Before S. S. Sandhawalia, C.J. and S. C. Mital, J.

DHANPAT OIL AND GENERAL MILLS,—*Petitioner.*

versus

UNION OF INDIA and others,—*Respondents.*

Civil Writ Petition No. 35 *of* 1974.

November 29, 1978.

Produce Cess Act (XV of 1966)—Sections 3(2), 4, 5(1), (2), 9(2) *and* 20—*Produce Cess Rules* 1969—*Rule* 6—*Constitution of India* 1950—*Articles* 266 *and* 272—*Cess levied under section* 3(2)—*Whether in the nature of fee and therefore* ultra vires *the power of Parliament—Such levy—Whether forms part of the Consolidated Fund of India—Word "Cess"—Whether necessarily descriptive of fee—Section* 5—*Whether disentitles the States from securing their share of duty collected within their territory—Mandate of Article* 272—*Whether violated—Laws levying excise duty already on the statute book—Parliament—Whether can enact another law on the subject—Section* 4—*Whether ambiguous and therefore liable to be struck down—Provisions of rule* 6—*Whether run counter to section* 9(2)—*Such rule—Whether vests unguided power in the Collector to make assessment.*

Held, that a plain reading of the provisions of sub-sections (1) and (2) of section 5 of the Produce Cess Act 1966 would show that section 5(1) generally provides the objects for which the amount equivalent to the cess collected is to be applied, namely, to promote the improvement, development and marketing of produce. On the other hand, sub-section (2) is plainly an elaborating provision which in specific terms lays down the various sub heads towards which the cess is to be appropriated, though this is without prejudice to the generality of the provisions of sub-section (1) of section 5 of the Act. A close perusal of this section would show that this does not even remotely provide that the cess collected under the Act is not to form part of the Consolidated Fund of India as is the mandate laid in Article 266 of the Constitution of India 1950. The key to this sub-section is provided by the very opening and material words, namely, "an amount equivalent to the proceeds of duty levied and collected under this Act." This would at once make it manifest that it is not that the cess shall not form part of the Consolidated Fund of India but would show that having so formed a part and parcel thereof an equivalent amount reduced by the cost of collection is to be appropriated by Parliament after enacting a law for utilisation for the objects and purposes spelled out in section 5 of the Act. Nowhere in the Act or any other provision any separate fund or forum is provided to which the proceeds of the cess levied here are to be credited. Once that is so, it is plain that by the clear mandate of Article 266, the collections made under

this Act must necessarily go to the Consolidated Fund of India. Indeed it appears to be manifest that like the other excise duties and taxes, the cess herein also would first go into and form part and parcel of the Consolidated Fund of India and thereafter appropriations would be made therefrom by Parliament in accordance with law. (Part 8).

Held, that an impost is to be adjudged on the broad perspective of the whole provisions of the enactment concerned and not merely by reference to the terminology used for describing the levy. Therefore, the mere use of the word "cess" is neither decisive nor conclusive. In fact section 3(2) clearly names this impost as a duty of excise and again section 4 refers to every duty of excise leviable under this Act on any produce. When Parliament in clear and unambiguous terms has itself clarified that the cess is a duty of excise due weight must inevitably be attached to its mandate. Thus, the terminology used herein is indeed a pointer to the fact that the intent of the Legislature was to impose a duty of excise rather than a fee for services rendered. (Para 9).

Held, that even from the plain language of Article 272 of the Constitution, it is evident that the distribution of the duties of excise mentioned therein to the States is not automatic. The obligation, if any, arises only if Parliament by law so provides. Herein again the position is not materially different and in any case is analogous to Article 266 wherein the appropriation out of the Consolidated Fund of India has always to be in accordance with law and for the purposes and in the manner provided for by the Constitution. The mere fact that under Article 272, Parliament has not made expressly any law for the distribution of the duties of excise collected under this Act to the States and, therefore, they do not get any share of the cess is no ground for holding that the mandate of Article 272 is in any way contravened or that the cess levied herein is not a tax or a duty of excise as expressly described by Parliament itself. (Para 10)

Held, that the enactment or otherwise of legislation is clearly a matter of legislative policy on which it is not the province of the Court to comment or to adjudicate. Indeed an examination of the Produce Cess Act as a whole would show that a separate enactment for the purpose was necessary and in any case desirable and if Parliament in its wisdom had done so it is vain to contend that the same provisions should have been incorporated in the existing statutes imposing duty of excise. (Para 11)

Held, that apart from the fact that there is no inherent ambiguity in the language of section 4, it appears axiomatic that a provision cannot be struck down merely on the ground of some difficulties of

interpretation posed thereby. Merely because section 4 may require some precise or impeccable interpretation by the Courts in a marginal area is no ground whatsoever for holding that the provision as such is violative of the Constitution.

(Para 16)

Held, that the scheme of the Act would show that section 8 lays the duty on the occupier of a mill to furnish the requisite returns to the Collector with regard to the produce consumed or brought under processing or extracted in the mills during the preceding month. Sub-sections (2) and (3) thereof require that this return shall be furnished before the seventh day of each month and shall be made in such form and verified in such manner as may be prescribed. Now it is evident that rule 6 of the Produce Cess Rules 1969 operates in a field where the occupier of the mill has failed to do the statutory duty imposed upon him by section 8. It is only where no return has been furnished as prescribed or if furnished is believed to be incorrect or defective by the Collector that the jurisdiction to assess the amount payable in the manner provided in rule 6 arises. It is neither unusual nor unreasonable that on the failure of a person liable to pay tax or duty to furnish the requisite return the authority would proceed to make a best judgment assessment. Such failure, therefore, necessarily involves the penal or hazardous consequence which may follow an assessment made according to the best judgment of the authority doing so. Rule 6 far from leaving the procedure of best judgment assessment entirely discretionary, in fact places a fetter and a guideline by laying down that the amount payable by the occupier shall be on the basis of the monthly average amount of cess levied and collected from him in the twelve months immediately preceding. This provision far from vesting an unguided or unreasonable discretion in fact clearly circumscribes the same.

(Para 19).

Held, that there is no conflict between the proviso to section 9(2) and the provisions of rule 6. In fact the two provisions are in a way complementary to each other. The proviso operates in a slightly different field where the Collector assesses the duty at an amount higher than that at which it is assessable on the basis of the return and ensures that before doing so he would afford an opportunity to the occupier for proving the correctness and completeness of the returns. There is neither any arbitrariness in the powers vested in the Collector to make the assessment under rule 6 nor is there any infraction of the provisions of section 9 or any other section of the Act. Rule 6 is, therefore, *intra vires*.

(Para 20).

Petition under Articles 226 and 227 of the Constitution of India praying that :—

(a) *a writ of mandamus or any other writ, order or direction be issued declaring section 3(2) and Section 4 of the Produce Cess Act, 1966, and Rule 6 of the Produce Cess Rules, 1969, to be ultra vires and invalid.*

(b) *a writ of certiorari be issued to quash the entire proceedings and notices dated 27th December, 1972 (contained in Annexure 'B') and dated 4th December, 1973 (Annexure 'E') ;*

(c) *a writ of mandamus or any other writ, order or direction may be issued to the respondents restraining them from assessing and recovering any cess from the petitioners ;*

(d) *any writ, order or direction which may be appropriate in the circumstances of the case, may be issued directing the Respondents not to collect any cess from the petitioners ; and*

(e) *costs of this writ petition may also be awarded to the petitioners.*

It is further prayed that this Hon'ble Court may be pleased to stay the assessment and recover proceedings initiated by the Respondents during the pendency of this writ petition.

R. L. Batta, Advocate with N. K. Zakhmi, Advocate, *for the Petitioners.*

Kuldip Singh, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) The constitutional validity of section 3(2) and section 4 of the Produce Cess Act, 1966 and of rule 6 of the Rules framed under section 20 thereof has been the primary and indeed the sole subject-matter of challenge in this set of forty-three connected writ petitions.

(2) As is manifest the issue is pristinely legal and the barest reference to the facts would hence be adequate. It would suffice to advert to the averments made in C.W.P. No. 35 of 1974 *M/s Dhanpat Oil & General Mills* v. *Union of India and others*, which are typical, if not identical with those in the others. The petitioners therein

carry on the business of oil extraction from groundnut, cotton-seeds, Sarson and other oil seeds and are also dealers in vegetable and other essential oils. The Superintendent, Central Excise, issued a notice, annexure 'A', dated the 29th of September, 1972, requiring the petitioners to produce necessary documents and to further attend personally before him apparently with regard to an enquiry pertaining to the cess leviable under the Produce Cess Act, 1966, (hereinafter called the Act). However, the petitioners failed to comply with the same in the alleged *bona fide* belief that their business did not fall within the purview of the Act. Later on the 22nd of December, 1972, the Superintendent Central Excise issued a notice (*vide* annexure 'B') to the petitioners requiring them to show cause as to why a penalty for their failure to file a return and to deposit the cess be not imposed on them. To this the petitioners replied,—*vide* annexure 'C' questioning the jurisdiction of the respondents to levy the cess upon them. However, another communication, annexure 'D' dated the 3rd of September, 1973, was then received from the Assistant Collector, Central Excise by the petitioners to appear before him with regard to the aforesaid proceedings in which the petitioners sought various adjournments thereafter. However, it is the admitted stand that the petitioners did not deposit the cess nor did they file the return as required by the show-cause notices on the ground that the respondents had no jurisdiction to levy and recover the cess on the products manufactured by and dealt in by them in their business. The petitioners thereafter preferred the present writ petition laying challenge to the very constitutionality of the provisions under which the cess is levied.

(3) Inevitably the argument and the controversy must necessarily revolve around the impugned provisions of the Act and these may first be set down for facility of reference :—

"5.3. Imposition of cess :

(1) * * * *

(2) There shall be levied and collected as a cess, for the purposes of this Act, on every produce specified in column 2 of the Second Schedule, a duty of excise at such rate, not exceeding the rate specified in the corresponding entry in column 3 thereof, as the Central

Government may, by notification in the official Gazette, specify:

Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate specified in the corresponding entry in column 4 of the said Schedule.

S. 4. *Persons who shall be liable to pay duty* : Every duty of customs leviable under this Act on any produce shall be payable by the person by whom such produce is exported from India and every duty of excise leviable under this Act on any produce shall be payable by the occupier of the mill in which such produce is consumed or extracted.

(4) Now the spear-head of the challenge to the constitutionality raised by Mr. R. L. Batta is first directed primarily against section 3(2) of the Act. Herein the core of the argument is that in pith and substance the levy under section 3(2) of the Act though styled as a duty of excise is in essence a fee for services rendered. It was sought to be pointed out that the *quid pro quo* for the services rendered for this cess are spelled out by section 5(1) and (2) of the Act which provides for the application of the proceeds of the cess. Therefore, it was contended with some vehemence that mere labelling of this levy as a tax or a duty of excise is patently misleading and cannot be decisive, the true test being the real nature of the levy. On these premises, Mr. Batta then built the argument that the cess being in the nature of a fee which is to be utilised for the specific purposes given in clauses (a) to (n) of section 5(2) of the Act, Parliament has no legislative power to impose the same. According to counsel the levy being in the nature of a fee primarily on agricultural produce the power to legislate with regard thereto was exclusively vested in the State legislature by virtue of entry 14 of the State List pertaining to agriculture including agricultural education and research, protection against pests and prevention of plant diseases.

(5) In order to establish the very corner-stone of his argument that in essence the levy under section 3(2) is not a tax or a duty of excise but a fee, Mr. Batta had attempted to call in aid certain indicia. The gravamen of the submission herein was that by virtue of the provisions of section 5(1) and (2) the cess levied under the Act would not form part of the Consolidated Fund of India and was ear-marked

to promote the improvement, development and marketing of produce in general, and for the purposes specified in clauses (a) to (n) of section 5(2) in particular. Counsel contended that by virtue of the aforesaid provisions of section 5 the cess could not be appropriated like the other general revenues of the Union which lose their identity and become part and parcel of its consolidated fund. Reliance for this proposition was placed on *The Hingir-Rampur Coal Co., Ltd. and others* v. *The State of Orissa and others* (1) and in particular on the observations made in paragraphs 9 and 22 of the report.

(6) It is evident from the above that the substratum of the argument of the learned counsel for the petitioners rested on section 5(1) and (2) of the Act and in order to fully appreciate the same it is best to set down the aforesaid provisions for facility of reference :—

"S. 5(1) An amount equivalent to the proceeds of the duty levied and collected under this Act, reduced by the cost of collection as determined by the Central Government together with any moneys, received by the Central Government for the purposes of this Act, shall, after due appropriation made by Parliament by law, be utilized by the Central Government to meet the expenditure incurred in connection with measures which, in the opinion of that Government, are necessary or expedient to promote the improvement, development and marketing of produce.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the proceeds of the duty levied and collected under this Act may be utilized by the Central Government for all or any of the following purposes, namely :—

(a) undertaking, assisting or encouraging, agricultural, industrial, technological and economic research, including research on the utilization of the products obtained from any produce;

(b) supplying technical advice to cultivators, growers and millers;

(c) encouraging the adoption of improved methods of cultivation and storage of crops;

(1) A.I.R. 1961 S.C. 459.

(d) producing, testing and distributing improved varieties of crops or assisting such work;

(e) assisting in the control of insects and other pests and diseases of the crops, both in the field and in storage;

(f) promoting the improvement of the marketing of produce and the products obtained therefrom in India and abroad including the setting up and adoption of grade standards for the produce and the products obtained therefrom;

(g) collecting statistics from cultivators, growers, dealers and occupiers of mills on all relevant matters and promoting improvement in the forecasting of crops and the preparation of all relevant statistics relating to the crops and the products obtained therefrom.

(h) maintaining, and assisting in the maintenance of, such institutes, farms and stations as the Central Government may consider necessary;

(i) advising and providing assistance on all matters connected with the improvement of the cultivation of crops (including advising on the best and most suitable varieties of the crops to be cultivated) and the improvement of the industries using the crops and the products obtained therefrom;

(j) promoting and encouraging the co-operative movement in any connected industry;

(k) adopting such measures as may be practicable for ensuring remunerative returns to the growers;

(l) organising the establishment of cultivators' growers' millers' and consumers' organisations;

(m) aiding and encouraging the establishment of exhibitions for demonstrating the uses of the produce and the products obtained therefrom;

(n) adopting any other measures which the Central Government may deem to be necessary or advisable to carry out the purposes of this Act.

(3) * * * *".

(7) A plain reading of the aforesaid provisions would show that section 5(1) in broad generality provides the objects for which the amount equivalent to the cess collected is to be applied, namely, to promote the improvement, development and marketing of produce. On the other hand sub-section (2) is plainly an elaborating provision which in specific terms lays down the various sub-heads towards which the cess is to be appropriated, though this is without prejudice to the generality of the provisions of sub-section (1) of section 5 of the Act.

(8) It appears to me that the core of the argument that the cess levied under the Act does not go to the Consolidated Fund of India is straightaway overturned if a precise and in depth reading of sub-section (1) of section 5 is made. A close perusal thereof would show that this does not even remotely provide that the cess collected under the Act is not to form part of the Consolidated Fund of India as is the mandate laid in Article 266 of the Constitution of India. To my mind, the key to this sub-section is provided by the very opening and material words, namely, "an amount equivalent to the proceeds of duty levied and collected under this Act". This would at once make it manifest that it is not that the cess shall not form part of the Consolidated Fund of India but would show that having so formed a part and parcel thereof an equivalent amount reduced by the cost of collection is to be appropriated by Parliament after enacting a law for utilisation for the objects and purposes spelled out in section 5 of the Act. What is of particular significance herein is the fact that nowhere in the Act or any other provision any separate fund or forum is provided to which the proceeds of the cess levied here are to be credited. Mr. Batta in fact had to fairly concede that unlike the provisions of the Agricultural Produce Marketing Act (*vide* sections 26 and 28 thereof to which reference was made by way of analogy) there is no provision in this Act which may enjoin the creation of a separate Fund into which the cess is to be deposited. Once that is so, it is plain that by the clear mandate of Article 266, the collections made under this Act must necessarily go to the Consolidated Fund of India. This is further made clear and manifest

by the categoric stand taken in the return by the respondent—Union of India. In paragraph 12(ii) thereof whilst expressly controverting that the levy herein would not go to the Consolidated Fund of India and merge with the general revenues it has been pointed out that the cess is collected and deposited under the specific head. It runs as under :—

> "Denied. The duty of excise as cess is collected and deposited under the specific head i.e. 'II—Union Excise Duties — D—Cesses on Commodities—Cess on oil/copra'."

All these factors, therefore, would make it plain that the cess under the Act would first go to the general revenues of the Union and form part of the Cansolidated Fund of India having been collected under the specified head, namely, "II—Union Excise Duties—D—Cesses on Commodities — Cess on oil/copra." This being so, it appears to be then plain that what sub-section (1) and equally sub-section (2) of section 5 of the Act lay down is not that the revenue from the cess would not go to the Consolidated Fund but in essence they provide for the mode and manner of appropriation out of the said Fund for the purposes of promoting the improvement, development and marketing of produce. When viewed from this angle, the significance of the words "an amount equivalent to the proceeds of the duty levied and collected under this Act" emerges and has to be kept in the fore-front whilst interpreting this provision. If the cess under the Act were to form a separate Fund, obviously no question of withdrawing an amount equivalent to the same or its appropriation out of the Consolidated Fund could arise. Of equal significance is the fact that section 5(1) further provides that the aforesaid amount is first to be reduced by the cost of collection as determined by the Central Government and thereafter an addition thereto is to be made of any moneys received by the Central Government for the purposes of this Act. What, however, then calls for a pointed notice is that the application of the aforesaid amounts is again not automatic for the purposes laid out in section 5 but is clearly made dependent on the appropriation made by Parliament by law as in other similar cases out of the Consolidated Fund of India. Viewed in this correct perspective, therefore, the very bottom drops out of the main contention raised on behalf of the petitioner that the cess under the Act does not form part of the Consolidated Fund of India and, therefore, lacks one of the necessary indicia of being a tax or a duty of excise. Indeed it appears to be

manifest that like the other excise duties and taxes, the cess herein also would first go into and form part and parcel of the Consolidated Fund of India and thereafter appropriations would be made therefrom by Parliament in accordance with law.

(9) Mr. Batta then fell back on the title of the Act and the terminology used therein to support his contention that the impost made thereunder was indeed a fee and not a tax or duty of excise. Herein the basic emphasis was on the use of the word "cess". It was argued with some vehemence that this nomenclature is normally, if not invariably, used for a fee and not for a tax. I am unable to agree. It is well settled and manifest even from the observations in *Hingir Rampur Coal Co. Ltd.* v. *State of Orissa* (1) (supra) on which the petitioner mainly relied that an impost is to be adjudged on the broad perspective of the whole provisions of the enactment concerned and not merely by reference to the terminology used for describing the levy. Reference to decided cases would make this manifest. In *Hingir Rampur Coal's case* (supra), the cess imposed by the Orissa Mining Areas Development Fund Act was, on a consideration of all the provisions of the said statute, held to be neither a tax nor a duty of excise but a fee. However, under the Gujarat Education Cess Act, even though the terminology used therein was "cess", it was held by their Lordships in *Ahmedabad Manufacturing and Calico Printing Co. Ltd., Ahmedabad* v. *State of Gujarat* (2) that the same was a tax and not a fee. In *Shinde Brothers etc.* v. *Deputy Commissioner, Raichur* (3), it appears to have been conceded that under the Mysore Health Cess Act the levy was a tax and not a fee. Therefore, it must be held that the mere use of the word "cess" is neither decisive nor conclusive. In fact, it appears to us that Mr. Kuldip Singh was on strong ground in contending that section 3(2) clearly names this impost as a duty of excise and again section 4 refers to every duty of excise leviable under this Act on any produce. When Parliament in clear and unambiguous terms has itself clarified that the cess is a duty of excise, due weight must inevitably be attached to its mandate. I am, therefore, inclined to conclude that the terminology used herein is indeed a pointer to the fact that the intent of the Legislature

(2) A.I.R. 1967 S.C. 1916.
(3) A.I.R. 1967 S.C. 1512.

was to impose a duty of excise rather than a fee for services rendered.

(10) Arguing in the converse Mr. R. L. Batta had then contended that the cess herein though labelled as a duty of excise cannot be so read because this would be in violation of Article 272 of the Constitution of India. It was contended that because of section 5 of the Act, the States would not be entitled to secure their share of the duty collected within their territory and as such the mandate of Article 272 would be contravened. To appreciate this contention one must read article 272—

> "272. Union duties of excise other than duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law."

Even from its plain language it is evident that the distribution of the duties of excise mentioned herein to the States is not automatic. The obligation, if any, arises only if Parliament by law so provides. Herein again the position is not materially different and in any case is analogous to Article 266 wherein the appropriation out of the Consolidated Fund of India has always to be in accordance with law and for the purposes and in the manner provided for by the Constitution. The mere fact that under Article 272, Parliament has not made expressly any law for the distribution of the duties of excise collected under this Act to the States and, therefore, they do not get any share of the cess is no ground for holding that the mandate of Article 272 is in any way contravened or that the cess levied herein is not a tax or a duty of excise as expressly described by Parliament itself.

(11) In this context almost as the last argument of despair, Mr. Batta had then contended that in face of the existing statutes, like Central Excise and Salts Tax Act and other similar statutes levying duty of excise there was no necessity for Parliament to

enact fresh legislation and such a duty could be levied under the provisions of any one of the statutes. The contention obviously lacks merit. The enactment or otherwise of legislation is clearly a matter of legislative policy on which it is not the province of this Court to comment or to adjudicate. Indeed an examination of the Produce Cess Act, 1966 as a whole would show that a separate enactment for the purpose was necessary and in any case desirable and if Parliament in its wisdom had done so it is vain on the part of the counsel to contend that the same provisions should have been incorporated in the existing statutes imposing duty of excise.

(12) In fairness to Mr. Kuldip Singh learned counsel for the respondent Union of India, I must notice that he forcefully argued that the Produce Cess Act was fully within the competence of the legislative powers of Parliament in view of item 84 of List I of the Seventh Schedule to the Constitution. Apart from the fact that the cess, being a duty of excise, would squarely come within the entry, counsel had also relied on the doctrine of pith and substance in the context of legislative competence and argued that even if there was some incidental and marginal overlapping of the subjects laid out in the State List, the constitutionality of the provisions would not be affected if in pith and substance the subject fell within the scope of entry 84. Reliance for this proposition was rightly placed on *Chaturbhai M. Patel* v. *Union of India and others* (4).

(13) Mr. Kuldip Singh had further argued by way of analogy that similar provisions as are under challenge herein had either been upheld or had long held the field e.g., the Agricultural Produce Cess Act, 1940, the Salt Cess Act of 1953 and even the Central Excises and Salt Act of 1944. Reference was again made to *Chaturbhai M. Patel's case* (supra) wherein the constitutional challenge to the Central Excises and Salt Act of 1944 on the basis of the legislative competence of Parliament to enact it was authoritatively repelled.

(14) Lastly in this context learned counsel for the respondent had taken the stand that the Produce Cess Act of 1966 was neither a new nor an unusual impost and in fact it was pointed out that in effect this statute is more of an amendatory or consolidating nature. It was submitted that the present Act takes the place of a number

(4) A.I.R. 1960 S.C. 424.

of earlier statutes which individually laid similar cesses on cotton, lac, coconut and oil-seeds etc. There is apparent merit in this contention in view of the clear statements of objects and reasons appended to the Bill which led to the enactment of the present statute. This aspect indeed was not and in fact could not be a matter of any serious challenge by Mr. R. L. Batta, learned counsel for the petitioners. To appreciate the purposes of the enactment of the Bill one cannot do better than reproduce *in extenso* the statement of the objects and reasons therefor:—

"Indian Cotton Cess Committee Act, 1923, the Indian Lac Cess Act, 1930, the Indian Coconut Committee Act, 1944, the Oilseeds Committee Act, 1946, will cease to have effect from 1st April, 1966, on which date the Indian Central Cotton Committee, and the Indian Lac Cess Committee, the Indian Central Coconut Committee and the Indian Central Oilseeds Committee, constituted under those Acts will stand dissolved, and there will be no legislative sanction for the continuance of the levy of the Cess on these produce after 31st March, 1966.

2. Although the Committees have been abolished, the work done by the Committees will continue to be carried out even after 31st March, 1966. The Research Institutes and Stations and other research projects of these Committees will come under the administrative control of the Indian Council of Agricultural Research and the work relating to development, marketing and other functions will be directly looked after by the Ministry of Food and Agriculture, Department of Agriculture, assisted by Development Councils formed for this purpose by the Government. Suitable grants will be given to the Indian Council of Agricultural Research for the maintenance of the Research Institutes and for carrying on the research activities. Under the revised set-up, larger investments will be necessary on these produce in order to have an effective programme of research and development. It, is, therefore, very necessary that the cesses on the produce are continued to be levied even after the Commodity Committees have been abolished.

3. The Bill accordingly seeks to continue the levy of cess on these produce.

4. Opportunity has also been taken to simplify the nature of cess levied on the produce and to reassess the rate of cess to be levied, in conformity with the present prices of the produce."

(15) For the aforesaid reasons I would conclude that the many pronged attack against the basic provisions of section 3 of the Act must be repelled and its constitutionality upheld.

(16) Coming now to the vires of section 4 of the Act, learned counsel for the petitioners was rather half-hearted in his challenge and the nature of the attack was equally fragmentary. It was contended that the provisions thereof were ambiguous and vague and did not specify with clarity whether the duty shall be payable by the occupier of the mill in which said produce is consumed or wherein it is extracted in case they are different. Apart from the fact that we are unable to find any inherent ambiguity in the language of section 4, it appears to us axiomatic that a provision cannot be struck down merely on the ground of some difficulties of interpretation posed thereby. Merely because section 4 may require some precise or impeccable interpretation by the Courts in a marginal area is no ground whatsoever for holding that the provision as such is violative of the Constitution. I must, therefore, equally uphold the validity thereof.

(17) Before parting with this aspect of the case it calls for mention that the view I am inclined to take receives substantial support from the judgment of the learned Single Judge in *Raja Oil Mills, Chovva, Connanore and others* v. *Union of India* (5), which was upheld in a short but categoric judgment by the Letters Patent Bench reported as *Raja Oil Mills* v. *Union of India* (6).

(18) Lastly rule 6 of the Produce Cess Rules 1969, framed under section 20 of the Act has then been assailed. This rule is in the following terms :—

"6. *Manner of assessment of cess* : Where the occupier of a mill has failed to furnish the return referred to in sub-section (1) of section 8 within the time specified in sub-section (2) of that section, or has furnished within the

(5) A.I.R. 1969 Kerala 176.
(6) 1969 K.L.R. 503.

specified period a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount payable by the occupier on the basis of the monthly average amount of cess levied and collected from the said occupier in the twelve months immediately preceding the month to which the assessment relates."

Learned counsel for the petitioners' main challenge to this provision was that it ran counter to the proviso to section 9(2) of the Act. It was also contended that the rule vested unguided and uncanalised powers in the Collector to assess the cess payable.

(19) The aforesaid contentions even on a cursory analysis cannot hold water. The scheme of the Act would show that section 8 lays the duty on the occupier of a mill to furnish the requisite returns to the Collector with regard to the produce consumed or brought under processing or extracted in the mills during the preceding month. Sub-sections (2) and (3) thereof require that this return shall be furnished before the seventh day of each month and shall be made in such form and verified in such manner as may be prescribed. Now it is evident that rule 6 operates in a field where the occupier of the mill has failed to do the statutory duty imposed upon him by section 8. It is only where no return has been furnished as prescribed or if furnished is believed to be incorrect or defective by the Collector that the jurisdiction to assess the amount payable in the manner provided in rule 6 arises. It is neither unusual nor unreasonable that on the failure of a person liable to pay tax or duty to furnish the requisite return the authority would proceed to make a best judgment assessment. Such failure, therefore, necessarily involves the penal or hazardous consequence which may follow an assessment made according to the best judgment of the authority doing so. What, however, calls for a particular notice is the fact that rule 6 far from leaving the procedure of best judgment assessment entirely discretionary, in fact places a fetter and a guideline by laying down that the amount payable by the occupier shall be on the basis of the monthly average amount of cess levied and collected from him in the twelve months immediately preceding. This provision far from vesting an unguided or unreasonable discretion in fact clearly circumscribes the same.

(20) Nor do I see any conflict betwixt the proviso to section 9(2) and the provisions of rule 6. In fact the two provisions are in a

way complementary to each other. The proviso operates in a slightly different field where the Collector assesses the duty at an amount higher than that at which it is assessable on the basis of the return and ensures that before doing so he would afford an opportunity to the occupier for proving the correctness and completeness of the returns. I am, therefore, of the view that there is neither any arbitrariness in the powers vested in the Collector to make the assessment under rule 6 nor is there any infraction of the provisions of section 9 or any other section of the Act. Rule 6 must, therefore, be held as *intra vires.*

21. Lastly, Mr. Batta had chosen to assail the show cause notices issued to the petitioners on the ground that no machinery had been provided for the levying of the cess and consequently the claims made by the authorities must be quashed. Counsel pointed out that whilst the Act came into force in the year 1966 and the various provisions thereof laid down the mode of its collection as being in the manner prescribed under the rules yet it was not till three years later that the Produce Cess Rules 1959 were framed. It was then pointed out that under the said Rules the Collector before whom the returns had to be filed and who had to make assessment thereunder was not appointed for the region till the 30th of July, 1970, and the appellate authority was not so notified under section 10 till the notification was made on the 21st of August, 1972. On the aforesaid premises, counsel stated that the material machinery being non-existent neither any return could be filed under section 8 nor the collection and assessments of the cess could be made under sections 9 and 10 of the Act. Consequently the notice with regard to the period prior to the creating of the requisite machinery was assailed as inherently lacking in jurisdiction.

22. The aforesaid argument of the learned counsel has only to be noticed and rejected in view of the clear provisions of section 15 of the Produce Cess Act. This would also call for quotation *in extenso* :—

> "15. *Provisions of certain Acts to apply.* (1) The provisions of the Customs Act, 1962, and the rules and regulations made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation

to the levy and collection of duties of customs on any produce specified in the First Schedule as they apply in relation to the levy and collection of duty payable to the Central Government under that Act.

(2) The provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of duties of excise on any produce specified in the Second Schedule as they apply in relation to the levy and collection of duty payable to the Central Government under that Act."

It is evident from the above that till the new rules were framed under section 20 of the Act adequate provisions, therefor, had been made by the aforesaid section 15. It was not seriously disputed that statutory rules existed both under the Customs Act as also under the Central Excises and Salt Act, 1944. That being so it does not lie in the mouth of the petitioners that the machinery for the collection and the assessment of tax were so completely lacking as to invalidate the notices issued to them. In this context, however, I may notice that learned counsel for the respondent Union of India was himself fair enough to concede that there did appear to be some marginal delays in the notification of the Collector and the appellate authority after the coming into force of the rules. This, learned counsel conceded, would be adequate justification for not resorting to any penal action against the defaulters under section 16 of the Act which also creates certain offences with regard to the collection and assessment of the cess under the Act.

I am consequently of the view that all these writ petitions are without merit and are hereby dismissed However, in view of some intricacy of the questions involved and the admitted delay in notifying procedural details after the promulgation of the rules the parties should be left to bear their own costs.

S. C. Mital, J.—I agree.

H.S.B.