

J.E. Bilmoria and Sons Vs. State of Maharashtra and ors.

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Court : Mumbai

Decided On : Aug-01-1989

Reported in : 1990(2)BomCR108

Judge : M.S. Deshpande and ;D.J. Moharir, JJ.

Acts : [Bombay Prohibition Act, 1949](#) - Sections 58A, 105 and 106(1); [Evidence Act, 1872](#) - Sections 115; Central Excise Rules, 1944 - Rule 10; Maharashtra Foreign Liquor (Import and Export) Rules, 1968 - Rule 20

Appeal No. : Writ Petition Nos. 970, 971, 972, 973, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1

Appellant : J.E. Bilmoria and Sons

Respondent : State of Maharashtra and ors.

Advocate for Def. : D.N. Kukdey, A.G.P., in W.Ps. 1168, 1170, 1172, 1174, 1176 and 678, ;M.A. Garud, A.G.P., in W.P. 1167, 1169, 1171, 1173, 1175, 1296, 665, 972 and 973 and ;K.R. Gohokar, A.G.P., in W.P. 970 and 971

Advocate for Pet/Ap. : S.G. Ghate, Adv. in W.Ps. 1168, 1167, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1296, 665 and 678 and ;S.V. Manohar, Adv. in W.Ps. 970, 971, 972 and 973

Judgement :

M.S. Deshpande, J.

1. It would be convenient to take up together for consideration these seventeen petitions under Article 226 of the Constitution, the challenge in all being to the authority of the respondents to recover excise duty on breakages caused in transit or in the Bonded Warehouse, by recourse to the circulars issued by respondent No. 2, Commissioner of Prohibition and Excise on 19th April, 1980 and 6th April, 1981 (Annexures C and D in Writ Petition No. 1168 of 1981), and the difference in the supervision charges leviable under section 58-A of the Bombay Prohibition Act.

2. Reference to the material allegations in Writ Petition No. 1168 of 1981 would suffice for examining the challenges raised, as the facts and questions of law arising in the other petitions are indetical.

3. On April 19, 1980, the respondent No. 2, Commissioner of Prohibition and Excise issued a circular (Annexure-C) modifying and revising the instruction contained in his earlier circular dated May 29, 1979 (Annexure-B), pertaining to the breakages for the period prior to and subsequent to 1-1-1977 by directing that the excise duty at prescribed rates should be recovered on all breakages of Indian made foreign liquor in transit before ordering their write off, in view of the provisions contained in Rule 20 of the Maharashtra Foreign Liquor (Import and Export) rules, 1968 (hereinafter referred to as 'the Maharashtra Foreign Liquor Rules'). In respect of the ullages, excise duty was to be recovered on all ullaged bottles that were allowed to be destroyed and it was stated that it was not necessary to refer such cases to the Commissioner, as excise duty was to be recovered on all ullaged bottles. It was also made clear that it was not necessary to submit proposals for writing off to the Commissioner, as excise duty was to be recovered on all types of losses in the consignment of Indian made foreign liquor coming into Bonded Warehouse except samples which were taken for departmental use. The other circular, dated 6th April, 1981 (Annexure-D), was in respect of recovery of excise duty and transport fee at prescribed rate which was required to be effected on losses of Indian made foreign liquor in transit/in licensed premises before ordering their write off from the accounts of licensee, and it was

directed that an undertaking should be obtained from respective licensees to pay excise duty and vend fee on breakages and other losses, as may be assessed, within fifteen days of the notice. By another circular memorandum dated 7th April, 1981, which is also under challenge Annexure-F a survey about differential amount of supervision charges was directed to be taken immediately and undertakings were to be obtained from all concerned licensees to pay all amounts towards arrears of supervision charges within fifteen days from the date of communication.

4. The challenge raised was on the provisions of sections 105 and 106 of the Bombay Prohibition Act and particularly in view of the provisions of sub-clauses (i) and (ii) of clause (a) of sub-section (1) of section 106, which provide for two modalities for the levy of excise duty, and it was contended that under sub-clause (ii), the point of time, on which the duty was leviable, was when the goods were sought to be removed from the Bonded Warehouse for sale and in view of this it was not permissible to take action under sub-clause (i). The previous practice according to the petitioners, was to write off the excise duty in respect of the breakages before and after the goods were brought to the Bonded Warehouse, the excise duty being leviable upon the issue and, in fact, excise duty on all such breakages in the part had been written off. The other challenge was in respect of recovery of supervision charges with retrospective effect from 5-5-1970, on the strength of the circular dated 7th April, 1981, because due to the subsequent benefits conferred on the State Government employees, consequent upon the revision of the payscales, the supervision charges had increased, and this incidence was sought to be placed on the licensed dealers who had placed their goods in the Bonded Warehouse, relying on the provisions of section 58-A of the Bombay Prohibition Act.

5. The contention of the respondent was that the provision of section 105 and 106 of the Bombay Prohibition Act permitted recovery of the excise duty on breakages and ullages, and since the taxing event was import of the goods, it was the duty of the licensees to pay the duty on the excisable articles in spite of the breakages and irrespective of whether the goods were stored in a Bonded Warehouse or not. With regard to the supervision charges it was urged that section 58-A of the

Bombay Prohibition Act vested the State Government with the power of imposing supervision charges, in respect of the goods mentioned therein by the persons who were engaged in the concerned activity, and since section 58-A imposed the liability, it was open to the State Government to vary the quantum, taking in to account the circumstances, and it was not necessary to have a clear provisions for recovering the amount and no question of retrospective operation of the rule or provision arose in these circumstances.

6. For considering the contentions raised on the question of breakages in transit or in the Bonded Warehouse, it will be useful to extract the relevant provisions of section 105 and 106 of the Bombay Prohibition Act, which are as follows :---

'105. (1) An excise duty or countervailing duty as the case may be, at such rate or rates as the State Government shall direct may be imposed either generally or for any specified local area on ---

(a) any alcoholic liquor for uiman consumption,

(b) any intoxicating drug or hemp,

(c) opium,

(d) any other excisable article,

when imported, exported transported, possessed, manufactured or sold in or from the State, as the case may be.

106. Subject to any regulations to regulate the time, place and manner of payment made by the Commissioner in this behalf, the duties referred to in section 105 may be levied in one or more of the following ways :---

(a) In the case of an excisable article imported ---

(i) by payment either in the State at the time of its import or in the State or territory of export at the time of its export,

(ii) by payment upon issue for sale from a warehouse established or licensed under the provisions of this Act.'

Clause (b) of section 106 deals with the case of excisable articles exported; Clause (c) deals with the case of excisable articles transported, while Clauses (d) and (e) have reference to the spirit or beer manufactured in any distillery established within the State and the intoxicating drugs manufactured in the State. The first proviso is material and it is to the effect that where payment is made upon issue for sale from a warehouse established or licensed under this Act, such payment shall be at the rate of the duty in force at the date of issue from the warehouse.

7. It is apparent that section 105 vests the power in the State Government of imposing an excise duty or countervailing duty on alcoholic liquor for human consumption at various stages, such as import export, transport, possession, manufacture or sale, in or from the State, as the case may be, while section 106 prescribes for the manner of levying excise duties.

8. Shri D.N. Kukdey, the learned Assistant Government Pleader, urged that though section 106 of the Bombay Prohibition Act provides for the modality of levying the duties it was not that the duty could be levied only in one or the other of the ways, because the opening words of section 106 showed that the levy may be in one or more of the ways mentioned therein. It is true that the duties can be levied either in one way or also in more than one way cumulatively, but what is important is that while levying the duty, the duty in respect of the manufacture or breakage on which the excise duty is to be levied, must answer one or the other requirements in the Clause (a) to (c). Evidently, when different stages have been provided by the statute for levying the duty, the power to levy the duty must have reference to one or the other stages mentioned in the statute and, in the case of excisable article imported, the duty could be only on the basis of its import, the taxing event being the import of the excisable article. Clause (a) itself carves out two classes while clothing the State with the power to levy the duty and Sub-clause (i) relates to the category where payment is to be made at the time of its import, while sub-clauses (ii) refers to the category where the duty is to be levied upon the issue for sale

from a warehouse established or licensed under the provisions of the Act. The word 'or' shows clearly that the State has to choose one or the other mode of levying the excise duty and it cannot impose a duty in both the ways and it cannot be used, in the context in which it occurs as a conjunctive, i.e., 'and'. It is well settled that the word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context. G.P. Singh in his Principles of Statutory Interpretation, Fourth Edition, 1988, at page 251 refers to an instructive observation by Scrutton, L.J., 'You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'.' And as pointed out by Lord Halsbury, the reading of 'or' as 'and' is not to be resorted to, 'unless some other part of the same statute or the clear intention of it requires that to be done'. But if the literal reading of the words produces an unintelligence or absurd result and may be read for or and or for and even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. In the present case, giving the word 'or' its natural meaning would make clear the courses open to the State more intelligibly, while reading it otherwise would make the provisions unintelligible and lead it to absurdity.

9. According to the learned Assistant Government Pleader, the use of the word 'levied' in section 106 of the Bombay Prohibition Act would only mean the point of time of stage at which the excise duty is collected and it cannot be equated with imposition of the tax. It must be noted that in section 105, which clothes the State with the power of imposing the duty, the word 'imposed' is used, while in the opening portion of section 106, the word 'levied' is used. In the context in which the term is used, it is apparent that it is used in the sense of 'imposition or assessment of the duty' and not as 'collection', because Clauses (a) and (d) use the words 'by payment' and when the words 'imposition, levy and payment' are used in the same Chapter-VIII which relates to excise duty, the Legislature could not have used the word 'levy' in the sense of payment or collection.

10. While dealing with the expression 'levy' in Rule 10 of the Central Excise Rules, 1944, the Supreme Court observed in *N.B. Sanjana v. The Elphinstone Spinning*

and Weaving Mills Co. Ltd. : 1973ECR6(SC) as follows :---

'We are not inclined to accept the contention of Dr. Syed Mohammad that the expression 'levy' in Rule 10 means actual collection of some amount. The charging provision section 3(1) specifically says---'There shall be levied and collected in such a manner as may be prescribed the duty of excise.....' It is to be noted that sub-section (i) uses both the expressions 'levied and collected' and that clearly shows that the expression 'levy' has not been used in the Act or the rules as meaning actual collection.'

The expression 'levied' in the context in which it appears, in our view, must mean imposition of the duty and would not indicate merely the manner as to how the recovery is to be effected.

11. On behalf of the respondents, reliance was placed on the decision of a learned Single Judge of this Court at Bombay in Writ Petition No. 631 of 1982, decided on June 19, 1986. While dealing with the submission that section 106 not merely prescribes the time for the collection of duty, but emphasises the point at which the duty is to be collected, the learned Judge observed that in case the taxing events occur at the point of import of liquor in the State, then the claim of the State Government that the duty will have to be calculated with reference to the quantity imported and the breakages, which occur during the transit to the warehouse or prior to its removal for the purpose of sale, can be ignored, deserves acceptance. It was there held that the plain reading of the two sections leaves no manner of doubt that the taxing event occurs when the liquor is imported in the State, and the importer is provided with the facility to store it in the warehouse and in such event the payment of excise duty is merely deterred till the liquor is removed from the warehouse for the purpose of sale. We are afraid, these observations overlook the use of the different words, including the word 'levy' and the use of the different words, including the word 'levy' and the use of word 'or' between Sub-clause (i) and (ii) of Clause (a) of section 106. The proviso to Clause (a) clearly spells out that where payment is made upon issue for sale from a warehouse established or licensed under the Act, such payment shall be at the rate of the duty in force at the date of issue from the warehouse. If the matter were to rest merely on the stage,

the point of time at which the duty, which is levied at the time of import, was to be collected, it would be difficult to understand how the recovery could be made at a different rate which may prevail at the date of issue. Evident, therefore, sub-clauses (i) & (ii) deal with different situations, and once the State Government decides to levy the excise duty on the issue for sale, it cannot turn round and choose the other alternative and say that the duty, which was payable at the time of import, should be paid because the goods have been rendered unavailable for the imposition of the duty at the time of issue on account of breakages in transit.

12. The view, which we are taking, is supported by the observation in *Abdul Kadir v. State of Kerala* : [1976]2SCR690 and *M/s. Mc Dowell & Co. Ltd. v. Commercial Tax Officer* : [1977]1SCR914 . In the latter, it was observed that excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, ultimate incidence will always be on the customer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is it is duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience. Thus, laws are to be found which impose a duty of excise at stages subsequent to the manufacture or production. It is also there explained that countervailing duties are meant to equalise the burden on alcoholic liquors imported from outside the State and the burden placed by excise duties on alcoholic liquor manufactured or produced in the State. We are also supported by the view taken by a Division Bench of the Allahabad High Court in *M/s. Mohan Meakin Breweries Ltd. v. State of U.P.* 1978(4) ALR 534. While construing identical provisions of sections 28 and 29 of the U.P. Excise Act, 1910, it was held that excise duty is a single point duty i.e., if it is charged at the stage of manufacture or at the stage of transport, it cannot be charged at both the points, and is essentially one on the production or manufacture of goods, although it may for administrative convenience be imposed at stages subsequent to the manufacture or production. In the later decision between the same parties. : AIR1979 All198 after noticing the proviso to section 29 of the U.P. Excise Act,

which is couched in terms similar to the first proviso to section 106(a)OMBAY PROHIBITION ACT, 1949~^ of the Bombay Prohibition Act, it was pointed out that the rate of duty is linked in point of time to the date of issue for sale and not to the date of manufacture. There the subsequent notification clearly indicated that the duty was chargeable only at the point of issue and the rate fixed with reference to the destination of the liquor, as also obtaining in the present case.

13. The circular dated 19th April, 1980 (Annexure-C to the petition) purports to be based on Rule 20 of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963. That rule only provides that the cost of conveying the consignment to the place of import and all risks incidental to such conveyance shall be borne by the importer and the storage of the consignment in he bonded warehouses shall also be at the risk of such importer. Under Rule 18th where the foreign liquor is imported in bond, the consignment shall, after it is examined under rule 16, be sent to the bonded warehouse together with Part IV of the pass and the certificate. Particulars of the consignment are to be entered by the Officer-in-charge of such warehouse in the register of deposit and withdrawals which shall be kept in such form as the Director may direct. It provides that the consignment shall be allowed to be removed under a transport pass on payment of (a) the duty leviable under the Act, on the foreign liquor imported, (b) the fees prescribed under the Bombay Foreign Liquor and Rectified Spirit (Transport) Fees Rules, 1954, and (c) other charges, if any, payable in respect of the consignment. None of the provisions of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963, provide for charging for the breakages as is purported to be done in transit, before the goods are put into the bonded warehouse. Under Rule 8 of the Maharashtra Foreign Liquor (Storage and Supply) Regulations, 1964, any loss in the foreign liquor stored in bond or issued therefrom shall be reported to the Director and if it is not satisfactorily accounted for by the licensee, it shall be liable to be excise duty and fees at the full rates payable thereon.

The learned Counsel for the petitioners stated that they had no grievance about their liability to account satisfactorily for the losses, and in the event their inability to do so, they would be liable to pay the excise duty and fees, but this would be only in respect of the goods stored in bond or issued therefrom and cannot have

any reference to the breakages which occur prior to placing of the goods in the bonded warehouse. One of the submissions of Shri Ghaté, the learned Counsel for some of the petitioners, was that excise duty was sought to be levied also in respect of the breakages in transit prior to the import of the goods within the State, but what has been referred to in the petitions is only loss in transit and it is apparent that this had reference only to the loss occasioned by virtue of the breakages from the place of manufacture or the place of import to the bonded warehouse, and not to the loss occasioned prior to the import. In fact, we see nothing on record or in the petitions to justify the submission that the respondents have claimed excise duty on breakages even prior to the import of the goods, and considering the nature of the excise duty that is leviable under the provisions of the Bombay Prohibition Act, it is impossible for us to believe that the respondents would claim duty on the breakages prior to the import, and it is not, therefore, necessary for us to deal with this contention raised by Shri Ghaté, for the first time, in the course of the arguments, without laying any foundation in the petitions.

14. The question for consideration is whether in view of the sub-clauses (i) of clause (a) of section 106 of the Bombay Prohibition Act, it was permissible for the respondents to ask for the loss of excise duty on breakages in transit until the articles were deposited in the Bonded Warehouse. Shri D.N. Kukdey, the learned Assistant Government Pleader, referred us to the circular dated 29th May, 1979 (Annexure-B to the petition) which, in turn, referred to the circular dated 21st January, 1970 as modified by the circular dated 29th January, 1971, and urged that instructions had been issued even earlier in connection with the writing off of breakages, Ullages or losses of foreign liquor in the foreign liquor trade and they purported to give instructions to the Collectors, and Superintendents of Prohibition and Excise, so far as the treatment to the various losses in foreign liquor in Bonded Warehouse premises, with regard to the question of payment of excise duty and transport fees thereon, was concerned. With regard to the breakages occurring in transit, the directions were to write off the amount under the orders of the Collector, without collecting the excise duty or transport fee thereon, after satisfying the Collector that the breakages were genuine transit breakages, with reference to the documentary evidence with regard to it, and these orders were to apply to transit breakages pertaining to the period prior to 31st December, 1976. In

respect of the breakages in foreign liquor stored in Bonded Warehouse, they were to be written off by the Commissioner and excise duty at full rates was to be recoverable on such breakages. About this part of the circular, the petitioners have no grievance as they accept responsibility to account satisfactorily for the losses, as required under Rule 8 of the Maharashtra Foreign Liquor (Storage and Supply) Regulations, 1964.

15. The submission was that the circular dated 29th May, 1979 (Annexure-B), was not challenged because all the breakages until the date of issue of that circular had been written off, as is apparent by the letters of the Collector dated 13th December, 1977 and 14th/15th September, 1978 (Annexures A-2 and A-3), and there was no cause for grievance. However, by issuing the circulars dated 19th April, 1980 (Annexure-C) and 6th April, 1981 (Annexure-D), excise duty was sought to be recovered on transit breakages in respect of the goods before they were put into the bonded warehouse and it became necessary to approach this Court for challenging these circulars.

16. It is apparent that if the excise duty is to be charged on the basis of sub-clause (i) of Clause (a) of section 106 of the Bombay Prohibition Act, on issue of the articles from the bounded warehouse, the question of loss of excisedutry on transit breakagese would not rise.

17. What is purported to be done by the circulars (Annexures-C and D) is to levy excise duty on breakages, without the authority of the taxing statute. It is apparent that the rules framed did not clothe the State Government with the authority to charge excise duty on the breakages, since power to impose the duty is to be found only in sections 105 and 106 of the Bombay Prohibition Act. The executive authority could not by issuing circulars, enlarge the field of taxation, and if that was sought to be done and as is being done by issuing the circulars (Annexures C and D) in the present case, that would be without the authority of law. We are clear that the circulars (Annexures C and D) are without authority of law, insofar as they purport to impose excise duty on breakages, which was impermissible, and are liable to be quashed. The petitioners would squarely be entitled to a direction restraining the respondents from demanding excise duty in respect of breakages

on the strength of these circulars.

18. That takes us to the next question relating to the demand for supervision charges. Under section 58-A of the Bombay Prohibition Act, the State Government is authorised, by general or special order, to direct that the manufacture, import, export, transport, storage, sale, purchase, use, collection or cultivation of any intoxicant, denatured spirituous preparation, hemp, mhowra, flowers, or molasses shall be under the supervision of such Prohibition and Excise of Police Staff as it may deem proper to appoint, and that the cost of such staff shall be paid to the State Government by the person manufacturing, importing, exporting, transporting, storing, selling, purchasing, using, collecting or cultivating the intoxicant, denatured spirituous preparation, hemp, mhowra flowers molasses. Under Rule 7 of the Maharashtra Foreign Liquor (Storage and Bond) Rules, 1964 the Director is authorised to appoint such staff at the Bonded Warehouse for excise supervision as he deems necessary and the cost of such staff shall be paid to the State Government by the licensee as provided by an order under section 58-A of the Bombay Prohibition Act. Condition No. 10 of the licence in Form 'BW-1' under Rule 4(2) of the Maharashtra Foreign Liquor (Storage and Bond) Rules, 1964, provides that no foreign liquor shall be removed by the licensee from the licensed premises for consumption within the State, except with previous permission of the Collector, in writing and on payment of excise duty and fees, and under a pass granted under the Maharashtra Foreign Liquor (Storage and Supply) Regulations, 1964. Under the proviso to that condition, the foreign liquor may be removed in bond by the licensee from his licensed premises for supply to another licensee holding a B.S. 1 licence in the State, under a pass granted by the Collector under the Maharashtra Foreign Liquor (Storage and Supply) Regulations, 1964. Condition No. 3 of the licence requires the licensee to pay to the State Government, in advance, at the beginning of each quarter commencing from the date of the licence, such cost of the staff appointed at the licensed premises for the purpose of excise supervision as may be fixed by the Director from time to time.

19. The grievance of the petitioners is that the supervision charges have actually been recovered much in excess of the actual salary of the staff employed in the licensed premises and that because there were revisions of salary of Government

servants and some audit objections were raised, the respondent started taking action for recovery of supervision charges with retrospective effect from 5-5-1970 on the strength of the circular dated 7-4-1981 (Annexure-F to the petition). That circular shows that revised rates of supervision charges were communicated to all licence-holders by the letter dated 2-1-1979 with instructions to effect recovery of supervision charges with effect from 5-5-1970 onwards, as shown in the statement, but no effective steps had been taken for two years by the officials concerned, and it was, therefore, directed that undertakings should be obtained from the licensees to pay all the amounts towards arrears of supervision charges within fifteen days from the date of communication. The return of the respondent shows that the cost of supervision was determined by the Commissioner of Prohibition and Excise from time to time as per the rates of pay and various allowance of the posts and they were conveyed to the district officers, who in turn, communicated the same to the licensee. According to the respondents, the pay and allowances were revised with retrospective effect on many occasions and therefore, the revision of rates of supervision charges was required to be made retrospectively. Para 24 of the return shows that the major impact of the supervision charges was from 1-4-1976 necessitated by the revision of pay-scales of Government servants under the Maharashtra City Services (Revised Pay) Rules, 1978, as a sequel to the report of Bhole Commission. The revised pay-scales had come into effect from 1st April, 1976, and, therefore, the Commissioner re-calculated and revised the rates of supervision charges after 17th April, 1978, and therefore, the differential amount on account of revision had been claimed and it was, therefore, only technically from true that the recovery of supervision charges took retrospective effect 5-5-1970.

20. We have already pointed out above the provisions of section 58-A of the Bombay Prohibition Act the relevant rules and the conditions of licence, which bear upon the question of supervision charges. If in pursuance of the provisions of section 58-A of the Bombay Prohibition Act, the rules and the conditions of licence, a advance payment of the supervision charges had to be made at the beginning of every quarter, and without payment of those charges, the articles could be removed from the Bonded Warehouse for sale, evidently the duty of the licensee, who stores articles in the Bonded Warehouse would be only to pay the amount

which has been ascertained and had to be paid in advance. Neither of these provisions clothes the State Government or the Commissioner with the authority to charge the supervision charges with retrospective effect. Obviously, when section 58-A uses the words 'the cost of such staff shall be paid to the State Government', that would have reference to the cost of the staff as obtaining for the period during which the goods are stored in the Bonded Warehouse and not the incidence which the State would have to bear by reason of such a remote circumstance as the upward revision of the pay-scales of its own employees at a latter date.

21. The learned Assistant Government Pleader tried to make a distinction between creation of liability under section 58-A of the Bombay Prohibition Act and the quantum that would have to be paid in pursuance of that liability, but this distinction appears to us to be without any difference, because section 58-A itself spells out that the liability shall be to the extent of the cost of the staff to be paid to the State Government. If this has to be paid in advance and if it had to be ascertained before the removal of the goods that the charges have, in fact, been paid, these circumstances would negative the existence of any power in the State Government or the Commissioner at a later date to ask for a higher amount by reason of circumstances which could not have been anticipated on the date when the charges become payable.

22. We must bear in mind the nature of excise duty as indicated in M/s. Mc Dowell Co.'s case : [1977]1SCR914 (supra) that it is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, ultimate incidence will always to be on the customer. By attempting to pass on the incidence of upward revision of pay-scales to the licensees, several years after the removal of the articles from the Bonded Warehouse, the respondent would make it impossible for the petitioners to pass on the cost of storing the articles in the Bonded Warehouse to the ultimate consumer, and this clearly the respondents cannot be permitted to do, because such a situation had never been anticipated by the petitioners, and by the unilateral action of the respondents, no additional liability can be imposed on the petitioners.

As observed in *Income-tax Officer v. I.M.C. Ponnoose* : [1970]75ITR174(SC) , it is open to a sovereign legislative to enact laws which have retrospective operation. Even when the Parliament enacts retrospective laws such laws are no doubt prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. The courts will not, therefore, ascribe retrospective to new laws affecting rights unless by express words or necessary implication, it appears that such was the intention of the legislature. Here, it does not appear to us that section 58-A of the Bombay Prohibition Act permitted the Government retrospectively to raise the quantum of costs, nor is there any warrant to infer that there was delegation to the rule making authority to charge the amount of costs on the basis of the events which could not have been anticipated at the time the costs were assessed.

23. After describing in detail how the petitioners order their affairs, the petitioners have stated in ground No. (vi) of para 2 of the petition that on a rational interpretation of the relevant conditions and provisions, the petitioners were entitled to know in advance the costs payable by them so as to enable them to fix the price of goods, and the respondents, having acted in the manner and permitted to the petitioners to sell the goods on the effective representation that the cost of supervision charges for incoming quarter was fixed for the said quarter, cannot now be permitted to go back on their said representation and demand additional amount, more so with retrospective effect from 5-5-1970.

24. Reliance was placed on behalf of the petitioners on *M/s. Motilal Padampt Sugar Mills Co. v. The State of Uttar Pradesh* : [1979]118ITR326(SC) and *Union of India v. Godfrey Philips India Ltd.* : [1986]158ITR574(SC) , and it was urged that upon the facts of this case, the doctrine of promissory estoppel would apply. In the former, it was observed that it is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promise should have altered his position in reliance on the promise. But if by detriment we mean injustice to the promises which would result, if the promisor were to recede

from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promiser were allowed to go back on promise. If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise that the Court would consider it inequitable to allow the promisor to go back upon his promise. We have already indicated the clear terms upon which the removal of the articles from the Bonded Warehouse was permitted. The incidence of the costs would have passed to the consumers on the basis of the actual charges recovered, acting upon the faith of the representation of the respondents as to the costs recoverable, when the prices of the articles were fixed and the articles sold to the purchasers and clearly irretrievable damage would be caused to the petitioners by State's claiming extra unanticipated costs. Circumstances here are so eloquent as to justify the application of the principle of promissory estoppel debarring the State from turning round and claiming additional amounts as costs. No circumstances have been brought to our notice by the respondents for displacing the equitable in the present case.

25. The learned Assistant Government Pleader relied on the judgment of the learned Single Judge in Writ Petition No. 631 of 1982 (cited supra), for urging that in the present case, the doctrine of promissory estoppel will not apply, because the Government had never given any promise from which the estoppel can be spelt out. From the circumstances pointed out above, it is obvious to us that a position had been taken by the respondents from which they cannot be allowed to resile and, with respect, we find it difficult to agree with the conclusion reached by the learned Single Judge in the above case. From the provisions, to which we have adverted, and the conduct of the parties, we find that even apart from the absence of the provisions allowing retrospective recovery, the respondents would be estopped from asking for the difference on the basis of unanticipated escalation in the costs of supervision at the later point of time. We, therefore, find that no claim for the difference in the cost of supervision could be made by issuing the circular dated 7th April, 1981 (Annexure-F to the petition) and that circular would have to

be quashed.

26. In the result, we quash the Circulars dated 19-4-80, 6-4-1981 and 7-4-1981 Annexures C, D and F---In Writ Petition Nos. 1167/81, 1168/81, 1169/81, 1170/81, 1171/81, 1172/81, 1173/81, 1174/81, 1175/81, 1176/81, 1296/81, 665/82 and 678/82.

In Writ Petition Nos. 970/81 and 973/81, the communication, dated 1-9-1980 (Annexure-C); the corrigendum, dated 2-9-1980 (Annexure-D); the communication, dated 27-3-1981 (Annexure-F); and the communication, dated 27-3-1981 (Annexure-G); and in Writ Petition Nos. 971/81 and 972/81 the communications, dated 9-7-1979, 29-9-1980, 1-10-1980, and 26-3-1981---Annexures B, E, G & H, respectively, were based on those very Circulars dated 19-4-1980, 6-4-1981 and 7-4-1981 (Annexures-C, D & F in W.P. No. 1168/81). We quash these communications also and direct the respondents to forbear from claiming any levy, charge or excise duty on the debonded goods on the basis of those Circulars and communications.

The rule in all the petitions is made absolute in the above term but in the circumstances of the case, there will be no order as to the costs.

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