost and that in some cases hardship might result are not matters which would influence courts on the construction of the statute. A tax payer subject is entitled only to such

benefit as is granted by the legislature. Taxation under the Act is the rule and benefit and exemption, the exception. And in this case there is no hardship. When the textile fabrics are subjected to the processes like bleaching, dyeing and printing etc. by independent processes, whether on their own account or on job charges basis, the value of the purposes of assessment under section 4 of the Central Excise Act will not be the processing charges alone but the intrinsic value of the processed fabrics which is the price at which such fabrics are sold for the first time A in the wholesale market. That is the effect of section 4 of the Act. The value would naturally include the value of grey fabrics supplied to the independent processors for the processing. However, excise duty, if any, paid on the grey fabrics will be given proforma credit to the independent processors to be utilised for the payment on the processed fabrics in accordance with the Rules 56A or 96D of the Central Excise Rules, as the case may be.

Read in that context and in the context of the prevalent practice followed so long until the decision of the Gujrat High Court in Real Honest case, there is no hardship and no injustice to the petitioners or the manufacturers of grey fabrics. The fact that the petitioners are not the owners of the end product is irrelevant. Taxable event is manufacture-not ownership. See In re 711e Bill to amend section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excise & Salt Act 1944.(1) The conclusion that inevitably follows that in view of the amendment made in section 2(f) of the Central Excises & Salt Act as well as the substitution of new Item 19 I and Item 22(1) m Excise / Tariff in place of the original items, the contentions of the petitioners cannot be accepted. Section 3 of the Central Excises and Salt Act clearly indicates that the object of the entries in the First schedule is firstly to specify excisable goods and secondly to specify rates at which excise duty will be levied. Reference has already been made to Rule 56A. Under sub-rule (2) of Rule 56A, it is expressly provided that a manufacturer will be given credit of the duty which is already paid on the articles used in the manufacture subject to certain conditions. It is stated before us that excise duty will be charged on processed printed material. Processors will be given credit for the duty already paid on the grey cloth by the manufacturer of the grey cloth. In this view of the matter we are of the opinion that the views expressed by the Bombay High Court in the case of New Shakti Dye Works Pvt. Ltd. & Mahalakshmi Dyeing and Printing Works v. Union of India and Anr. (Writ Petition Nos. 622 and 623 of 1979) are correct. The views expressed by the Gujarat High Court in Vijay Textiles v. Union of India in so far as it held that the processed fabrics could only be taxed under residuary entry and not Item 19 I or Item 22 of the First Schedule of the (Central Excise Tariff cannot be sustained. (1) [1964] 3 S.C.C. 787 at 822.

We are also unable to accept the view of the Gujarat High Court in the case of Union of India & Ors. v. M/s Real Honest Textiles & Ors. (Civil Appeal Nos. 586 to 562 of 1979).

Writ Petition (Civil) No. 11728 of 1984 therefore fails and is dismissed with costs. The connected applications viz. Civil Appeal No. 3564 of 1984 and 6414 of 1983 and Writ Petition Nos. 13556, 13792, 13788, 15438-39 of 1984 also fail and are dismissed with costs. Interim orders, if any, are vacated. Arrears of duties should forthwith be paid and future duties should also be paid as and when goods are cleared.

Civil Appeal Nos. 586 to 592 of 1979 are allowed with costs.

Good deal of arguments were canvassed before us for variation or vacation of the interim orders passed in these cases. Different courts sometimes pass different orders as the courts think fit. It is a matter of common knowledge that the interim orders passed by particular courts on certain consideration are not precedents for other cases may be on similar facts. An argument is being built up now-a- days that once an interim order has been passed by this court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in matter of interim orders.

If we may venture to suggest, in fiscal matters specially in cases involving indirect taxes where normally taxes have been realised from the consumers but have not been paid over to the exchequer or where taxes are to be realised from consumers by the dealers or others who are parties before the court, interim orders staying the payment of such taxes until final disposal of the matters should not be passed. It is a matter of balance of public convenience. Large amounts of taxes are involved in these types of litigations. Final disposal of matters unfortunately in the present state of affairs in our courts takes enormously long time and non-realisation of taxes for long time creates an upsetting effect on industry and economic life causing great inconvenience to ordinary people. Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigations, it becomes difficult for the governments to run and become oppressive to the people. Governments' expenditures cannot be made on bank guarantees or securities. In that view of the matter as we said before, if we may venture to suggest for consideration by our learned brothren that this Court should refrain from passing any interim orders staying the realisations of indirect taxes or passing such orders which have the effect of non-realisation of indirect taxes. This will be healthy for the country and for the courts.

S.R. Civil Appeal Nos. 586 to 592 of 1979 allowed and Petitions dismissed.