

N. Rahmath and ors. Vs. Union of India and ors.

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Court : Chennai

Decided On : Aug-30-1983

Reported in : 1988(38)ELT425(Mad)

Judge : Ramanujam and ;Ratnam, JJ.

Acts : Central Excise Rules, 1944 - Rule 8; [Central Excise Act, 1944](#) - Sections 3

Appeal No. : Writ Petition Nos. 4588, 4691 to 4693, 5171, 5172, 5207, 5208, 5325, 5457, 5794, 5796, 6609, 6885, 6

Appellant : N. Rahmath and ors.

Respondent : Union of India and ors.

Advocate for Def. : K. Parasaran, Solicitor-General, ;R. Thyagrajan, Central Government Standing Counsel, ;S. Govindaswaminathan, Adv. for ;N.S. Sivan, Sriramapanchu, G. Anbumani and K. Kumaraswami Pillai, Adv.

Advocate for Pet/Ap. : P. Chidambaram, Adv. for ;M. Mohammed Ibrahim Ali, Adv., ;K.K. Venugopal, Adv. for ;R. Janakiraman, Adv. and ;S. Duraiswami, K.A. Jafar, M. Abdul Nazir, K. Ravirajapandian, K. Govindarajan, and ;P.

Judgement :

Ramanujam, J.

1. Since the issues arising in all these writ petitions are the same, they are dealt with together.
2. The petitioners in all these cases are manufacturers of matches and they have challenged the constitutional validity of Section 52 of the Finance Act of 1982 and the conditions imposed in Notification No. 22/82[GSR 77(E)/82] dated 23rd February, 1982, on the ground of violation of the petitioners' fundamental rights under articles 14 and 19(1)(g) of the Constitution of India as also on the ground that it is beyond the legislative competence of the Parliament inasmuch as it purports to retain monies which are not tax collected under the authority of law as provided for in Article 265 of the Constitution of India. The petitioners have challenged the conditions imposed in Notification No. 22/82[GSR 77(E)/82] in regard to production and clearance also on the ground that it is arbitrary or irrational discriminatory.
3. For appreciating the petitioners' said challenge, it is necessary to set out the circumstances and the background in which the said Section 52 of the Finance Act came to be enacted giving retrospective effect to Notification No 22/82[GSR 77(E)/82] dated 23rd February, 1982. Historically there was no manufacture of safety matches in this country till about the year 1895. They were mainly imported from Sweden and Japan. For the first time a handful of 15 semi-mechanised safety match manufacturing industries came up and functioned during the period 1895 to 1923. In 1923 the Government of India imposed import duty as a revenue raising measure. After the imposition of import duty in 1923, a Swedish match company set up their fully mechanised match factory in India in the name and style of Western India Match Company Ltd., (WIMCO). At about the same time, some industrialists of Sivakasi in Tamil Nadu established a unit for the manufacture of hand-made safety matches in Sivakasi after adopting the know-how obtained from certain Japanese manufacturers who were working in Calcutta. Hand-made match sector gradually increased their production and widened their production centres and activities though the growth initially was confined to a few towns and villages in and around Sivakasi which was the pioneer match manufacturing centre. However, the hand-made sector of matches is now spread out widely throughout the country and there were as many as 10 to 11 thousand units in the non-

mechanised sector, though the WIMCO continued to be the only company manufacturing matches in the mechanised sector in India. Till 1967, nearly 70 per cent of the manufacture of matches in India was controlled by WIMCO and the non-mechanised sector could not compete effectively in the manufacture of matches with WIMCO.

The Government of India for the first time in 1967 made a classification of match manufacturing units, namely, mechanised and non-mechanised for levy of excise duty. A further refinement was made shortly thereafter by giving a larger exemption from duty to non-mechanised match manufacturers producing not more than 75 million match sticks per annum. This scheme continued till the year 1975. The said notification was continued subject only to a condition that the third category of match units, namely, those producing less than 75 million sticks per annum should obtain a certificate from the Khadi and Village Industries Commission, hereinafter referred to as the KVIC that the unit is a bona fide cottage unit. On account of the concession shown to the non-mechanised sector, there was substantial increase in the production of matches in the said sector from 1975 to 1980. In the year 1980, the Government of India issued Notifications Nos. 98 of 1980 and 99 of 1980 dated 19th June, 1980. While the first notification continued the classification of mechanised and non-mechanised sector of the industry and provided for differential rates of effective excise duty, namely, Rs. 7.20 per gross of boxes of 50's matches for the mechanised sector and Rs. 4.50 per gross of boxes of 50's matches for the non-mechanised sector, Notification No. 99 of 1980 sought to give greater benefit by way of a larger exemption from excise duty to certain specified categories of match manufacturers. In Notification No. 99 of 1980 the Government fixed a norm of identifying a tiny sector through KVIC and the co-operative societies established and recognised by the State Government. The said notification imposed certain conditions for the grant of exemption of excise duty in excess of Rs. 1.60 per gross boxes of 50's matches as against the statutory rate of Rs. 7.20 per gross. The conditions imposed (were) contained in the four provisos to the said notification. The first proviso of the notification imposed a condition that the lowest rate of levy of excise duty would be allowed to a manufacturer whose factory is recommended by the KVIC for exemption under this notification. The proviso also gave the power of identifying the tiny unit to the

State where the manufacturer is a member of the co-operative society and consisting exclusively (of) manufacturers of such matches. The second condition is contained in the next proviso which provided that the matches produced or sold by such units are through KVIC or the co-operative society. The third proviso related to the units recommended by the KVIC who have to use labels which are prescribed by KVIC or the co-operative society. This condition was imposed lest the bigger units diversify themselves in small units and become eligible for the purpose of larger concessional rate, available in the notification. The last proviso in the notification dealt with the manner in which the matches should be manufactured. The said Notification No. 99 of 1980 was impugned by some of the petitioners before this Court in W.P. Nos. 8845 of 1981 (batch) (R. M. S. James v. Union of India) and this Court has taken the view that the first two provisos in Notification No. 99 of 1980 are impossible of performance, and therefore, the exemption under that notification will be available to all the match manufacturers in the non-mechanised sector. The court accepted the plea of the petitioners that though in the production of matches the only rational way of identifying the tiny sector would be the quantity of production or clearance of matches, that basis had not been adopted that the requirement of the recommendation of KVIC in the first proviso only related to the question of the cottage unit being bona fide or not to the question as to whether the manufacturing unit is in fact a cottage unit, that the proviso did not carry out the intention of the Government regarding the concessional levy in as much as the proviso did not enable the KVIC to put a limitation on production to enable a manufacturer to get a bona fide certificate. The court also held that the proviso is discriminatory as persons who had obtained the bona fide certificates in the previous years will be entitled to continue to produce unlimited quantity and yet get the exemption, whereas persons who had not obtained the certificate for some reason or other, earlier or a new entrant will not be permitted to avail of the concession, if their output exceeds the limit. The court similarly held that the stipulation made by the State Government under Notification No. 1466 relating to match co-operative societies imposed conditions which are impossible of compliance for persons who wanted to apply for the concessional levy even though they are eligible for it. In this view the court has directed the respondents to apply the said notification to all manufacturers in the non-

mechanised sector ignoring the provisos 1 and 2 in the notification.

After the said judgment, Notification No. 2 of 1982 dated 1st January, 1982, was issued by the Central Government. In that notification, the stipulations prescribed were for concessional rate of duty at Rs. 1.60 per gross of boxes of 50 matches are that the manufacturer should not, during the period 1st January, 1982, to 31st March, 1982, clear in excess of 37.5 million matches, that the total production of matches in a calendar month should not exceed 15 million matches and annually for the calendar year 1981 the manufacturer should not have cleared in excess of 150 million matches and that the manufacturer should also give a declaration that his clearances for the first quarter of 1982 would not exceed 30 million matches. According to the department these stipulations relating to output were prescribed as to identify the units in the tiny sector.

Thereafter, Notification No. 22/82 dated 23rd February, 1982, came to be issued providing for a ceiling limit on the output for claiming a higher exemption. It provided that the manufacturer, in order to have the benefit of concessional levy of excise duty thereunder, should not produce more than 15 million matches per month and the clearance annually should not exceed 150 million. The said notification was originally issued only with prospective operation. The Government thereafter enacted Section 52 of the Finance Act of 1982 giving retrospective effect to the said notification with effect from 19th June, 1980. The object of enacting Section 52 of the Finance Act giving retrospective effect to Notification No. 22 of 1982 with effect from 19th June, 1980, was to meet the demand of persons like the petitioners for refund of the amounts paid by them as excise duty over and above Rs. 1.60 per gross of boxes of 50 matches. It is at that stage that the petitioners have come forward with the writ petitions for the issue of writs of declaration declaring as unconstitutional and void Section 52 of the Finance Act, 1982, and the conditions imposed in Notification No. 22 of 1982 dated 23rd February, 1982, prescribing a production limit of 150 million and clearance limit of 120 million sticks per annum and 15 million sticks per month.

4. The petitioners' substantial grounds of attack in their petitions against Section 52 of the Finance Act of 1982 are these :

(1) Section 52 contains a non obstante clause to override the effect of any judgment [including the judgment of this Court dated 9th December, 1981 in W.P. No. 8845 of 1981 (batch) (R. M. S. James v. Union of India)] and in enacting Section 52, the Parliament has in fact exercised judicial power in the guise of exercising legislative power. Sub-section (2)(c) of Section 52 of the Finance Act of 1982 has made the intention of the Government very clear that no refund shall be made to the writ petitioners, notwithstanding the decision of this Court referred to above and it is not open to the Parliament to override the constitutional mandate as also the judicial pronouncements of the courts and by enacting Section 52, the Parliament has usurped the judicial power in a wholly undesirable manner and is liable to be declared null and void. The retrospective effect given by Section 52 to Notification No. 22 of 1982 dated 23rd February, 1982, writ effect from 19th June, 1980, is in effect and in substance a parliamentary declaration overruling the said judgment of this Court which has issued a positive mandamus to give effect to the scheme of exemption provided for in Notification No. 99 of 1980, dated 19th June, 1980, without reference to provisos 1 and 2 thereto. The parliament has thus assumed the powers of an appellate court over the judgments of courts.

(2) The parliament by enacting Section 52 seeks to levy excise duty retrospectively from 19th June, 1980, and that is not permitted by Rule 8 of the Rules.

(3) Retrospective validation of laws can be resorted to only if the fiction seeks to give effect to certain factual situation which was in existence in the relevant period but which is found by the court to be illegal. But what has been done in this case is not such validation as the old scheme of exemption has been superseded by a new scheme brought into force for the first time on 23rd February, 1982, and it is sought to be given retrospective effect from 19th June, 1980. Thus the alleged validation is not strictly a validation as understood in legal parlance.

(4) Even assuming that Section 52 of the Finance Act of 1982 is constitutionally valid, the classification made in the notification dated 23rd February, 1982, for availing the concessional rate of duty is wholly arbitrary, unreasonable and unworkable. There is no difference between manufacturer and manufacturer in the

non-mechanised sector, and even assuming that there can be a legitimate classification on the basis of the past production, the adoption of the production during 1979-80 as the base year for determining eligibility for availing of the lower rates of duty in the year 1980-81 or the adoption of the production of 1980-81 as the base year for determining the eligibility for the financial year 1981-82 is per se unreasonable, since the very notification has been given retrospective effect during the said period for meeting certain contingency arising out of the scheme which positively gave up any limits on production and having held out such a promise and goaded or lulled the manufacturers into the belief that they would be entitled to avail of the lower excise duty without any limit on production, it would be wholly unconscionable to bring through the backdoor and that too retrospectively a qualifying production limit which in effect nullifies the original scheme contemplated by Notification No. 99 of 1980.

(5) Section 52 of the Finance Act, 1982, amounts to colourable exercise of legislative power as the true object behind Section 52 is to retain the citizen's monies illegally collected in the guise of helping the so-called cottage sector. Therefore Section 52 in so far as it operates retrospectively from 19th June, 1980, is violative of the petitioners' fundamental rights under Article 19(1)(g) of the Constitution and the same is to protected by Article 19(6) of the Constitution, as it has taken away the petitioners' right to get refund of the excise duty as per judgment of this Court.

5. In the counter-affidavit filed by the respondent, after referring to the facts and circumstances which led to the enactment of Section 52 of the Finance Act of 1982, it is stated that the Parliament has got the requisite legislative power to enact that provision, that it has got the power to give retrospective effect to that provision as it is well-established by now that Parliament is free to enact a retrospective legislation and that Section 52 of the Finance Act only carries out the intention of the Government in promulgating Notification No. 99 of 1980 in pursuance of which taxes have been collected, after making necessary safeguards. It is in fact a validating section to validate the excise duty collected as per Notification No. 99 of 1980. It is also stated by the respondents that though the Constitution provides that no tax shall be levied or collected except by authority of

law, it does not stipulate that the taxes cannot be levied retrospectively. Hence Section 52 of the Finance Act of 1982 cannot be said to be outside the framework of the Constitution. Since the Government's intention behind Notification No. 99 of 1980 was to give a larger concession only to tiny units and the said notification has been interpreted to mean and intended to apply not only to the tiny sectors but also to all the manufactures of non-mechanised category, the Government with a view to carry out its intention, has substituted the notification by a fresh notification and removing or rectifying the defects pointed out by this Court and this was done to avoid a substantial loss of revenue to the Government. There is nothing inherently unreasonable in giving retrospective effect to any enactment the object of which is to prevent the loss of revenue to the State which will otherwise occur. There is no discrimination in the implementation of the retrospective legislation. As per the legislation review in respect of all the assessments in the non-mechanised sector for the past period has been made and wherever the scale of clearance is within the prescribed ceiling limit, concession is expended overlooking the provisos 1 and 2 to Notification No. 99 of 1980, which conditions have been deleted in the new Notification. The deletion of provisos 1 and 2 and prescribing a limit of production or clearance will itself go to prove that the Government bona fide intended to comply with the observations of the High Court simultaneously taking care to prevent unintended enrichment occurring to the bigger units, by prescribing the ceiling limit in the notification itself. Section 52 seeks to validate the levy after making good the omissions pointed out by the High Court, and therefore, it cannot be construed as a fraud of power or as a colourable exercise of legislative power. As can be seen from the notes on clauses of the Finance Bill, 1982, clause 52 seeks to make the existing scheme of concessional excise duty for the cottage sector of match industry retrospectively applicable from 19th June, 1980, with appropriate modifications. The historical background given above would clearly establish the bona fides of the Government and their declared policy to protect tiny and cottage sectors as against the bigger units in the non-mechanised sector.

6. It has been further stated in the counter affidavit that the Government's intention all along has been to give the larger concessional rate of Rs. 1.60 per gross only to the relatively weaker section in the non-mechanised sector. Otherwise there

would not have been any need for prescription of duty at the rate of Rs. 4.50 per gross under another Notification, namely, No. 42 of 1981 dated 1st March, 1981, applicable to the bigger units in the non-mechanised sector. Even a reading of Notification No. 99 of 1980 will clearly indicate that the intention of the Government was to benefit only cottage or tiny sectors. But as this Court had held that provisos 1 and 2 of Notification No. 99 of 1980 are not workable and directed the department to overlook those provisos, the very object of the Government to benefit tiny or cottage sectors would be frustrated and the benefit of the said notification had accrued to the bigger units to whom the concession was never intended and this has resulted in considerable loss of revenue to the State, and therefore, it became necessary for the Government to make good the omissions pointed out by this Court in the notifications issued on 1st January, 1982, and 23rd February, 1982, and validate the levies made for the past period. It is then stated by the respondents that the limit of 150 million match sticks per annum prescribed in Notification No. 22 of 1982 is not arbitrary. For recognising the cottage and tiny units in the non-mechanised sector, the scale of clearance has been adopted as a norm since long and only the quantum has been varying having regard to the development of production in the cottage sector, that the units under the KVIC and co-operative societies were producing about 100 million matches or 120 million matches respectively and taking into account the need for providing some in-built growth for these units, the maximum ceiling limit has been fixed at 150 million matches with duty liability at the concessional rate restricted to 120 million matches and the excess over 120 million charged at Rs. 4.50 per gross. Therefore, the ceiling limit cannot be questioned as arbitrary.

7. Mr. K. K. Venugopal, the learned counsel for some of the petitioners, does not question the constitutional validity of Section 52 of the Finance Act of 1982 in so far as it operates prospectively. But he is questioning only the validity of Section 52 in so far as it operates retrospectively as that amounts to levy of excise duty retrospectively from a prior date and such a retrospective levy will be arbitrary and violative of Article 19(1)(g) of the constitution of India. Thus, the constitutional validity of Section 52 in so far as it gives retrospective effect to Notification No. 22 of 1982 is alone under challenge. It is by now well-established that Parliament has got the power to make a law on a topic in respect of which it is competent to enact

a law both prospectively and retrospectively, and such a power to make a law retrospectively is more freely exercised by the legislature in the field of taxation. Since the object of validating Acts is to enable the legislature to carry into effect that which it had designed and attempted, but which has failed of its expected legal consequences only by reason of some statutory disability or irregularity in their action, the general rule that a statute should not be construed to operate retroactively, unless the legislative intent is clear that it should so operate, has no application to such validating Acts. Such Acts which by their very nature intended to operate on past transactions are, therefore, necessarily retrospective. In this case Notification No. 99 of 1980, which was intended to benefit only the cottage industry, was construed by this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99 as benefiting all match manufacturing units in non-mechanised sector on the ground that while the notification in terms does not provide a ceiling production limit for getting the benefit of the said notification, provisos 1 and 2 therein have chosen to make the quantity produced as the basis for granting the benefit and that in any event as the provisos are inoperative and impossible of performance, the benefit of exemption granted under the notification will be available to all units in the non-mechanised sector. Thus the respondents found that the object of benefiting the cottage sector had been frustrated. With a view to cure the defects pointed out by this Court and to make their intention clear and express, the legislature has applied Notification No. 22 of 1982 dated 23rd February, 1982, with retrospective effect from 19th June, 1980, the date when the original Notification No. 99 of 1980 was issued. In this case Notification No. 22 of 1982 was originally issued by the Central Government under Rule 8 of the Central Excise Rules. The legislature approved the scheme of exemption under that notification and intended that the said exemption notification shall apply with effect from 19th June, 1980. No doubt, Notification No. 22 of 1982 has been issued by the Central Government in exercise of their powers under Rule 8 of the rules framed under Section 37 of the Central Excises and Salt Act. Though Notification No. 22 of 1982 has been issued by the Central Government in exercise of the delegated power, the same has been approved and adopted by the legislature as its scheme of exemption to be applied with retrospective effect. In Notification No. 22 of 1982 the method of identification of tiny units has been specified on the basis

of the total output. This has been done by the legislature for removal of the defect pointed out by this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99 with reference to the date of Notification No. 99 of 1980 came into force. Thus Section 52 of the Finance Act of 1982 has been given retrospective effect with a view to neutralise the judgment of this Court and to give effect to the legislative intention of giving the benefit of exemption only to cottage industries. It cannot be disputed that the legislature which delegated the power of exemption to the Government can itself take over that power and exercise the power of exemption if it chooses. Instead of the legislature itself issuing a fresh exemption notification of its own, it chose to take the existing notification issued by the Government and adopted and applied the same as its own from an anterior period for the purpose of removing the anomalies or the defects pointed out by this, Court in Notification No. 99 of 1980. The question is whether Section 52 of the Finance Act of 1982 which is intended to remove the defect pointed out by this court in Notification No. 99 of 1980 and thus neutralise the decision of this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99 and to validate the assessments made and which are in accord with Notification No. 22 of 1982 which has been made applicable for the period from 19th June, 1980, is valid.

8. A somewhat similar question came up for consideration before the Supreme Court in *Jaora Sugar Mills (P) Ltd. v. State of Madhya Pradesh* : [1966]1SCR523 . Under the Madhya Pradesh Sugarcane (Regulation of supply and Purchase) Act, 1958 (Act 1 of 1959), a cess was levied on sugarcane and for this purpose a sugarcane factory was treated as a 'local area'. In the *Diamond Sugar Mills* case : [1961]3SCR242 it was held by the Supreme Court that such a levy was not valid as the State Legislature had no legislative competence to levy such a cess. There were similar Acts in several other States which suffered from the same infirmity. To meet that situation the Parliament passed the Sugarcane Cess (Validation) Act, 1961 (38 of 1961). This Act by Section 3 made valid all assessments and collections made before the commencement of the various State Acts and laid down that all the provisions of the State Acts and the relevant notifications, rules etc., made under the State Acts would be treated as part of Section 3. The said Section 3 was to be deemed to have existed at all material times when the cess

was imposed, assessed and collected under the State Acts. The said Central Act was challenged and the said challenge having failed before the Madhya Pradesh High Court, the matter was taken to the Supreme Court. The following contention were urged on behalf of the appellant before the Supreme Court : (1) What the Validation Act had done was to attempt to cure the legislative incompetence of the State Legislature by validating State Acts which were invalid on the ground of absence of legislative competence in the respective State Legislatures. (2) The Parliament had passed the Act in question not for the purpose of levying a cess of its own, but for the purpose of enabling the respective States to retain the amounts which they had illegally collected, and therefore, the Act was a colourable piece of legislation. (3) The Act had not been passed for the purpose of the Union of India and the recoveries of cesses which were retrospectively authorised by it were not likely to go into the Consolidated Fund of India. The Supreme Court rejected all the said three contentions on the following reasonings : As per the decision of the Supreme Court in Diamond Mills case : [1961]3SCR242 , it is obvious that the cess in question was outside the legislative competence of the State and the Parliament had the necessary legislative competence to levy such a cess, and therefore, the legislative competence of the Parliament to levy a cess as was imposed by Section 3 of the Sugarcane Cess (Validation) Act, 1961 (Central Act 38 of 1961), has to be upheld. By enacting the said Section 3 the Parliament is not attempting to confer legislative competence on the State Legislatures to enact a law for levy of cess and thus validate the valid State statutes but what the Parliament has done is to make a law concerning cess covered by the State statutes and to provide that the said law shall come into operation retrospectively. The Parliament should be taken to know that the relevant State Acts were invalid because the State Legislatures were not competent to enact them and that it was fully competent to make an Act in respect of the subject-matter covered by the invalid State statutes. The Parliament, however, decided that rather than to make elaborate and long provisions in respect of recovery of cess it would be more convenient to make a compendious provision such as is contained in Section 3. The plain meaning of Section 3 is that the material and relevant provisions of the State Act as well as the provisions of notifications, orders or rules issued or made thereunder are included in Section 3 and shall be deemed to have been included

at all material times in it. In other words, what Section 3 provides is that by its order and force the respective cesses will be deemed to have been recovered because the provisions in relation to the recovery of the said cesses have been incorporated in the Act itself. The command under which the cesses would be deemed to have been recovered would, therefore, be the command of Parliament. Dealing with the attack that the Central Act 38 of 1961 is a colourable piece of legislation, the Supreme Court observed that where a challenge to the validity of a legal enactment is made on the ground that it is a colourable piece of legislation, what has to be proved to the satisfaction of the court is that though the Act ostensibly is within the legislative competence of the legislature in question, in substance and in reality it covers a field which is outside its legislative competence and that in enacting Section 3 the Parliament exercised its undoubted legislative competence to provide for the recovery of the specified cesses in the respective State areas from the date and in the manner indicated by it, and therefore, the Act cannot be attacked as a colourable piece of legislation. As regards the attack made on Central Act 38 of 1961 in so far as it has given retrospective effect, the Supreme Court expressed the view that the Parliament can, in exercise of its undoubted legislative competence pass a law retrospectively, validating the cess collections and by converting their character from collections made under the State statutes to that of collections made under its own statute operating retrospectively and to hold otherwise would be to cut down the width and amplitude of the legislative competence conferred on Parliament by article 248 read with entry 97 in List I of the Seventh Schedule. This decision of the Supreme Court has reiterated the well-established principle that the legislature is competent within its field to enact a law with retrospective effect validating the levies and collections already made under an invalid statute by treating the collections as having been made under the law enacted by it operating retrospectively. To deny the Parliament the said power would be cutting down the width and amplitude of the legislative competence conferred on Parliament by article 248 of the Constitution.

9. In *Shri Prithvi Cotton Mills Ltd. V. Broach Municipality* : [1971]79ITR136(SC) the Supreme Court has laid down certain principles on which retrospective validation can be upheld by courts. Section 73 of the Bombay Municipal Boroughs Act, 1925,

allowed the municipality to levy a rate on buildings or lands or both situated within the municipality. The Rules under the Act applied the rates on the basis of the percentage on the capital value of lands and buildings. In *Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad* : [1964]2SCR608 the Supreme Court had held that the term 'rate' must be given the special meaning it had acquired in English law and must be confined to an impost on the basis of the annual letting value and it could not be validly levied on the basis of capital value though capital value could be used for the purpose of working out the annual letting value. Faced with this decision the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. By Section 3 of that Act, past assessment and collection of 'rate' on lands and buildings on the basis of the capital value or a percentage of capital value was declared valid despite any judgment of a court or tribunal to the contrary, and future assessment and collection on the basis of capital value for the period before and after the Validation Act was authorised. The said Section 3 of the Gujarat Act was challenged before the Gujarat High Court but without success. Thereafter the matter was taken to the Supreme Court. While rejecting that appeal and upholding the validity of Section 3 of the Gujarat Act, the Supreme Court laid down the following tests for determining the validity of a Validating Act : (1) The legislature must possess the power to impose the tax, the levy and collection of which it seeks to validate. (2) The cause for ineffectiveness or invalidity must be removed before validation. (3) It is not sufficient to merely declare that the decision of the court shall not be binding or effective for that will tantamount to reversing the decision in exercise of the judicial power which the legislature does not possess and a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. After laying down the tests, the Supreme Court proceeded to observe as follows :

'Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for

jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax.'

Thus in that case the expression 'rate' occurring in Section 73 of the Bombay Municipal Boroughs Act, 1925, was construed by the Supreme Court in a particular manner and it was confined to an impost on the basis of the basis of the annual letting value but the legislature not only equated the tax collected to a tax on lands and buildings which it had the power to levy but also to a rate giving a new meaning to the word 'rate' and while doing so, it put out of action the effect of the decision of the courts to the contrary. Thus the implication of the word 'rate' was effectively removed and the tax on capital value of lands and buildings imposed instead. This was upheld by the Supreme Court on the ground that the legislature had the power to do so.

10. In *Smt. Indira Gandhi v. Raj Narain* : [1976]2SCR347 the Supreme Court had expressed the view that the power of the legislature to validate matters which have been found by judgments or orders of competent courts or tribunals to be invalid or illegal is a well-known pattern, that the legislature validates acts and things by which the basis of judgments or orders of competent courts or tribunals are made

ineffective, that the effect of validation is to change the law so as to alter the basis of any judgment which might have been given on the basis of the old law, that the rendering of the judgment ineffective by changing the basis by legislative enactment is not an infringement of judicial power but is a legislation within the competence of the legislature rendering the basis of the judgment non est. In that case the Supreme Court referred with approval to an earlier decision of the Federal Court in *Piare Dusadh v. The King Emperor* [1944] FCR 61 wherein by a latter enactment the legislature provided that the earlier decisions of the tribunals which were invalidated by a decision of the Federal Court should be treated as decisions of duly constituted tribunals. That was held not to constitute an encroachment on judicial power. While upholding the validity of the Special Criminal Courts (Repeal) Ordinance, 1943, which conferred validity and full effectiveness on sentences passed by special courts which functioned under the Special Criminal Courts Ordinance, 1942, the Federal Court observed that the Parliament can take up certain determinations which existed in fact, though made without authority and validate the sentences passed by such courts by conferring jurisdiction on the special courts and authorise them to try the cases and impose sentences, and by so authorising the legislature did not exercise any judicial power.

11. The Supreme Court also referred to the decision in *Basanta Chandra Ghose v. The King Emperor* [1944] FCR 295 wherein Federal Court noticed the distinction between a legislative act, and a judicial act and said that neutralising a judicial decision is a legislative act, but to direct that a proceeding before court be discharged is clearly a judicial act. In that case there was an Ordinance which discharged the proceedings before a court of law and that was held to be an excise of judicial power by the legislature which it has no power to exercise.

12. It is in the light of these decisions we have to consider the grounds of attack raised by the petitioners in these cases.

13. That the legislature has got the powers to make a retrospective law on a subject which its field has not been questioned before us. The petitioners seek to question Section 52 so far as it operates retrospectively on the ground of violation

of Article 14 and Article 19(1) of the Constitution. The learned counsel for the petitioners, however, states, that though the legislature has got the power to make a law retrospectively, such a law, however, cannot affect the judgment rendered by this Court and that the judgments continue to be effective and enforceable notwithstanding the enactment of Section 52. Thus the contention of the learned counsel for the petitioners is that the power to make a law retrospectively is limited to cases where it is not the subject-matter of a decree or order of court, and that once a court has pronounced a judgment and granted relief to the parties concerned, the legislature cannot, by enacting a retrospective law, take away the effect of the decision of the court. If the legislature by making a retrospective law invalidates decisions of courts then it will amount to an exercise of judicial power by the legislature which is prohibited under the Constitution. In support of this contention, the learned counsel refers to the observations of Beg, C.J., in *Madan Mohan Pathak v. Union of India* : (1978)ILLJ406SC which is to the effect that the decisions rendered by courts can only be avoided by approaching the appellate or revisional courts and the legislature cannot make them ineffective and any attempt to do so will amount to exercise of judicial power by the legislature. No doubt the said observations of the learned Judge have been made on the basis that though the legislature has no (sic) power to make the law with retrospective effect, it has no power to invalidate the judgment of the court which can be done only by the appellate or revisional courts and that the invalidation of the decision of courts will amount to the exercise of judicial power by the legislature. But the majority in that case felt it unnecessary to consider that question. The majority decision was that the impugned Act in that case, viz., the Life Insurance Corporation (Modification of Settlement) Act, 1976, violated Article 31(2) of the Constitution and as such void. Therefore the observations of Beg, C.J., cannot be taken as the view of the majority. His is a lone voice and that does not fit in with the principles laid down in the earlier decisions of the Supreme Court referred to above. In the earlier decisions the Supreme Court consistently held that the legislature has power to make a retrospective law taking away the basis of the judgment and validate any action earlier taken notwithstanding the judgment of courts, but that power is subject to two conditions : (1) The legislature must have the power to make the law. (2) It must take away the basis of the judgment by declaring the law to be

otherwise and validating the action taken under the old law, treating those actions as having been taken under the new law notwithstanding any order of court to the contrary. In those decisions, the Supreme Court did not make any reservation in so far as decrees of courts are concerned. Merely because the legislature makes a law which is inconsistent with earlier decisions of courts it cannot be said that it is exercising judicial power. Similarly the legislature cannot be said to exercise judicial power if it changes the law as declared by courts. Any decision contrary thereto should be taken to be null and void. It is well-established that the legislature is supreme and sovereign in its field. It is therefore not possible to invalidate Section 52 of the Finance Act of 1982 in so far as it seeks to affect or nullify the decision of the court to the contrary on the ground that it is an exercise of judicial power by the legislature and hence it should be taken to be invalid.

14. The learned counsel then refers, in support of his submission, to the decisions rendered by the Supreme Court in the following three cases and submits that those decisions clearly laid down that the legislature cannot take away the force and effect of the judgments by retrospectively legislation and that the only thing open to the respondents in these cases is to file an appeal against the judgment of this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99 if they are aggrieved thereby :

15. *Madan Mohan Pathak v. Union of India* : (1978)ILLJ406SC is the first of the three cases. The Life Insurance Corporation of India and its employees had entered into a settlement on 24th January, 1974, relating to the conditions of service of Class III and Class IV employees including bonus payable to them. Clause 8 of the settlement provided for an annual cash bonus to be paid to the employees of Class III and Class IV at the rate of 15 per cent of the annual salary. The said cash bonus was paid by the Life Insurance Corporation for a period of 2 years but later the bonus was withheld on the ground that the Life Insurance Corporation is not covered by the Bonus Act, and therefore, the employees are not eligible for payment of bonus. The employees, however, asserted that the Corporation was bound to pay the bonus in accordance with the terms of the settlement but the Life Insurance Corporation resisted the employees' claim for bonus on the ground that the payment of bonus by the Corporation was subject to

Central Government 's directions and that the Central Government had advised not to pay any bonus without their approval. Thereupon the All India Insurance Employees' Association moved the High Court of Calcutta for issue of a writ of mandamus directing the Corporation to act in accordance with the terms of the settlement. That writ petition was allowed by a Single Judge and the Life Insurance Corporation filed a letters patent appeal against the said judgment. At that stage the Parliament passed the Life Insurance Corporation (Modification of Settlement) Act, 1976. After the passing of that Act the letters patent appeal was not pressed by the Life Insurance Corporation, presumably on the ground that by passing of the said Act, the judgment of the court has been made ineffective. Since the effect of that Act was to deprive Class III and Class IV employees the cash bonus due and payable to them in accordance with the settlement, some of the service associations filed writ petitions before the Supreme Court challenging the constitutional validity of the said Act. It was contented on behalf of the employees that even if the impugned Act rendered Clause 8 of the settlement ineffective with effect from 1st April, 1975, it did not have the effect of absolving the Corporation from its obligation to carry out the writ of mandamus issued by the court and that the right of the employees to get annual cash bonus for the years 1975-76 and 1976-77 under Clause 8 of the settlement already accrued was 'property' and as the said Act provided for the compulsory acquisition of that property without payment of compensation, it was violative of Article 31(2) of the Constitution. The view taken by the majority in that case is that the said Act is violative of Article 31(2) of the Constitution, that the liability to pay cash bonus to its employees by the Corporation has accrued and it has become a debt due by the Corporation to its employees and that such a debt cannot be wiped out or extinguished without payment of compensation. This decision of the court rested on the violation of Article 31(2) of the Constitution and not on the lack of power for the legislature to neutralise a writ of mandamus issued by the courts by making or altering a law retrospectively and the majority did not hold that any attempt to get over the writ of mandamus issued by the court by passing a retrospective law by the legislature will amount to exercise of judicial power by the legislature which is prohibited.

16. The second is L.I.C. of India v. D.J. Bahadur : (1981)ILLJ1SC . The L.I.C. after the successful challenge by the employees the L.I.C. (Modification of Settlement) Act, 1976, before the Supreme Court Pathak's case : (1978)ILLJ406SC issued notices to its employees under Section 19(2) read with Section 9A of the Industrial Disputes Act seeking to effect a change in the conditions of service of its employees. The Central Government also issued a notification on 26th May, 1978, under Section 49 of the Life Insurance Corporation Act substituting a new regulation for the old regulation 58. All these steps were taken to stop payment of bonus to the employees under the settlement. The validity of these notices was successfully challenged before the Allahabad High Court. Thereafter the Life Insurance Corporation came up in appeal before the Supreme Court. The Supreme Court held that notwithstanding the issue of the notice proposing to change the conditions of service, the existing conditions of service will continue till the fresh conditions of service are thought of and that, therefore, the Corporations' liability to pay cash bonus as per the terms of the settlement which contains the conditions of service continues. According to the Supreme Court the settlement continues to govern the relationship between the parties until it is displaced by another settlement or contract, and therefore, the Corporation cannot disown its liability to pay cash bonus under the settlement till the contract of service as recorded in the settlement is replaced by a fresh settlement award or valid legislation.

17. The third case is A. V. Nachane v. Union of India : (1982)ILLJ110SC . In that case the validity of the provisions of the Life Insurance Corporation (Amendment) Act, 1981, which inserted clause (cc) in sub-section (2) and introduced sub-section (2A), (2B) and (2C) in Section 48 of the Life Insurance Corporation Act, 1956, was challenged. All these provisions had been given retrospective effect. Subsequent to the amending Act the Central Government framed rules called the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981. Rule 3 therein has been given retrospective effect from 1st July, 1979, and that provided that no Class III or Class IV employee shall be entitled to any profit sharing bonus or any other kind of cash bonus. Sub-rule (2) of Rule 3 states that the said employees shall be entitled to a payment in lieu of bonus for the period commencing from 1st July, 1979, and ending with 31st

March, 1980, at the rate of 15 percent of his salary and thereafter for every year commencing from 1st April and ending with 31st March the following year at such rate and subject to such conditions as the Central Government may determine. The said amending Act was challenged on the following grounds : (1) That the rules are violative of Articles 14, 19(1)(g) and 21 of the Constitution. (2) That the amending Act was invalid on the ground of excessive delegation of legislative function. (3) Sub-section (2C) of Section 48 was invalid to the extent it directed retrospective operation to override the decision of the Supreme Court in D. J. Bahadur's case : (1981)ILLJ1SC . The Supreme Court held that the amending Act does not violate Articles 14, 19(1)(g) and 21 of the Constitution. It also held that the amending Act is not invalid on the ground of excessive delegation of legislative function. However, the Supreme Court held that Section 48(2C) read with Rule 3 operating retrospectively cannot nullify the effect of a writ issued by the Supreme Court in D. J. Bahadur's case : (1981)ILLJ1SC which directed the Life Insurance Corporation to give effect to the terms of the settlement of 1974 relating to the bonus until superseded by a fresh settlement, an industrial award or relevant legislation and that though the amending Act as also the amended rules can be taken to the relevant legislations, in so far as the Act and the Rules seek to abrogate the terms of the 1974 settlement relating to bonus, it can operate only prospectively and not retrospectively, and that notwithstanding the said amending Act, the employees were entitled to be paid the bonus earned by them before the date of publication of the amended Rules, 1981. The Supreme Court though upheld the validity of the amending Act, expressed the view that the amending Act and the Rules in so far as they take away the accrued rights of the employees, i.e., rights accrued to them anterior to the date of the amendment are invalid.

18. Strong reliance has been placed on the last two judgments by Mr. K. K. Venugopal, the learned counsel for the petitioners, in support of his submission that by a retrospective legislation the legislature cannot take away the effect of a writ of mandamus issued by a court under Article 226 of the Constitution of India and such a legislation will amount to an exercise of a judicial power which the legislature cannot exercise. In Nichane's case : (1982)ILLJ110SC Gupta, J., who delivered the main judgment, after referring to the observations of Beg, C.J., referred to above, and treating his view expressed by Beg, C.J., as the majority

view in Pathak's case : (1978)ILLJ406SC proceeded to hold that Rule 3 operating retrospectively cannot nullify the effect of the writ issued in D. J. Bahadur's case : (1981)ILLJ1SC which directed the Life Insurance Corporation to give effect to the terms of the 1974 settlement relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation. Apart from the fact that Beg, C. J., alone expressed the view in Pathak's case : (1978)ILLJ406SC that Section 3 of the Life Insurance Corporation (Modification of Settlement) Act, 1976, is invalid for trenching up on the judicial power in so far as that section operating retrospectively affects the judgment rendered by courts, the majority did not proceed on that basis.

19. Even assuming that the view taken by Beg, C.J., is the majority view in Pathak's case : (1978)ILLJ406SC and that view has also been accepted by the court in Nachane's case : (1982)ILLJ110SC , still we are of the opinion that the said view should be taken to be with reference to the peculiar facts of those cases. As already stated, the facts out of which the said two cases arose are somewhat peculiar. There the Life Insurance Corporation has entered into a settlement with its employees for payment of cash bonus. Since the Life Insurance Corporation did not pay the cash bonus as required by the terms of the settlement, the affected employees have gone before the court and obtained writs of mandamus directing the Life Insurance Corporation to pay them cash bonus which has accrued and which has become a debt due by the Life Insurance Corporation to its employees. On the basis that the debt has already accrued, the court directed that whatever happens in the future, the debt already accrued has to be paid by the Life Insurance Corporation to its employees. The Life Insurance Corporation originally brought in a legislation for extinguishing that debt. That was held to be unconstitutional as offending Article 31(2) of the Constitution. Later, they issued a notice under Section 9 of the Industrial Disputes Act proposing to change the terms and conditions of service as set out in the settlement. That was held to be invalid by the Supreme Court in the ground that a mere notice of termination of the terms of the settlement will not result in the alteration of the terms and conditions as set out in the settlement, unless the settlement is superseded by a fresh settlement, industrial award or a legislation. The third attempt was by bringing in a legislation with retrospective effect. This time the Supreme Court sustained the

validity of the legislation in so far as its prospective operation is concerned as also for the period not covered by the writs of mandamus issued by the courts. The Act was held to be invalid only in so far as it affects the writs of mandamus issued by the courts directing payment of accrued cash bonus by the Life Insurance Corporation to its employees for an anterior period. The reason for doing so is that as per the terms of the settlement, cash bonus payable to the employees has become a debt due to them and since the court has issued a mandamus directing the discharge of a contractual liability, that cannot be extinguished by a legislative enactment and that the mere extinguishing or nullifying of an order passed by the court by a legislative process without altering the basis of the order will amount to exercise of judicial power by the legislature which it does not possess.

20. We do not see how that principle will apply to the facts of this case. Here, there is no question of any contractual liability which the government owed to the petitioners. Section 3 of the Central Excises and Salt Act, 1944, imposes a liability to pay excise duty on all match manufacturers, but a distinction has been made between mechanised units and non-mechanised units and different rates of excise duty have been applied. Even in the non-mechanised sector, the Government thought that protection is necessary for cottage units which were not in a position to compete with the bigger manufacturers of match units whose economy is sound and who have got other facilities to market their produce. For the purpose of helping the cottage units who can carry on the activity of manufacture only with the help of the KVIC or the co-operative societies to get raw materials as well as to sell matches, the Government issued Notification No. 99 of 1980 reducing the excise duty to 1.60 per gross of matches. All the petitioners herein are persons who have cleared their manufactured stock by paying the rate of excise duty at Rs. 4.30 per gross as per Notification No. 98 of 1980. The petitioners and others who do not fall in within the cottage per tiny sector felt themselves aggrieved by Notification No. 99 of 1980 giving a concessional rate of excise duty to the cottage or tiny sector and attacked it on the ground that there is no need for making a distinction as between persons in the non-mechanised sector and that in any event in so far as it imposes certain conditions which are impossible of performance it has to be read without those conditions and if so read, they will also get the benefit of the said notification. This contention of the petitioners have been

accepted by this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99, and it has been held that the benefit of exemption contained in Notification No. 99 of 1980 will be available to all manufactures in the non-mechanised sector. The Government felt that as a result of the said judgment, their intention to benefit only the cottage or tiny sector has been frustrated and that manufactures for whom the benefit was not intended got also the benefit of exemption contemplated in the notification. Based on the judgment, the petitioners and others who were originally assessed at the rate of excise duty provided for in Notification No. 98 of 1980 now seek a fresh assessment as per the rate of excise duty contemplated in Notification No. 99 of 1980 and this exposed the Government to various claims for refund running into crores of rupees. With a view to rectify the defects pointed out by the court in Notification No. 99 of 1980 which according to the court resulted in the benefit of the notification being extended to all manufacturers in the non-mechanised sector and to neutralise the judgment of the court, the Parliament has enacted Section 52 adopting Notification No. 22/82 and giving it retrospective effect. On those facts, there is no question of the court granting a relief for enforcing a contractual liability. It is true, no doubt, the decision of the court has resulted in the State's liability to refund the excess excise duty collected from the petitioners as found by the court. But that liability is not a contractual liability on which the court has pronounced its decisions, but it arose out of a particular interpretation placed by the court on the notification issued by the Government. Since the interpretation placed by the court did not fit in with the intention of the Government in issuing the notification, the Parliament wanted to make their intention clear and specific, and therefore, brought another Notification No. 22 of 1982, and give it retrospective effect. This the Parliament had the power to do and there is no question of exercise of any judicial power by the Parliament. What the Parliament has done is to clarify its intention in providing for the exemption to cottage' units under Notification No. 99 of 1980 and take away the basis for the judgment of the court and thus neutralise the decision. That the Parliament has the power to neutralise the judgment by taking away the basis of the judgment by changing the law retrospectively has been laid down by the Supreme Court in a series of cases, one of them being *T. R. Rajindra Nath v. State of U.P.* : AIR 1973 SC405 . The Supreme Court has pointed out time and

again in several cases the distinction between encroachment on judicial power and nullifying the effect of judicial decision by changing the law retrospectively. That the validation of executive orders is subsidiary or ancillary to the legislative power has been held in one of the earliest cases of the Federal Court in United Provinces v. Atiqa Begum . On the facts of this case the decision of the Supreme Court neither in D. J. Bahadur's case : (1981)ILLJ1SC , nor in Nachane's case : (1982)ILLJ110SC will apply here. We have to, therefore, hold that Section 52 of the Finance Act of 1982 is well within the legislative competence of the Parliament.

21. Then the further question is whether Section 52 of the Finance Act, 1982, which adopted and applied Notification No. 22 of 1982 with retrospective effect violates article 14, 19(1)(g) and 300A of the Constitution as contended by the petitioners. It is urged by their learned counsel that retrospective legislation should be taken to be per se arbitrary and that in such a case the onus is on the State to show that it is not arbitrary. It is side that in so far as the exemption Notification No. 22 of 1982 lays down retrospectively a new yardstick based on the output as a condition for exemption which is now impossible of compliance, it is violative of article 19(1)(g) of the Constitution. It is also said that the imposition of a condition based on the output for getting the exemption under the notification is an unreasonable restriction on the petitioner's right to carry on their trade. In C. J. Patel's case : AIR 1962 SC1006 the Supreme Court has clearly laid down that retrospective levy of excise duty was valid and did not contravene article 19(1)(f). In Rai Ramkrishna's case : [1963]50ITR171(SC) the Supreme Court has observed that merely because the law is made retrospectively, it cannot be said to be unreasonable. The Supreme Court has also held in British India Corporation v. Collector of Central Excise 1978 E.L.T. (. 307)], : 1978(2)ELT307(SC) that classification of small and big manufacturers for exemption is a valid one and it does not offend article 14. It is also urged by the learned counsel for the petitioners that even if cottage units could be identified on the basis of output a member of a co-operative society is treated differently as no such limitation based on output is imposed on him. According to the petitioners, under Notification No. 99 of 1980 a production limit has not taken as the basis for exemption uniformly for all the three categories (1) the units certified by KVIC (2) the units within the co-operative sector and (3) units who held the old certificates issued by KVIC. Thus

Notification No. 99 of 1980 cannot be said to fix for all cases an output as the basis for exemption. In so far as Notification No. 22 of 1982 imposes a condition regarding output as the basis for exemption for the first time, it is unreasonable, arbitrary and violative of article 14 of the Constitution. Even assuming for the sake of argument that Notification No. 99 of 1980 did not provide a ceiling on the output for claiming the exemption thereunder and only under Notification No. 22 of 1982 the exemption was based on the basis of the output, still we are unable to accept the contention of the learned counsel for the petitioners that introduction of a different basis for exemption will make the notification an arbitrary one. While exercising the power of exemption, the State can adopt any reasonable basis and the adoption of output as the basis for exemption cannot be said to be an unreasonable or arbitrary basis. According to the petitioners though normally it is open to the State to adopt output as the basis for exemption, in this case the adoption of that basis for purposes of exemption has been made with retrospective effect for a post period when persons like the petitioners had no opportunity to adjust their production or output suitably for claiming exemption, it becomes arbitrary. In this case we are not concerned with a law imposing a tax burden for the first time so that the petitioners may say that an imposition has been made retrospectively which they could not have anticipated or contemplated or which they could not pass on to consumers. There is already a charge under Section 3 of the Central Excises and Salt Act and it is only the question of exemption from that charge either in whole or in part. The State intended to benefit the cottage sector by granting exemption under Notification No. 99 of 1980. This has been held to apply to all non-mechanised sectors. Hence the legislature has brought about a notification fixing certain norms for the grant of exemption based on the output with retrospective effect from the date when the original Notification No. 99 of 1980 came into force. Thus Notification No. 22 of 1982 gives benefit to all those whose output has not exceeded the limit prescribed therein. The fact that the petitioners, if they had known about the contemplated maximum output prescribed under Notification No. 22 of 1982, they would have reduced their production to that level so as to claim the exemption, and therefore, the retrospective adoption of the output basis has caused them hardship. Merely because by retrospective application of Notification No. 22 of 1982 the petitioners are not able to adjust their

output for the purpose of claiming the exemption, the exemption cannot be said to be either arbitrary or unreasonable. We are not able to agree with the learned counsel for the petitioners that the State did not intend earlier to adopt output as the basis for the exemption. As a matter of fact in all the earlier notifications for exemption the output appears to have been taken as the basis. It is no doubt true this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99 held that as Notification No. 99 of 1980 did not fix the output as the basis for exemption the KVIC had no jurisdiction to take the output as the basis for the grant of certificate as such a power has not been conferred on it by the legislature or under the concerned notification. But the intention behind the notification was no benefit the cottage industries. Though there is no definition of 'cottage industry' either in the Central Excises and Salt Act or in the notification, it has to be understood in its natural or popular sense. As has been held in *District Co-operative Federation Ltd. v. Commissioner of Income-tax* : [1973]87ITR639(All) and *District Co-operative Development Federation Ltd. v. Commissioner of Income-tax* : [1973]88ITR330(All) the expression 'cottage industry' normally connotes an industrial activity of which a well-recognised feature is that it is commonly located in the cottages or homes of the artisans and it is carried out on a small-scale with a small amount of capital and a small number of workers and has a limited turnover. Thus in common parlance a cottage industry is to be taken as a unit employing a small amount of capital and a small number of workers and has a small turnover when compared with other non-mechanised units. The intention behind Notification No. 99 of 1980 is to confer benefit on small or tiny match manufacturing units and not to confer the benefits on all non-mechanised units. It cannot be denied that cottage units can be identified on the basis of output which has been adopted in Notification No. 22 of 1982.

22. Then it is urged by the learned counsel for the petitioners that the retrospective application of exemption Notification No. 22 of 1982 based on output is only a device to withhold the refund of the amounts due to the petitioners, and therefore, the retrospective operation of Notification No. 22 of 1982 should be taken to be for an oblique purpose and as a stratagem to defeat the rights of the petitioners to get refund. It is side that there is no question of any unjust enrichment on the part of the petitioners in seeking a refund of the excess excise duty paid as has been

wrongly assumed by the State. We do not see how we accept the said contention. The purpose of Validation Acts is always to make valid assessments which have been held to be invalid by the courts. Therefore, the object of bringing in a Validation Act is to cure the defect pointed out by the court and to validate the levies already made. Merely because the purpose by Validation Acts is to validate levies which are held to be invalid, those Acts cannot be attacked as having been brought in with an oblique purpose to enable the Government to retain illegal levies. Therefore, merely because the object of enacting Section 52 is to enable the Government to withhold the levies already made, it cannot be struck down as having been enacted with an oblique purpose of retaining the levies which have been held to be invalid. It is true, no doubt, the petitioners have been held entitled to the benefits of exemption under Notification No. 99 of 1980 which according to the respondents was not intended to confer benefits on persons other than cottage units. Since the intention attributed to the exemption notification by the court was contrary to the intention of the State behind the issue of said exemption notification, it is open to the Government to bring in a fresh notification fully effectuating its intention and validating the levies earlier made. We are, therefore, of the view that Section 52 of the Finance Act of 1982 adopting and giving retrospective effect to Notification No. 22 of 1982 cannot be taken as having been made with an oblique purpose.

23. The next contention of the learned counsel for the petitioners is that in so far as Section 52 had applied Notification No. 22 of 1982 with retrospective effect which has got the effect of extinguishing the rights acquired by the petitioners under the judgment of this Court in *Devi Match Factory v. Superintendent of Central Excise, Sattur* 1983 ELT 99, it is invalid for the reason that it has not provided for compensation. In support of this submission, reliance is placed on the judgment of the Supreme Court in *Pathak's case* : (1978)ILLJ406SC , wherein the Supreme Court struck down the Life Insurance Corporation (Modification of Settlement) Act, 1976, on the ground that it is violative of article 31(2) of the Constitution. But we are of the view that the said decision should be distinguished on facts. There a debt had accrued due by the Life Insurance Corporation to the employees as per the terms of settlement which is an enforceable contract between the parties and such a debt which has already accrued and became

payable by the Life Insurance Corporation cannot be taken away by a legislation unless a provision for compensation is made. That is not the case here. Here it is in pursuance of the judgment of this Court rendered under a particular view of the notification the levy of excise duty on the petitioners was found to be excessive. There is no question of springing into existence a debt as a result of the judgment. Further the finality of the judgment depends upon the view to be taken on the notification by the appellate court and if the appellate court takes a contrary view, then there is no question of any excess levy of excise duty. In such circumstances, the judgment of this Court cannot by itself create a debt, and therefore, such a right which cannot be equated to a debt cannot be taken to be the property of the petitioner. Therefore Section 52 of the Finance Act of 1982 cannot be said to violate article 300A of the Constitution which has taken the place of article 31 by the 44th Constitution Amendment.

24. Then we come to the attack based on the alleged violation of article 19(1)(g) in so far as the exemption Notification No. 22 of 1982 lays down retrospectively a new yardstick which is impossible of compliance. According to the petitioners the new yardstick amounts to an unreasonable restriction on the petitioners' right to carry on trade. We do not see how an exemption notification such as the Notification No. 22 of 1982 fixing a maximum output for getting the benefit of exemption can be taken to be an unreasonable restriction on the petitioners' right to carry out their trade. The grant of exemption is in the exclusive discretion of the Government, and merely because the Government has chosen to extend the benefit of exemption only to the category or cottage units whose output is less than a particular limit, it does not mean that it imposes a restriction on production. The petitioners are always at liberty to produce whatever quantity they want and merely because the benefit of exemption will not be available to them if their production exceeds a particular limit, they cannot challenge the notification fixing the maximum limit for getting the benefit of exemption as an unreasonable restriction on the petitioners' right to carry on business.

25. Then it is said that the new yardstick of 150 million matches in Notification No. 22 (of 1982) is arbitrary and amounts to a discrimination between those who do not have the benefit of Notification No. 99 of 1980 and those who got the benefit of

the judgment of this Court in *Devi Match Factory v. Superintendent of Central Excise*, Sattur 1983 ELT 99. According to the petitioners, though the basis of the judgment has been taken away by Section 52 of the Finance Act of 1982 for some, the basis of the judgment is allowed to be operative in respect of others. We do not see any merit in this contention. Fixation of 150 million matches as the maximum output for getting the benefit of exemption cannot be said to be arbitrary. Once the power of the legislature or of the Government acting under Rule 8 to exempt a certain category from payment of excise duty is exercised, then necessarily some classification has to be made to distinguish between the persons to whom the exemption is to be granted and persons to whom the exemption is not intended. In this case the Government has chosen to fix 150 million matches as the maximum limit of output for availing of the exemption. Such a classification cannot be attacked by the petitioners on the ground that some other limit which will be beneficial to them should have been prescribed. It is well-established that the legislature has got undoubted power to make a reasonable classification having regard to the object of the legislation, and in making such a classification, the legislature has got a wider discretion in the field of taxation. The legislature, with a view to encourage and benefit the tiny match manufacturing units who are producing less than 150 million matches, brought in and applied Notification No. 22 of 1982 with retrospective effect. The legislative intention is clear that the benefit of exemption will be confined only to persons producing less than 150 million matches and that the exemption will not be available to those producing more than 150 million matches. It may be possible to think of a different ceiling limit. But that is not a ground for questioning the wisdom and discretion of the legislature which has chosen to confer the benefit to persons producing less than 150 million matches. We cannot, therefore, hold that the yardstick, even if it is taken to be introduced for the first time in Notification No. 22 of 1982, is arbitrary as contended by the petitioners.

26. Then it is contended by the learned counsel for the petitioners that the exemption notification can operate only prospectively and not retrospectively and that in this case so far as the exemption notification has been applied with retrospective effect, arbitrariness should be presumed, unless the Government discharged their onus of showing that it is not arbitrary and that the date fixed for

retrospective operation is also an arbitrary date. Here again we are not in a position to accept the above contention put forward by a learned counsel for the petitioners. In this case, there has been an exemption Notification No. 99 of 1980 which was operative from 19th June, 1980. Since that notification was understood in a particular manner which has resulted in that notification being applied to persons who are not intended by the Government to get the benefit of it, the Government has chosen to adopt and apply Notification No. 22 of 1982 for the same period. Therefore, this is the substitution of a notification in the place of an earlier notification. Hence it cannot be said that the exemption notification has been passed for the first time for the period from 19th June, 1980. Merely because the petitioners will not be in a position to adjust their output now to claim the benefit of Notification No. 22 of 1982, because of its retrospectivity, the notification cannot be said to be either arbitrary or bad. So long as the exemption notification does not impose any restriction on the petitioners' quantum of production for any period, the exemption notification cannot be attacked as taking away any right of the petitioners. We are of the view that the petitioners' contention that in a retrospective legislation there is a presumption of arbitrariness and it is for the revenue to establish to the satisfaction of the court that it is not arbitrary is also equally unsustainable. Reliance is placed on the decision of a Division Bench of this Court in *S. P. Temple v. Manickam Chettiar* : (1977)1MLJ425 in support of the contentions that an exemption can only be prospective and not retrospective. However, we find that the said decision cannot support the petitioners' stand. In that case Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, was held to enable the government to exercise the power of exemption only prospectively. After referring to the language used in Section 29 of the said Act the court expressed the view that the power granted in that section is exercisable by the Government only prospectively, that if any notification is in terms issued with retrospective effect, that notification to that extent would be ultra vires Section 29 and that any notification issued thereunder if its language is natural, it must be construed only as operating prospectively for only by such a construction can the notification be held to be ultra vires the enabling provision of Section 29 and if the language of the notification cannot be read so as to give it retrospective effect, since to do so would be to impute to the Government a power to grant exemption

with retrospective effect, which the Government does not possess on a true construction of Section 29. On the basis of this decision it could be said that the power of exemption under Rule 8 of the Central Excise Rules can only be prospective and not retrospective, for Rule 8 can be understood as only conferring power on the Government to issue an exemption notification prospectively. But in this case, though Notification No. 22 of 1982 was issued originally by the Government under Rule 8, the legislature has adopted that notification as its own in exercise of its legislative function and has given a retrospective operation for the notification. It has already been held that the Parliament has got the requisite power to make a law regarding exemption and to apply the law with retrospective effect. The question here is not whether the exemption already made is given retrospective effect or not. But the question is whether the legislature has the power to pass a law with retrospective effect. Here it is not the case of exemption notification made by the Government under Rule 8 being given retrospective effect of its own terms. It is a case of that notification having become a part of the legislation and the same being given retrospective operation by the legislature. It has already been held that the criteria laid down in Notification No. 22 of 1982 are not arbitrary, and it does not impose an unreasonable restriction on the right of the petitioners to carry on business. Therefore, it is not possible to assume or presume from the mere retrospective operation of the notification either arbitrariness or hardship.

27. It is then said that because of the retrospective operation of Notification No. 22 of 1982 imposing conditions which cannot be complied with by the petitioner, it should be construed as confiscatory in nature. We do not see how the mere retrospective operation of a law will amount to a confiscatory legislation. The petitioners have paid excise duty as per the rates provided in the Act which stood reduced by Notification No. 98 of 1980. Thus the payment of excise duty has been as per the statutory provisions as modified by the said notification. Merely because the petitioners were not in a position to satisfy the conditions set out in Notification No. 22 of 1982 for getting an additional exemption which has been applied retrospectively, it cannot be said that it has resulted in confiscation of any of the petitioners' property rights. The right to have the production adjusted for getting the benefit of exemption cannot be said to be a property in any sense. This contention

should, therefore, be rejected.

28. Next it is contended that an exemption notification can confer only benefit but it cannot, in any event, be used as a taxing measure by giving retrospective effect as has been done in this case. According to the petitioners, the retrospective operation of Notification No. 22 of 1982 is intended not to exempt but to restore a charge which has been held to be invalid by the Court. It is said that the exemption notification in this case is intended to benefit the Government by withholding the refund due to the petitioners based on the basis of the judgment rendered by this Court earlier. As already stated, by a retrospective application of Notification No. 22 of 1982 the Government has made its intention clear that the exemption is intended only to tiny sector and not to all the manufactures within the non-mechanised sector. The notification had been given retrospective effect to the see that only the tiny sector whose maximum output is less than 150 million matches alone gets the benefit of exemption from the date of Notification No. 99 of 1980 and persons in the other non-mechanised sectors do not get the benefit of this exemption, that might have resulted in the petitioners not getting the benefit of exemption and consequently they had lost the right to get the refund on the basis of the judgment of this Court. But on that ground it cannot be said to be a taxing measure. The petitioners' further allegation is that the yardstick provided under Notification No. 22 of 1982 makes a hostile discrimination between persons who get the benefit of the judgment in that the persons manufacturing more than 150 million matches will not be entitled to the benefit and persons manufacturing less than 150 million matches will be entitled to the benefit of the judgment, and therefore this classification is arbitrary. The contention of the learned counsel ignores the basic concept of exemption. If the Government has got the power to exempt, it has to exempt some and deny exemption to others by making a reasonable and rational classification having regard to the object behind the grant of exemption. Merely because some people get the benefit of the exemption and others do not get the exemption, the notification cannot be attacked as making a hostile discrimination violating article 14 of the Constitution. Here, as already stated, since this Court interpreted the exemption Notification No. 99 of 1980 as conferring the benefit to all persons in the non-mechanised sector, which was not intended by the Government while issuing the said notification, the Government

made its intention clear by specifying the necessary criteria in the subsequent exemption notification and applying the same with retrospective effect so as to cover the period which was the subject matter of the judgment. Naturally the retrospective operation which is intended to cure the defect pointed out by this Court in the earlier notification has to make a classification and so long as that classification is found to be reasonable and germane, it is not possible to say that the classification or the yardstick prescribed in the subsequent notification is arbitrary.

29. An additional point has been raised in the following writ petitions :

W.P. Nos. 7439 and 8783 of 1982. 4233, 4332, 4333, 4377, 4378, 4456, 4457, 4458, 3094, 3410 and 3710 of 1983. These petitioners are persons who hold certificates granted by the KVIC certifying that they are bona fide cottage units entitled to the benefit of Notification No. 99 of 1980. The complaint of these petitioners is that as a result of the retrospective application of Notification No. 22 of 1982 they have lost their right of exemption as it is now impossible for them to satisfy the yardstick laid down in the latter notification, that therefore the retrospective application of the notification amounts to confiscation and that in any event, the Government will be estopped by the principle of promissory estoppel from giving retrospective effect to the notification so far as they are concerned. The petitioners proceed on the basis that the right to claim exemption under the earlier notification is a property right and that cannot be taken away by the State by giving the retrospective operation to Notification No. 22 of 1982. The learned counsel for the petitioners refers to the decision of the Supreme Court in Income-tax Commissioner, Calcutta v. B. N. Bhattacharjee : [1979]118ITR461(SC) in support of his submission that the State is also bound by the principle of promissory estoppel not to apply the new notification so far as the petitioners are concerned as it will have the effect of withdrawing the exemption given to them. In that case the Supreme Court has observed that the rule of estoppel is a rule of equity which forbids truth being pleaded or representation, on which faith, another has acted to his detriment, being retracted and even extending the rule into the new fangled empire of promissory estoppel, it cannot go beyond the limits contemplated by Lord Denning in the High Trees case [1947] 1 KB 130 : 'We,

therefore, recommend that a promise which the promisor knows, or reasonably should know, will be relied upon by the promisee, shall be enforceable if the promisee has altered his position to his detriment in reliance on the promise.'

30. At the same time, a caution has been expressed that the principle of promissory estoppel cannot be availed of against a statute because public policy animating a statutory provision may then become the casualty. However, we are not inclined to accept the contention of the learned counsel for the petitioners that the principle of promissory estoppel applies to the petitioners' case. It is no doubt true that Notification No. 99 of 1980 did not, on the face of it, provide any optimum limit of output for claiming the exemption and the petitioners, by virtue of their having been granted a certificate by the KVIC, have become entitled to the benefit of the exemption notification. Once the legislature is held to have the power to legislate an exemption with retrospective effect, the legislative power cannot be questioned on the basis that the Government is bound by the plea of promissory estoppel. Even assuming that the plea of promissory estoppel applies to the Government and therefore is bound not to take away the benefit by adopting a different criteria, the legislature is not bound by such a plea of estoppel. As a matter of fact it is not the contention of the petitioners that the legislature is bound by the plea of promissory estoppel. Therefore, we have to hold that Notification No. 22 of 1982 which has been brought in by the legislature with retrospective effect by Section 52 of the Finance Act of 1982 cannot be said to be bad. As a matter of fact in *M.P. Sugar Mills v. State of U.P.* : [1979]118ITR326(SC) it has clearly been held by the Supreme Court that the plea of estoppel will not apply to the legislature and that the principle of estoppel will not apply to the exercise of power under a statute. Thus the additional point urged by the petitioners in the above writ petitions is also to be rejected.

31. In view of the fact that all the contentions urged by the petitioners have been rejected, all the writ petitions are dismissed. There will, however, be no order as to costs.

32. The learned counsel for the petitioners makes an oral application for leave to appeal to the Supreme Court against the judgment just now pronounced. But

having regard to the fact that our judgment is mainly and substantially based on certain decisions of the Supreme Court, we do not think that this is a fit case for the grant of leave. Therefore the oral application for leave is rejected.

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