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Court : Kerala

Decided On : Aug-02-1983

Reported in : 1984(15)ELT7(Ker)

Judge : Khalid and; Kochu Thommen, JJ.

Acts : [Copra Cess Act, 1979](#) - Sections 2, 3 and 3(1); (The Indian) Coconut Committee Act, 1944 - Sections 3; Produce Cess Act, 1966; [Government of India Act, 1935](#); Sea Customs Act - Sections 20(2); [Coconut Development Board Act, 1979](#) - Sections 4; [Central Excise Act, 1944](#) - Sections 13, 14 to 17 and 19; Produce Cess Act, 1966 - Sections 15; [Constitution of India](#) - Articles 143(1), 189(1), 285, 289 and 289(1)

Appeal No. : O.P. Nos. 3449 of 1979-1, 3799 of 1979-B and 462 of 1980-E

Appellant : Chirukandan and ors.

Respondent : Superintendent, Central Excise and ors.

Advocate for Def. : T.R. Govinda Wariyar,; T.C.N. Menon,; K.P.G. Menon,;

Advocate for Pet/Ap. : K.A. Nayar,; Menon,; Pai,;

Judgement :

Kochu Thommen, J.

1. A common question arises in all these cases, and that is the only point urged before us at the bar on behalf of the petitioners. It is alleged that the [Copra Cess Act, 1979](#), under which the petitioners are required to pay duty of excise on the copra consumed in their mills, is ultra vires and beyond the competence of the Parliament. Such a cess, the petitioners say, is a tax on consumption, and not a duty of excise falling under entry 84 of list I of the 7th Schedule of the Constitution. The petitioner in O. P. No. 3799 of 1979 has not, unlike the others, challenged the whole Act, but only Section 3(1) thereof which is the charging section.

2. The [Copra Cess Act, 1979](#) (No. 4 of 1979) imposes under Section 3 a cess which is described as a duty of excise. It reads :

'3. Imposition of cess : (1) There shall be levied and collected as a cess, for the purposes of this Act, on copra consumed in any mill in India with a view to producing or manufacturing any goods therefrom a duty of excise at such rate, not exceeding five rupees per quintal of ' copra, as the Central Government may, by notification in the Official Gazette, specify:

Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate of sixty paise per quintal of copra.(2) The duty of excise leviable under Sub-section (1) shall be payable by the occupier of the mill in which the copra is consumed.'

The impost is on copra consumed in a mill with a view to producing or manufacturing any goods therefrom. The section is attracted only to consumption in a mill. A mill is defined under Section 2(d) as follows :

'2(d). 'mill' means any premises in which or in any part of which, copra is crushed, or is ordinarily crushed, with the aid of power for the extraction of oil or is otherwise processed with the aid of power.

Explanation :-'Power" means electrical energy or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency.'

This means that what is reckoned by the statute for the purpose of levy is only such copra as is consumed in a mill where copra is crushed with the aid of power

for the extraction of oil or is otherwise processed with the aid of power. Wherever copra is crushed in a mill or is otherwise processed at a mill with the aid of power such copra is consumed. If copra is so consumed with a view to producing or manufacturing any goods therefrom, a duty of excise is attracted at the rate specified as provided under the Act.

3. The petitioners contend that the imposition is not on the production or manufacture of goods, as it should be if it were to be a duty of excise but upon consumption of raw material from which unspecified finished goods are intended to be produced or manufactured. Shri M. I. Joseph, appearing for the petitioner in the O.P. No. 3799 of 1979, contends that the levy of cess under Section 3 does not fall upon finished goods, but upon raw material purchased by the petitioner to carry on his trade or profession, and such levy has no reference to production or manufacture. Counsel further says that the petitioners are not producers or manufacturers of copra which is only a raw material from which finished goods are produced, and the impost under Section 3 upon the consumption of raw material amounts to a purchase tax or a tax on profession or trade which is totally outside the legislative competence of the Parliament. Taxes on sale or purchase of goods, or on profession, trade or calling, counsel points out, fall under list II of the 7th Schedule and are therefore exclusively within the sphere of the state legislature. The fact that tax is computed with reference to the copra consumed, counsel says, would indicate that it is on the consumption of copra and not on manufacture or production of goods that it is levied. These arguments are supported by Shri K. A. Nayar appearing for the petitioner in O.P. No. 3449 of 1979. On the other hand, Shri Aziz, appearing for the Central Government, and Shri T. C. N. Menon for the respondent-Board, submit with much force that the levy under Section 3 is not attracted by the purchase of copra, but by the conversion of copra into oil or any other goods. This is what is meant by 'consumed in any mill'. If copra is purchased and merely kept in a mill without 'consumption', respondents' counsel points out, Section 3 would not be attracted.

4. The point at issue, in our view, really is whether the cess under Section 3 is imposed on copra or whether it is on the manufacture of any commodity therefrom. Is it the purchase of copra by the petitioner or is it the manufacture of goods

therefrom that attracts the levy is consumption of copra in a mill an integral part of the process of manufacturing or producing goods ?

5. The legislative practice in this matter can be traced to (The Indian) Coconut Committee Act, 1944 (the '1944 Act') which provided for the creation of a fund for the improvement and development of the cultivation, marketing and utilization of coconuts in India. Section 3 of that Act imposed a cess in the following words :

'3. Imposition of coconut cess : (1) There shall be levied and collected, as a cess for the purpose of this Act, on all copra consumed in any mill in (India) whether produced in or imported from outside (India) a duty of excise at such rate, (not exceeding forty-nine naya paise per quintal), as the Central Government may, after consulting the Committee, by notification in the Official Gazette, fix in this behalf.'

The impost was on copra consumed in any mill in India. A mill was defined under Section 2(d) of that Act as follows :

'2(d) : 'mill' means any premises in which or in any part of which copra is crushed or is ordinarily crushed with the aid of power for the extraction of oil.

Explanation.-'Power' means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.'

The definition of mill under the 1944 Act was in substance the same as under the present Act except that the definition took in only extraction of oil and not any other processing. What is significant is that as early as 1944 a duty of excise was imposed wherever copra was consumed in a mill in India, whether or not the raw material itself was produced in or imported from outside India. The emphasis was on consumption in a mill within the country. After the dissolution of the Coconut Committee (set up under the 1944 Act) as from 1-4-1966, the Parliament enacted the Produce Cess Act, 1966 (the '1966 Act') for the imposition of cess on certain produce. Section 3 which imposes a cess provides for levy and collection of a duty of customs under Sub-section (1) and for levy and collection of a duty of excise under Sub-section (2). Sub-section (2) reads :

'There shall be levied and collected as a cess, for the purpose of the Act, on every produce specified in column 2 of the Second Schedule, a duty of excise at such rate, not exceeding the rate specified in the corresponding entry in column 3 thereof, as the Central Government may, by notification in the Official Gazette, specify :Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate specified in the corresponding entry in column 4 of the said Schedule.'

One of the items of produce mentioned in column 2 of the Second Schedule was 'copra consumed in any mill in India with a view to producing or manufacturing any goods therefrom'. A mill was defined under Section 2(g)(ii) of that Act:

'in relation to copra...any premises in which or in any part of which, copra...is crushed, or is ordinarily crushed, with the aid of power for the extraction of oil.'

Section 3(2) read with column 2 of the Second Schedule relating to copra and the definition of mill in respect of that commodity was in substance identical to the relevant provisions of the present Act. It is significant that in both the 1944 Act and 1966 Act, the reference was to copra consumed in a mill in India, although in the latter Act, as in the present Act, the purpose of the consumption was specifically referred to. The consumption had to be with a view to producing or manufacturing any goods. This significant clarification in the 1966 Act and the present enactment was implicit in Section 3 of the 1944 Act inasmuch as copra could not be consumed in a mill otherwise than with a view to production or manufacture of goods. In other words, in all the three enactments, the legislature intended to levy and collect as a cess a duty of excise in relation to copra consumed in a mill with a view to producing or manufacturing goods therefrom. By the present Act, the 1966 Act has amended to delete any reference to copra in that Act.

6. 'Manufacture' is a term which as a noun signifies the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labour or by machinery. It is a process of converting some material into a different form adopted to uses to which in its original form it could not be so readily applied. As a verb 'manufacture' means to make, to invent, to fabricate or to produce an article by the hand, by

machinery or by other agency. To manufacture is to produce something new out of existing materials. 'Manufacture', and the adjective 'manufacturing' are synonymous and interchangeable with 'produce' and 'producing'. TO produce is to make or manufacture or to bring into being or form. (See Corpus Juris Secundum, Vol. 55, pp. 657 et seq. and Vol. 72, pp. 1208 et seq., see also Shorter Oxford English Dictionary, Vols. 1 and 2, Second Edition). 'Manufacture' or 'produce' thus implies a change in the sense of transformation into a new and different article having a distinct name, character or use. A new substance is produced from the raw material by the process of manufacturing. (See *Manager, Pulpally Devaswom v. State of Kerala* -1977 KLT 549). This is the sense in which the expression 'with a view to producing or manufacturing any goods therefrom' appears under Section 3 of the present Act. Consumption of copra in a mill with the aid of power through a process of crushing or any other process implies transformation of the copra into a new product.

7. To 'consume' is to use up, to eat up, or to drink up, or to destroy, or to accomplish or to complete. (Shorter Oxford English Dictionary, Vol. I). The word 'consume' does not necessarily mean immediate eating up or destruction, but may, and often does, contemplate the ultimate use to which all intermediate ones lead. (See Corpus Juris Secundum, Vol. 16, pp. 1523 et seq.). The word may thus denote transformation or conversion at intermediate stages prior to the final Act of devouring or annihilation. This is the sense in which that word was employed by the Supreme Court in *Anwarkhan Mahboob Co. v. The State of Bombay* (now Maharashtra) and Ors., AIR 1961 SC 212, 217 where the Court said :

'This conversion of a commodity into a different commercial commodity by subjecting it to some processing, is consumption within the meaning of the Explanation to Article 286 no less than the final Act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up...we think it proper and reasonable to say that whenever a commodity is so dealt with as to change it into another commercial commodity there is consumption of the first commodity....

When tobacco was delivered in the State of Bombay for the purpose of changing it into a commercially different article, viz., bidi patti the delivery was for the purpose of consumption....'

8. It is therefore clear that consumption denotes production or manufacture of new article from the raw material. Through consumption a commodity of a different and distinct commercial identity has come into existence. It is this process of conversion that is referred to by the Section as 'consumed in any mill'. Mill does not eat up copra when it is crushed or otherwise processed, and copra does not evaporate or cease to exist. It assumes new and distinct form. Consumption in a mill is an integral part of or an essential step in the process of transformation of copra into a new commodity. Copra consumed in a mill is the raw material from which the new commodity is made. Consumption and conversion are cause and effect. Together they constitute the goods manufactured or produced. Tax in relation to the goods manufactured is a levy on the manufacture-the event that attracts the tax-and it is in short a tax on conversion or transformation or manufacture or production caused by consumption. Copra consumed is therefore a measure of the manufacture, and it is with reference to that quantity that the quantum of duty is determined under Section 3 at the rate to which it refers. The impost is thus not on copra or on the purchase of copra, but on the process of manufacture or production of goods caused by the consumption of copra. This is what is meant by 'copra consumed with a view to producing or manufacturing'.

9. Excise is a word of wide import. Its dictionary meaning is that it is an 'indirect tax on commodities manufactured, produced, sold, used or transported within a country. A licence fee for various sports, trades, or occupations'. (Webster Illustrated Contemporary Dictionary, Encyclopaedic Edition.) This wide definition of excise appears to have been current in English language. As early as 1841 Stephen in his 'Commentaries on the Laws of England' called it a duty, imposed upon 'commodities produced and consumed within the country' (quoted by Jayakar, J. in AIR 1939 F.C. 1 at 34). According to Corpus Juris Secundum, Vol. 33, p. 111, the word 'excise' means 'every form of taxation which is not a burden laid directly on persons or property, or every form of charge imposed by public authority for the purpose of raising revenue on the performance of an act, the

enjoyment of a privilege, or the engaging in an occupation'. This wide definition takes in all kinds of indirect taxes.

10. H. E. Wills in 'Constitutional Law of the United States' (1936 Ed. page 372) defines 'excise' as 'an inland tax laid upon the manufacture, sale or consumption of commodities within a country', (emphasis supplied) In *Patton v. Brady*, 184 U.S. 608 : 46 Law Ed. 713 the U.S. Supreme Court referred to 'excise' as 'a duty imposed at some stage between the manufacture or production and the act of consumption'. A wide definition of 'excise' has been adopted by the High Court of Australia in a number of cases in the context of Section 90 of the Commonwealth of Australia Constitution Act, which provides :

'...the power of the Parliament to impose duties of customs and of excise...shall (be) exclusive.'

Summing up the case law on the point, P. H. Lane ('Australian Federal System', 1979, p. 747) says :

'A duty of excise on goods can be levied from the producer, manufacturer, distributor, or seller in respect of the production, or any process prior or subsequent to the production, upto and including the step by which the goods finally reach the consumer from the retailer.'

Referring to a number of cases decided in that country, Lane concludes :

'the criterion of liability is the taking of a step in a process of bringing goods into existence or to a consumable stage, or passing them down the line which reaches from the earliest stage in production to the point of receipt by the consumer.'

This wide definition of excise includes even tax on sale of goods and it is justified by the wording of Section 90 of the Australian Constitution Act. (See also W. A. Wynes, 'Legislative, Executive and Judicial Powers in Australia', 5th Edn., pp 373 et. seq.)

11. Finally Shirras in 'Science of Public Finance', (Vol. II, 3rd Edn., p. 654, quoted by Jayakar, J. in AIR 1939 F. C. 1 at 39) says :

'Excise or taxes on commodities of domestic manufacture may be levied on the raw materials or at an intermediate stage of their production or when the articles are ready for consumption....The taxes should be levied in accordance with the canon of convenience.'

12. Whatever be the ordinary, natural and grammatical meaning of 'excise' or the legislative or judicial practice in other countries in regard to it, that term has acquired a restricted connotation in India on account of the precise division of legislative powers between the Centre and the States. As early as 1939 the Federal Court had recognised that in a general sense the expression 'duty of excise' was wide enough to include a tax on sales, but under the [Government of India Act, 1935](#) where power was expressly given to another authority to levy a tax on sales, 'duty of excise' had to be understood in a more restricted sense than the expression would otherwise bear.

13. In *Re. C.P. Motor Spirit Act*, AIR 1939 F. C. 1 Jayakar, J. observed that if the [Government of India Act, 1935](#) had not divided the legislative powers between the Centre and the States, as it did, the expression 'duties of excise' would have included all duties of excise on goods manufactured or produced in India, whether levied or collected at the stage of manufacture or production or at any of the subsequent stages upto consumption. But he pointed out that in view of the division of the legislative powers between the Central and provincial legislatures under item 45 (List I) and item 48 (List II) respectively, a conflict had to be avoided by proper reconciliation between the two items. He therefore held :

'...It is not therefore unfair to infer from this grouping that the scheme of taxation was intended to be that an excisable commodity is subject to the legislation of the Centre in respect of all taxes on or connected with its production, manufacture, etc., etc. but when such commodity enters the precincts of a Province and a tax has to be imposed on its sale within the Province for purposes of consumption therein and the tax is in no way connected with its production etc. but is imposed with respect to its sale merely as an existing article of trade and commerce, the power to do so is exclusively with the Province....'

14. Referring to the entries relating to duties of excise and taxes on sales under the [Government of India Act, 1935](#), Gwyer, C.J. in *The Province of Madras v. Boddu Paidanna & Sons*, 55 L. W. 337 F.C. pointed out that duties of excise were :

'...duties levied upon the manufacturer or producer in respect of the manufacture or production of the commodity taxed. The tax on the sale of goods...is a tax levied on the occasion of the sale of the goods. Plainly a tax levied on the first sale must in the nature of things be a tax on the sale by the manufacturer or producer; but it is levied upon him qua seller and not qua manufacturer or producer. It may well be that a manufacturer or producer is sometimes doubly hit...If the tax-payer who pays a sales tax is also a manufacturer or producer of commodities subject to a central duty of excise, there may no doubt be an overlapping in one sense; but there is no overlapping in law. The two taxes which he is called on to pay are economically two separate and distinct imposts....'

15. Affirming the principle stated by the Federal Court in these decisions, the Privy Council in *G.G. in Council v. Madras Province*, AIR 1945 P.C. 98 held :

'...a duty of excise is primarily a duty levied upon a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax upon goods not upon sales or the proceeds of sale of goods... The two taxes, the one levied upon a manufacturer in respect of his goods, the other upon a vendor in respect of his sales, may, as is there pointed out, in one sense overlap. But in law there is no overlapping. The taxes are separate and distinct imposts. If in fact they overlap, that may be because the taxing authority, imposing a duty of excise, finds it convenient to impose that duty at the moment when the excisable article leaves the factory or workshop for the first time upon the occasion of its sale. But that method of collecting the tax is an accident of administration : it is not of the essence of the duty of excise which is attracted by the manufacture itself....'

Agreeing with these observations of the Federal Court and the Privy Council, the Supreme Court in *R.C. Jall and Anr. v. Union of India and Anr.*, AIR 1962 SC 1281 at 1287 says:

'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, its ultimate incidence will always be on the consumer. 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 a 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....'

16. The question again arose for consideration of the Supreme Court (by a Bench consisting of 9 judges) In Re. Sea Customs Act, Section 20(2) (AIR 1963 SC 1760) on a reference made to it by the President of India under Article 143(1) of the Constitution as regards the scope and interpretation of Article 289 of the Constitution. The point for decision was whether the duties of customs and excise were direct taxes levied on property or income or whether they were indirect taxes levied not directly upon property but in relation to property. If such duty amounted to a direct tax it could not be levied on the property of a State owing to the immunity under Article 189(1). On the other hand, if it was not a levy on property, but only in relation to property, such a tax would not be hit by the immunity, but would be saved by Clause 2 of Article 289. Referring to Articles 285 and 289 which respectively exempted properties of the Union and the States from taxes imposed by each other, the Court observed :

'...Neither the Union nor the States can claim unlimited as regards the area of taxation. The right has been hedged in by considerations of respective powers and responsibilities....'

The Court then pointed out that when Article 289(1) provided that the property of a State would be exempt from all Union taxation, the exemption extended only to tax imposed directly on property. Drawing a distinction between direct and indirect taxes, the Court upheld the argument of the Union of India that a tax on property meant a tax in respect of ownership, possession or enjoyment of property, in contradistinction to customs duties and duties of excise, which in their very nature

were not taxes on property but only in relation to property. Affirming the principle laid down in AIR 1962 SC 1281, the Court continued :

'This will show that the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. We may in this connection contrast sales-tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales-tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax. It would thus appear the duties to excise partake of the nature of indirect taxes as known to standard works on economies and are to be distinguished from direct taxes like taxes on property and income.'

17. To be justified as a duty of excise, the tax has to be closely related to production or manufacture of goods. It does not matter if the levy is made not at the moment of production or manufacture but at an intermediate stage. If duty has been levied on an excisable article, but collected from a retailer, it would not cease to be an excisable duty so long as the impost is with reference to production : *Shinde Brothers v. Dy. Commr., Raichur*, AIR 1967 SC 1513, 1521. Following these decisions, this Court held in *E.R. Jose and Ors. v. State* 1973 KLT 463 that duties of excise could be imposed with reference to the source of the raw materials consumed in the production.

18. Duties of customs and excise, as in the case of taxes on sale, are attracted by an industrial or trading activity. They are indirect taxes because they tend to affect the price of the goods, and are thus passed on to the consumer, or to some one down the line below the actual taxpayer : (See the judgment of Kitto J. in *Dennis Hotels Proprietary Limited v. The State of Victoria and Anr.*-104 CLR 529, 560 and the authorities cited therein.) While it is the movement of goods across the customs frontier that attracts the duty of customs, what attracts the duty of excise is an industrial activity, namely, the production or manufacture of goods, and in the

case of taxes on sale it is the sale of goods. In each of these cases, the impost must have sufficient nexus with the particular activity. The impost is not on goods as such, but in relation to them.

19. The method of quantification of collection of the tax does not affect the nature of the impost. So long as the taxable event is the manufacture of goods, the tax can be quantified either with reference to the manufactured goods or with reference to the raw material from which the goods are manufactured. Quantification with reference to the raw material does not make it a tax on the purchase of the raw material. It is for administrative convenience that the quantity of raw material consumed in the manufacture of new articles is taken into account for the purpose of determining the quantum of the tax at the specified rate. But the impost itself is ..upon the production or manufacture. Entry 84 of List I of the 7th Schedule says : 'Duties of excise on tobacco and other goods manufactured or produced in India except...' (the exceptions are not material). The words 'manufactured or produced in India' are descriptive of the goods upon which duty of excise is leviable under that entry. That description is meant to distinguish it from entry 83 which relates, to duties of customs including export duties. Unlike duties of customs, duties of excise are levied only on goods manufactured or produced in India. Referring to entry 84 and emphasising the words 'goods manufactured' Shri Joseph contends that the duty can be levied only upon finished goods. We think counsel's interpretation of the entry is not warranted by its language and is contrary to the construction placed upon it by courts. 'Manufactured or produced in India' being descriptive of the goods, it would not be correct to say that entry 84 envisages duty to fall directly upon goods. That controversy was nettled by the Supreme Court as early as 1963,

20. The object of the present Act is 'to provide for the imposition of cess on copra for the development of the coconut industry and for matters connected therewith'. The maximum duty leviable under Section 3 is Rs. 51- per quintal of copra. The proceeds of the cess are credited to the consolidated fund of India. This amount, on an appropriation by the Parliament, may be paid-by the Central Government, after making certain deductions, to the Coconut Development Board established under Section 4 of the [Coconut Development Board Act, 1979](#). It is the

responsibility of an occupier of a mill to supply certain particulars and monthly returns to the Collector as required under Sections 5 and 6. It is on the basis of the returns submitted by him as regards the quantity of copra consumed in his mill that duties are assessed by the Collector in terms of Section 7. This Section postulates that in making an assessment the Collector shall observe the rules of natural justice by issuing a notice to the occupier, if the Collector does not act upon the returns submitted. The order made by the Collector is appealable under Section 8 to an appellate authority. Section 9 provides for refund of cess. It reads :

'Refund of cess oil exported from India-Where any cess on copra is levied and collected under this Act and the oil extracted from the whole or any part of such copra is exported from India, then, the Central Government shall, subject to such conditions as may be prescribed, refund so much amount of cess as is equal to the cess collected in respect of the copra from which the oil so exported was extracted, to the occupier of the mill from whom such cess was collected, whether or not such copra is produced in or imported into India.'

The right to refund of duty on oil exported shows that the levy is in respect of the commodity manufactured and not upon the raw material. Section 13 says that the 'provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder, including those relating to refunds and exemptions from duty shall, so far as may be, apply in relation to the levy and collection of duty payable to the Central Government under that Act". Sections 14 to 17 deal with offences. Section 19 provides for rules to be made by the Central Government to carry out the provisions of this Act and in particular with reference to the information and returns supplied by the occupier of the mill, the manner of assessment of duty, the conditions subject to which refund of amounts may be made under Section 9 and connected matters. By Section 20, as we have pointed out earlier, Section 15 of the Produce Cess Act, 1966 has been amended so as to remove all reference to copra under that Act. This is the general scheme of the Act.

21. These provisions show that the cess imposed is not on raw material purchased by the occupiers of mills, but in relation to the goods produced or manufactured from such raw material. What has attracted the cess under Section 3 is not the

purchase of the raw material, but the production or manufacture of new material of distinct and different commercial identity from them. The impost is not on goods but on consumption of copra which, as we have shown, is an essential and integral part of the process of manufacture. The word 'consumed' in Section 3 connotes the process of manufacture.

22. The test as to the validity of a statute is whether it is within the competence of the legislature and whether it is free of any breach of constitutional limitations. The petitioners have not established that the Act is not valid by either test. The challenge against the impugned enactment thus fails. The Original Petitions are dismissed. We do not, however, make any order as to costs.

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