CIVIL MISCELLANEOUS

Before R. S. Narula and S. S. Sandhawalia, JJ.

SHANKER IRON AND STEEL ROLLING MILLS,—*Petitioner*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 703 of 1963.

July 8, 1968

Constitution of India (1950)—*Article* 14—*Guarantee of equal protection of laws—Nature and scope of—Taxation law—When would be in violation of Article* 14—*Central Excise Rules* (1944)—*Rule* 178—*Licence under—Benefit of—Whether can be transferred.*

Held, that the guarantee of equal protection of laws and equality before the law does not prohibit reasonable classification. It only forbids class legislation. The only classification which amounts in law to invidious discrimination is the one between the object of which and that of the legislation in question there is no rational relationship or nexus. Subject to the aforesaid condition, valid classification of persons or objects can be made by a law-making authority on any approved basis, e.g., occupation, standing, age, locality, point of time, etc. In other words the basis of classification may be historical, geographical, in view of difference in time or locality, difference in the nature, the trade, calling or occupation of persons sought to be affected by the legislation, difference in the position or nature of different business concerns, difference in the category of employers or employees, difference in length or nature of service, difference in the nature and incidence of particular rights, and various other basis, which it is impossible to attempt to enumerate exhaustively. (Para 11)

Held, that though a taxation law must also pass the test of Article 14, but in deciding whether such a law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or bodies it will tax and that a statute is not open to attack on the ground that it taxes some persons or bodies and not others. It is only when within the range of its selection the law operates unequally or when classification cannot be justified that the law would be violative of Article 14. (Para 15)

Held, that in view of the clear statutory provisions contained in sub-rule (3) of Rule 178 of Central Excise Rules (1944), a transferee from an original manufacturing licensee cannot be deemed to be a licensee even for the remaining period of the year in respect of which original manufacturer had taken the

licence. Under sub-rule (2) of Rule 178 of the Rules, a licence granted to the original manufacturer is personal to him and the benefits of the same cannot be transferred by him to the transferee. (Para 9)

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 5th January, 1967, *for decision of an important question of law involved in this case a larger Bench. The Division Bench consisting of the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice S. S. Sandhawalia decided the case finally on 8th of July,* 1968.

Petition under Article 226 *and* 227 *of the Constitution of India, praying that a writ in the nature of* mandamus *or any other appropriate writ, order or direction be issued to the respondents to exempt the petitioner from payment of the excise duty in question since his case falls within Notification, dated* 13*th June,* 1962, *and* 10*th November,* 1962 *and further praying that the Central Government be restrained from levying any excise duty on him if the petitioner complies with the terms of the Notification mentioned above irrespective of the fact that he has purchased the Shanker Iron and Steel-Rolling Mills, Amloh, along with other partners from the previous owner on* 27*th July,* 1962.

H. L. SIBAL, SENIOR ADVOCATE WITH S. C. SIBAL, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL (HARYANA), S. S. DEWAN, ADVOCATE WITH HIM, for the Respondents.

JUDGMENT

The Judgment of the Court was delivered by:

NARULA, J.—The constitutionality of the last proviso to the gazette notification of the Central Government; dated June 13; 1962 (Annexure 'A-1') as amended by notification, dated November 10, 1962 (Annexure 'E'), under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 (hereinafter referred to as the 1944 Rules) providing that the exemption from liability to pay excise duty under the Central Excises and Salt Act (1 of 1944) (hereinfater called the Act) in respect of re-rollable scrap of iron and steel covered by item No. 26AA of the First Schedule to the Act, shall not be available for the benefit of persons who began to manufacture the relevant product on or after the 13th of June, 1962, has been called in question in this petition under Articles 226 and 227 of the Constitution of India, on the ground that the said exception to the exemption suffers from invidious discrimination and amounts to an unreasonable restriction on the fundamental right of the petitioners guaranteed to them under

Article 19(1) (f) of the Constitution. The relevant facts leading to the filing of this petition which are not in dispute are set out herein below.

(2) One Dev Raj was carrying on business of re-rolling used re-rollable scrap for the manufacture of iron bars, etc., for quite some time prior to April, 1962, under the name and style of Shanker Iron and Steel Rolling Mills at Amloh in district Patiala. The re-rolled product was for the first time subjected to excise duty under the Act with effect from April 24, 1962. The levy of the excise duty in question made it uneconomical for the smaller units of re-rolling mills to compete with larger units. A representation on behalf of such manufacturers was, therefore, made to the Central Government by the Northern India Steel Rolling Mills Association. Dev Raj had in the meantime made an application for a licence under section 6 of the Act on May 3, 1962 (Annexure 'R-1'). The representation of the above-mentioned association was favourably considered by the Government and notification, dated June 13, 1962 (Annexure 'A-1'), was issued by the Central Government exempting with effect from the 24th of April, 1962 (with effect from the date of imposition of the excise duty on the product in question) iron or steel products in dispute from the levy of excise duty on the fulfilment of certain specified conditions, viz.,—

(a) that the re-rolling product had been manufactured out of re-rollable scrap on which appropriate amount of excise duty had already been paid;

(b) the person claiming the exemption under the notification must be only such who did not use more than one metric ton of billets in any calendar month or more than ten metric tons of billets in a year for re-rolling; and

(c) provided that the manufacturer of the product in question had applied for a licence under the Act before the 13th of June, 1962.

(3) Out of the three conditions precedent for obtaining the requisite exemption mentioned in the notification of June 13, 1962, the one which is relevant for the purposes of this case is only the last one contained in the second proviso to the notification to the effect that any manufacturer who had applied for licence on or after the 13th of June, 1962, would not be eligible for the exemption. A copy of the notification, dated June 13, 1962, was forwarded by the

Government of India to the Northern India Steel Rolling Mills Association with the Government's letter, dated July 5, 1962 (Annexure 'A'). In response to the association's representation Dev Raj applied for the exemption and his application was allowed on July 24, 1962. The grant of the exemption was communicated to the Shanker Iron and Steel Rolling Mills (then owned exclusively by Dev Raj) in Government's letter, dated July 26, 1962 (Annexure 'B'). It was stated in the letter that the exemption would continue to operate till the concern fulfilled the terms and conditions undertaken in the declaration filed on July 21, 1962, or till further orders. It is not disputed that the declaration, dated July 21, 1962, had been filed by Dev Raj. Before, however, the communication, dated July 26, 1962, conveying the exemption could reach the addressee, Dev Raj sold away his business concern in question along with the goodwill and the firm name, to Ganga Deen and others by a conveyance deed, dated July 27, 1962. Letter Annexure 'B' which had been addressed to the firm name was received by Ganga Deen through whom the present petition has been filed on July 28, 1963. As the 1944 Rules provided that on the transfer of a manufacturing unit, the licence granted to the transferer comes to an end, Ganga Deen and others made application, dated October 3, 1962, (Annexure 'C' corresponding to Annexure 'R-3'), to the Superintendent, Central Excises, Mandi Gobindgarh, intimating the fact of their having purchased the goodwill as well as the proprietary rights of the petitioner concern and praying for the issue of the requisite licence for the remaining period of 1962 without payment of fresh licence fee as a licence for that period had already been issued to Dev Raj. In the meantime a representation (Annexure 'D') had been made on behalf of the affected manufacturing units for extending the date fixed in the last proviso to the notification of June 13, 1962, as some small units had not made an application for the requisite licence before the 13th of June, 1962, on account of the very small period of time which elapsed between the 24th of April and the 13th of June, 1962. It is on a consideration of the said representation that the impugned notification, dated November 10, 1962 (Annexure 'E') was issued in which for the original second proviso contained in the notification of June 13, 1962, the following was substituted:—

> "Provided further that the products manufactured by a person applying for licence on or after the 13th June, 1962, shall not be eligible for the exemption unless a penalty not exceeding an amount equal to the duty that would have been payable by him on the products manufactured

during the period beginning with the 13th June, 1962, and ending with the date of application, is paid by him to the Collector concerned:

Provided also that the products manufactured by a person applying for licence on or after the 1st December, 1962, shall not be eligible for exemption:

Provided also that nothing contained herein shall apply to the products manufactured by a person who began to manufacture such products on or after the 13th June, 1962.".

(4) It is not disputed before us that the only ground on which the claim for the requisite exemption was refused to the petitioners was that they fell within the mischief of the last proviso reproduced above, i.e., on the ground that nothing contained in the notification granting the exemption could apply to the products manufactured by Ganga Deen and others who now owned the Shanker Iron and Steel Rolling Mills and who had begun to manufacture the products in question only on October 8, 1962, after having purchased the manufacturing unit by sale deed, dated July 27, 1962. It is further claimed on behalf of the petitioners that they submitted another application, dated November 30, 1962 (Annexure 'F'), for a new licence under the Act for the year ending December 31, 1962. During the pendency of the application of the petitioners, they were allowed by the Government (*vide* Annexure 'G'), to clear their goods on payment of excise duty or to execute a bond in the prescribed form. The petitioners adopted the latter course. Ultimately on April 3, 1963, the petitioners were informed (Annexure 'H') that their claim for exemption had been rejected and that they should clear their manufactured goods under the Excise Rules. Their representation to the Central Government was finally rejected by order, dated May 4, 1963 (Annexure 'R-7'). The said order of the Central Government was couched in the following language:—

"The last proviso of notification No. 131/62, dated the 13th June, 1962, as amended by notification No. 192/62, dated the 10th November, 1962, states that nothing contained therein shall apply to the products manufactured by a person who began to manufacture such products on or after the 13th June, 1962. In the present case the transferee started the production of products on the 8th October, 1962, and as

such does not satisfy the conditions and is not entitled for the exemption."

(5) Before the Central Government's order could be communicated to the petitioners, they had already filed on the same day, i.e., May 4, 1963, this petition praying for a suitable writ, order or direction being issued to the respondents, (i) Union of India, (ii) Deputy Superintendent, Central Excise, Gobindgarh, and (iii) Assistant Collector, Central Excise, Chandigarh to exempt the petitioners from payment of the excise duty in question and to restrain the respondents from levying the same on them. The said relief was claimed on two main grounds, viz., (a) that the petitioners had qualified themselves for the exemption in terms of the Central Government's notifications, dated June 13, 1962, and November 10, 1962, and (b) the discrimination against the petitioners was hit by Article 14 of the Constitution. The petition was admitted by Falshaw, C.J., (as he then was) and Jindra Lal, J., on May 6, 1963.

(6) The common case of all the three respondents as disclosed in the written statement, dated September 25, 1963, is that the exemption in question had been granted on July 24, 1962 (intimation despatched on July 26, 1962), to Dev Raj, and that the mere fact that the said communication, dated July 26, 1962, was addressed to the Mills does not entitle the new proprietors to claim that the exemption had been granted to the Mills or to them as owners by purchase. On the legal question, the impugned order of the Government has been supported by the respondents on the basis of the last proviso contained in the notification, dated November 10, 1962, and it has been stated that in view of the said proviso the new proprietors of the Mills, who commenced the manufacture of the dutiable goods on their own showing from October 8, 1962, or in any case from July 27, 1962, as is being now claimed in the writ petition, were not entitled to earn exemption as they were hit by the said proviso, which absolutely took away the right to claim exemption from persons who commenced manufacture of the products in dispute after the 13th of June, 1962. It has been added that no exemption at all has been granted under the notification in question to any person who was not manufacturing the dutiable goods in question prior to June 13, 1962. In reply to the attack under Article 14 of the Constitution, the respondents have averred that the pre-June 13, 1962, manufacturers constitute a class by themselves and the exemption from the excise duty in question subject to the conditions contained in the two relevant notifications has been granted to all the members of that

class in order to protect their very existence in the trade and to enable them to stand in competition with large units and as a result to protect the interest of the workers in those small units who it was apprehended would have been thrown out of employment in case the imposition of duty in question was insisted upon. The exemption can be availed of only by such of the manufacturers as answer to the description mentioned in the notifications. Exemption, according to the return of the respondents, was granted in favour of the members of the above-said class because it was considered that the small units should be allowed to exist in the national interest and in so far as it was thought that the products manufactured by them were necessary to meet the requirements of the country. It was added that the position of the small-scale units who had already come into existence before the introduction of the duty stood on a different footing from that of those who came into the business later, and, therefore, with open eyes. The case of the respondents is that while it was not the intention of the Government to unduly disturb the economy of the manufacturers owning small units and possibly to force their closure, it was considered undesirable on the ground of public policy to encourage further fragmentation of existing units by extending the benefit of such exemption to all new-comers as that would have in fact amounted to discrimination. The classification contained in the impugned proviso has been justified as reasonable on the above-mentioned basis. The return of the respondents continues to state that no person or class of persons can claim exemption as a matter of right and inasmuch as the petitioners purchased the Mills after the issue of the notification, they were admittedly not the manufacturers prior to the crucial date, i.e., prior to June 13, 1962. An objection of a somewhat preliminary nature has been taken in paragraph 13 of the return to the effect that the petitioners have not availed of remedies by way of appeal and revision provided for by the Act.

(7) When this petition came up before Shamsher Bahadur, J., on January 5, 1967, the learned Judge in a detailed order of reference observed that the petitioners came within the mischief of the impugned proviso but made the reference as the issue of alleged discrimination on which much could be said for both sides had been raised in the case and because there was likely to be a Letters Patent Appeal against the decision of the Single Judge in either eventuality. It is in pursuance of the said order of the learned Single Judge that this case was come up for disposal before us.

(8) In view of the clear language of the second proviso contained in the notification, dated November 10, 1962 (already reproduced

in an earlier part of this judgment), and in view of the observations of Shamsher Bahadur, J., in this respect in his order of reference Mr. Hira Lal Sibal, the learned counsel for the petitioners, did not seriously press the first ground to the effect that the word "person" in the second proviso includes a transferee of the original manufacturer. Even otherwise, there is no force in the said contention. Section 3 of the Act provides that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods (subject to certain exceptions) which are produced or manufactured in India at the rates set forth in the First Schedule. Section 6 states, *inter alia,* that the Central Government may by notification in the official gazette provide that from such date as may be specified in the notification, no person shall, except under the authority and in accordance with the terms and conditions of a licence granted under the Act, engage in the production or manufacture of any specified goods included in the First Schedule. It is the common case of both sides that the description of the product in question is set out in the First Schedule to the Act and that the relevant notification in respect thereof was issued by the Central Government under section 6 imposing the restriction under that provision with effect from April 24, 1962. Section 37 of the Act authorises the Central Government to make rules for carrying into effect the purposes of the Act. In exercise of the power conferred by the said section, the Central Government framed the 1944 Rules. Rule 8 of the said Rules authorises the Central Government to exempt, subject to such conditions as may be specified in the notification in the official gazette, any excisable goods from the whole or any part of the duty leviable on such goods. Chapter VIII of the 1944 Rules commencing with rule 174 and ending with rule 181A deals with licensing under section 6 of the Act. The purview of rule 174 provides that the manufacturers of excisable goods except salt shall be required to take out a licence and shall not conduct their business otherwise than by the authority and subject to the terms and conditions of a licence granted by a duly authorised officer in the proper form. Rule 175 contains the procedure for obtaining the requisite licence. Under rule 176, a form of application for a licence has been prescribed. The rule further directs that every application for a licence shall be submitted so as to reach the licensing authority at least one month before the commencement of the year for which it is required and shall be accompanied by the prescribed fee. Rule 177 is not relevant for our purposes. Sub-rule (1) of rule 178 states, *inter alia,* that every licence granted or renewed under the 1944 Rules shall be for a period not exceeding one year

and shall expire on the date specified therein. Sub-rules (2) to (6) of rule 178 are quoted below verbatim:—

"(2) Every licence shall be deemed to have been granted or renewed personally to the licensee and no licence shall be sold or transferred.

(3) Where a licensee transfers his business to another person, the transferee shall obtain a fresh licence under these Rules but it shall be granted free of fee for the residue of the period covered by the original licence.

(3A) Where a licensee dies, the original licence shall be deemed to have been terminated and if more than one person claiming to be the heir to the deceased, apply for the grant of a fresh licence for the same premises, the licence shall be granted to the person who in the opinion of the licensing authority, is in actual possession of the said premises, provided that the grant of the licence to such person shall not prejudice the rights of any other person over the licensed business or the licensed premises to which such person may be lawfully entitled.

(4) If the holder of a licence enters into partnership in regard to the business covered by the licence he shall report the fact to the licensing authority within thirty days of his entering into such partnership and shall get his licence suitably amended. Where a partnership is entered into, the partner as well as the original holder of the licence shall be bound by the conditions of that licence.

(5) If a partnership is dissolved every person who was a partner shall send a report of the dissolution to the licensing authority within ten days of such dissolution.

(6) If during the currency of a licence the licensee desires to transfer his business to new premises, he shall intimate his intention to the licensing authority at least fifteen days in advance, specifying the address of the new premises, and get his licence suitably amended. The licence shall, thereupon, hold good in respect of the new premises.".

(9) In view of the clear statutory provisions contained in sub-rule (3) of rule 178, it cannot be successfully argued on behalf of the petitioners that a transferee from an original manufacturing licensee could be deemed to be a licensee even for the remaining period of the year in respect of which the original manufacturer had taken out a licence. Under sub-rule (2) of rule 178, a licence granted to Dev Raj in the instant case was personal to himself, and benefits of the same could not be transferred by him to Ganga Deen and others, even if Dev Raj intended to do so. Ganga Deen and others, transferees from Dev Raj, cannot, therefore, claim that they should be deemed to be persons who had been manufacturing the dutiable goods in qeustion prior to June 13, 1962, though in fact they purchased the manufacturing concern only in the end of July, 1962.

(10) It is the second contention on which lengthy and serious arguments were addressed by Mr. Sibal. He argued that on the construction which the respondents want to put on the impugned proviso contained in the notification, dated November 10, 1962, the proviso becomes unconstitutional, as the classification contained therein has no reasonable nexus with the objects of the grant of the exemption in question. According to the written statement of the respondents, submitted Mr. Sibal, the object of the notification in question was to enable the small manufacturing units to continue in existence to avoid their labour being thrown on the road and to permit in the national interest the production of the re-rolled iron bars, etc. Learned counsel submitted that it was not necessary for the fulfilment of any one of the abovesaid objects that new manufacturing units which come into existence or which merely change hands after 13th June, 1962, should be deprived of the exemption from the payment of excise duty. He first took up the analogy of the death of the original owner and the possibility of the son being deprived of the exemption. He then took up the example of a partnership concern wherein some partners may be changed. As already indicated different rules apply to the case of death and to the case of partnership (*vide* various relevant clauses of rule 178 of the 1944 Rules). So far as transfer is concerned, the situation has to be viewed differently. No body can claim exemption from liability to pay a tax or an excise duty as a matter of right. It is for the State to grant exemption in suitable cases to any particular class for cogent reasons. There is no question of any equality in the matter of a tax or in the matter of grant of exemption from liability to pay a tax. The object of granting the exemption in the instant case was to protect the smaller units of the existing industries against

their being forced to be closed down on account of the additional liability which the owners of those industrial units could not have envisaged at the time of starting their business. There could be no such justification for an exemption in case of persons who either instal a new unit or purchase an existing one with the full knowledge of excise duty being leviable on persons who were not manufacturing the product in question prior to the 13th of June, 1962. There is great force in the argument of Mr. C. D. Dewan, the learned Deputy Advocate-General for the State of Haryana, who appears for the respondents that the Government could even have said that the exemption would not be granted to persons who commenced the manufacture after the 24th of April, 1962, i.e., the date on which the duty was levied on the article in question, and that the mere fact that the Government allowed even those people who had commenced the manufacture later on up to the 13th of June, 1962, should not invalidate the notifications. Once it is seen that the object of granting the exemption was to benefit only those persons who were already manufacturing the article prior to June 13, 1962, it is obvious that the impugned proviso has a direct nexus with the object of the notifications. Mr. Sibal is not quite correct in contending that the Government has taken away from the transferees the licence which had been granted to the transferor. The licence granted to Dev Raj was personal to him and came to an end by operation of rule 178 immediately when he transferred the manufacturing units. The vires of rule 178 have not been challenged by Mr. Sibal.

(11) The guarantee of equal protection of laws and equality before the law does not prohibit reasonable classification. It only forbids class legislation. The only classification which amounts in law to invidious discrimination is the one between the object of which and that of the legislation in question there is no rational relationship or nexus. Subject to the aforesaid condition, valid classification of persons or objects can be made by a law-making authority on any approved basis, e.g., occupation, standing, age, locality, point of time, etc. In other words the basis of classification may be historical, geographical, in view of difference in time or locality, difference in the nature, the trade, calling or occupation of persons sought to be affected by the legislation, difference in the position or nature of different business concerns, difference in the category of employers or employees, difference in length or nature of service, difference in the nature and incidence of particular rights, and various other basis, which it is impossible to attempt to enumerate exhaustively.

(12) The basis of the classification contained in the impugned proviso is in point of time. The validity of such a classification, would in my opinion, depend on whether the date fixed for the impugned piece of legislation which acts as the dividing line between two sets of persons is or is not related to the objects of the legislation. If a haphazard date is fixed for which no justication can be given and which has no relationship with the objects of the legislation, it may possibly be open to an attack under Article 14 of the Constitution. As already stated, however, the basis on which the dividing line contained in the date June 13, 1962, has been fixed in this case, is too obvious to need any detailed discussion. That was the date of the first notification granting the exemption. It was clearly intended that only those persons who were already manufacturing the goods up to that date, on certain conditions be exempted from liability of paying the excise duty. If this safeguard had not been taken, it would have enabled some of the bigger units to split themselves up into smaller units after June 13, 1962, to obtain benefit of the exemption and thus defeat the very object of the legislation. The classification of pre-June 13, 1962, manufacturers, and post-June 13, 1962, owners of manufacturing units, is in these cirsumstances demonstrably related to the object sought to be achieved by the original notification, i.e., to exempt only those persons who were actually manufacturing the article prior to June 13, 1962. This classification was in fact not introduced for the first time in the notification, dated November 10, 1962. The restriction contained in the impugned proviso was inherent even in the original notification of June 13, 1962. Any person who was not manufacturing the product in question prior to June 13, 1962, could not possibly have applied for a licence before that date. The notification of 13th of June provided that the benefit of exemption would not be available to persons who had not applied for a licence before June 13, 1962.

(13) The object of issuing the second notification (dated November 10, 1962) was not to enlarge the scope of the class of persons so as to permit manufacturers who were not in the trade prior to June 13, 1962, to take benefit of the exemption. The obvious object of the second notification was to permit those who were actually manufacturing the product prior to June 13, 1962, but who had by chance not applied for a licence up to that date to take benefit of the exemption on certain conditions provided they applied for the licence up to December 1, 1962. In these circumstances, it is impossible to hold that the impugned proviso is hit by Article 14 of the Constitution. It is not for the first time that classification has been

made from the point of time. Such a classification was upheld in *Ramjilal* v. *The Income-tax Officer, Mohinder Garh* (1), in *M/s. Hathising Manufacturing Co., Ltd., Ahmedabad and another* v. *Union of India and another* (2), and in various other cases. In the last-mentioned case it was authoritatively held by their Lordships of the Supreme Court that by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operative, no discrimination is practised.

(14) Mr. C. D. Dewan was correct in submitting on the basis of the Division Bench judgment of the Madras High Court in *K. Rangaswami Chettiar and Co.* v. *Government of Madras represented by Commericial Tax Officer, Coimbatore South at Erode* (3), that the principle that in case of ambiguity a taxing statute should be construed in favour of the tax-payer does not apply to a provision giving a tax-payer relief in cetrain cases from a section clearly imposing a liabiiity. His submission based on the Division Bench judgment of this Court in *M/s. Jaswant Sugar Mills Ltd., Meerut and another* v. *Union of India and others* (4), to the effect that one who assails a classification must carry the burden of showing that it does not rest on any reasonable basis and if any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed, is not without force. In that case it was further held that the limit of an exemption from excise duty had to be drawn somewhere and the Court, though bound to examine the effects of the limit so fixed and its incidence on the various types of producers, could not substitute its own judgment for that of the Executive. In *Mohmedalli and others* v. *Union of India and another* (5), it was held that classification between establishments which had been in existence for less than three years and those which had been in existence for less than five years was an understandable classification with a view to save newly started establishments from the additional burden of making contribution to provident fund in respect of its employees under the Employees' Provident Funds Act, 1952. In *Orient Weaving Mills (P) Ltd., and another* v. *Union of India and others* (6), Sinha, C.J. (as he then

(1) A.I.R. 1951 S.C. 97.
(2) A.I.R. 1960 S.C. 923.
(3) A.I.R. 1957 Mad. 301 at 309.
(4) I.L.R. (1965) 2 Pb. 491=A.I.R. 1964 Pb. 192.
(5) A.I.R. 1964 S.C. 980 at 986.
(6) AI.R. 1963 S.C. 98.

was), who wrote the judgment of the Supreme Court, held that the notifications under rule 8(1) of the 1944 Rules granting exemption to certain classes of persons were not bad in so far as they exempted only the classes of persons whose liability it was to pay the tax and not the class of goods in respect of which the tax had to be paid, as the duty of excise is payable by the persons producing the goods though it is on the production of the goods. On that basis it was held that the exemption is also refused to such goods as come within the description of excisable goods, but it is valid classification to exempt one set of producers of the same goods and not another set of producers when the two sets (co-operative societies alone were exempted) fall in a distinct class. From a study of the case law on the subject referred to above, it is clear that the classification contained in the impugned proviso is not hit by Article 14 and is a valid and permitted classification. For the same reason the proviso does not impose any unreasonable restriction on the fundamental rights of the petitioners and is not hit by Article 19 of the Constitution.

(15) Though a taxation law must also pass the test of Article 14, but in deciding whether such a law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or bodies it will tax and that a statute is not open to attack on the ground that it taxes some persons or bodies and not others. It is only when within the range of its selection the law operates unequally or when classification cannot be justified that the law would be violative of Article 14 [judgment of the Supreme Court in *M/s. East India Tobacco Co., etc.* v. *State of Andhra Pradesh and another* (7)].

(16) In the view we have taken of the main contention advanced by Mr. Sibal in this case, it is unnecessary to deal with an objection of somewhat preliminary nature which was raised towards the end of his submissions by Mr. C. D. Dewan, learned counsel for the respondents, to the effect that we should dismiss this writ petition on the short ground that the petitioners have not availed of the alternative remedy by way of a statutory appeal against the order of the Collector refusing to grant the petitioners the exemption in dispute. Reliance was placed by Mr. Dewan for this contention on the judgment of the Allahabad High Court in *Naini Glass Works, Naini, Allahabad* v. *Collector, Central Excise, Allahabad and others* (8), and on the authoritative pronouncement of the Supreme Court

(7) A.I.R. 1962 S.C. 1733.
(8) A.I.R. 1965 All. 305.

in *Shivram Poddar* v. *The Income-tax Officer, Central Circle II, Calcutta and another* (9). It is, however, significant to note in this case that though it was not so mentioned in the writ petition, the case had gone right up to the Central Government which had also rejected the claim of the petitioners by order Annexure 'R-7', a copy of which has been placed on the record of this case by the respondents themselves.

(17) No other point having been argued before us in this case, the writ petition fails and is accordingly dismissed though without any order as to costs.

K.S.K.

APPELLATE CRIMINAL

Before Shamsher Bahadur and Gopal Singh, JJ.

MUNICIPAL COMMITTEE, AMRITSAR,—*Appellant*

versus

PARKASH CHAND,—*Respondent*

Criminal Appeal No. 756 of 1966.

July 9, 1968

Prevention of Food Adulteration Act (XXXVII of 1954)—S. 16 (i)(a)(ii)—Prevention of Food Adulteration Rules (1955)—Rules 7(1), 15 and 20—Public Analyst—Whether must state in his certificate that he actually compared the seals—Failure to state so—Whether results in rejection of the certificate—The question of absence or inadequacy of preservative in a sample—Whether can be raised by a person where sample is taken for examination.

Held, that under rule 7 of Prevention of Food Adulteration Rules, 1955, all that is required of the Public Analyst, who receives the package containing a sample, is to compare "the seals on the container and the outer cover with specimen impression" and he is required to make a note only about the "condition of the seals thereon." What he is required to record is the "conditions of the seals." He is not required in the form prescribed under rule 7(3) to say that he

(9) A.I.R. 1964 S.C. 1095.