development, which took place in the years 1979-80 and onwards, were taken into consideration. The land had remained unclutivated from 1975 to 1979. Pahani Patraks showed that the land was cultivated at least since 1979-80. It is obvious that the facts of the year 1979-80 and onwards are subsequent to 1975 to 1979 and, therefore, the Court held that the application for exemption could not be rejected merely because the land had remained uncultivated in past. Therefore, in my opinion, this decision is of no help to the petitioners. On the contrary, this decision permits the consideration of the subsequent development after the land remained uncultivated and it is in this context that the Court has held that whether or not during three preceding years from the date of the application for exemption the lands in question were being cultivated or not. Now so far as the facts of the present case at hand are concerned, the documents placed on record by the petitioners does go to show that in the year 1993-94 the Company was not functioning on account of the financial crisis and deflation in the industry, which was faced not only by the petitioners' Unit but by many other Iron Industries. That may be so, but it cannot be said that the reasons given in the order are irrelevant. The petitioner sought exemption under Sec. 20 on the ground of development, diversification and expansion. The Government is charged with the power to grant exemption and under Sec. 20, on the basis of the location of the land and the purpose for which it is proposed to be used and other relevant considerations, the Government has to decide whether the exemption is to be granted or not. The Government has, after considering all the aspects and entering into a long drawn correspondence with the petitioners calling upon them to provide the documents and material, passed the order rejecting the application under Sec. 20 and in doing so, it has also given reasons and there is no basis for the contention that these reasons are irrelevant, more particularly when the documents produced on record by the petitioners themselves show that the Unit was not working and even the copies of the balance-sheet filed by the petitioners do not espouse the petitioners' case for the years immediately before the passing of the order. In this view of the matter, I do not find any ground to interfere with the order dated 7-12-1994 passed by the Industries Commissioner or the order dated 25-1-1995 passed by the Revenue Department of the Government of Gujarat.

7. This Special Civil Application has no merits and the same is hereby dismissed.

(ATP) *Rule discharged.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice A. P. Ravani and
the Hon'ble Mr. Justice J. N. Bhatt.

TILOK TEXTILE MILLS LTD., SURAT v. UNION OF INDIA*

Constitution of India, 1950 — Arts. 14 & 19(1)(g) — Central Excises & Salt Act, 1944 (I of 1944) — Central Excise Rules, 1944 — Rule 9A — Additional Duties of Excise (Goods of Special Importance) Act, 1957 (LVIII

*Decided on 9-2-1995. Special Civil Applications Nos. 492, 493, 494, 684, 689, 690, 691, 930, 949, 1589, 1590, 3179 and 3180 all of 1988 for quashing the demand of excise duty and for a declaration that certain notifications issued under Rule 9A are void and that Rule 9A of Central Excise Rules, 1944 is itself void.

of 1957) — Sec. 3(3) — Central Excise Tariff Act, 1985 — Tariff Headings Nos. 54.09, 50.02, 55.08, 55.11, 55.12 and 60.01 — None of the above provisions or Notifications is void as being violative of Art. 14 or Art. 19(1)(g).

It is true under our Constitutional Law, the impugned provisions or any other law for that purpose should not be arbitrary, unreasonable or irrational, unconnected with the object of the Act. The four impugned Notifications and the provisions of Rule 9A of the "1944-Rules" successfully, pass through the test or requirements of Art. 14. It is not shown successfully in this group of matters that, the criteria or the basis of classification makes any actionable hostile discrimination by conferring privileges or imposing liabilities upon the person arbitrarily selected out of large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed. The contention that the impugned Notifications and the provisions of Rule 9-A of "1944-Rules" violate the provision of Art. 14, is unsustainable. The basis for the imposition of duty and the criteria enunciated in the impugned provisions could not be said to be arbitrary for the simple reason that they do not involve negation of equality for equals. (Para 22)

Likewise, the contention that the impugned Notifications and the provisions of Rule 9-A are also contrary to the provisions of the Constitution and hit by Art. 19(1)(g) of the Constitution is also found without any merits in light of the facts and circumstances. Art. 19 prescribes provisions giving protection of certain freedom. It is true, under Art. 19(1)(g), there is a freedom to practise in profession or to carry on occupation or business. However, such freedom is subject to reasonable restrictions as provided under Art. 19(5) & (6). It cannot be said even for a moment that the criteria or the basis adopted in the impugned Notifications is affecting freedom of trade of the petitioners. The petitioners have not, successfully, shown from the record that their business is in any way adversely affected on account of the impugned provisions of the said four Notifications and Rule 9A. Apart from that, mere fact that the impugned provisions, incidentally, remotely or collaterally has the effect of abridging or abrogating those rights, will not fulfil required test to invalidate the impugned provisions under Art. 19(1)(g). Even in case where some adverse effect on the business on account of exercise of statutory discretion is generated, it is incidental and collateral which could not be said to be unreasonable restriction. It is true that the impugned provisions in order to be invalidated on the basis of Art. 19(1)(g), it must be shown that there are unreasonable restrictions inhibited in Art. 19. Nothing of the this sort has been shown from the record to convince the Court that the impugned Notifications and the provisions of Rule 9-A are in any way violative of Art. 19(1)(g). (Para 23)

The contention that the criteria of width and flat rates irrespective of quality has adversely affected freedom of trade is not sustainable. The impugned Notifications could not be said to be unreasonable restrictions on freedom of trade. It is legal and open for the revenue to prescribe structure on the basis of width and also on flat rates. The State has to consider various aspects and it has to consider various conflicting social and economic values and legal parameters while fixing duty structures while exercising the statutory powers. (Para 24)

This Court in a Division Bench decision in case of *Maheshwari Mills Ltd. v. Union of India*, 1988 (35) ELT 252 (Guj.) had upheld the constitutionality and validity of the notification No. 254 of 1987 dated 25th November 1987. It is also held in the said decision that it is open to the Government to change basis of exemption so long as the duty does not exceed the basic duty as it is clearly permissible under Rule 8(3) read with explanation thereto. When there is no increase in the basic additional duty levied under Sec. 3(1) of the "1957 Act", by the impugned Notification No. 254 of 1987, it cannot be said to be

illegal or invalid. Same principles would apply to other impugned notifications also. Therefore, the challenge against the aforesaid impugned notifications that they are invalid, illegal and *ultra vires* the Constitution has no merit at all. (Para 31)

Rule 9A, specifically, provides to the effect that the date of removal will be the date for deciding what should be the duty of the goods concerned. It is, well settled that even though taxable event is the production or manufacture of excisable article, duty can be levied and collected at a later stage, from the administrative convenience point of view. Scheme of the Excise Act read with the relevant Rules and particularly Rule 9A, unequivocally goes to show that the taxable event is a manufacture and payment of duty would relate to the date of removal of such article from the factory or warehouse with the result that the goods were unconditionally exempted from duty from the date of manufacturing but were dutiable on the date of removal, thereof, and same would be liable to duty on the basis of Rule 9A. It cannot be contended even for a moment that the revenue is incompetent to apply the rates prevalent on the date of removal. (Para 33A)

Rule 9A of the "1944 Rules" operates in supplementary manner to Sec. 3 of the "1944 Act". When it says that in the case of goods removed from the factory or warehouse as the case may be, the date for consideration and determination of the duty and valuation shall be the duty of actual removal. The main object of the charging Sec. 3 is to make clear that the taxable event occurs on the production or manufacture of the goods in India. The other matters are left to be prescribed in such a manner as may be provided under the provisions of the Act. The taxable event in this regard unless otherwise provided or indicated statutorily cannot be itself be deemed to be the date for determination of the duty. The provisions made under Rule 9A are made under the statutory authority. The date of rate of duty and tariff evaluation being the removal of the goods as prescribed in Rule 9A cannot be said to be inconsistent with the provisions of Sec. 3(1) of the "1944 Act" or Sec. 3(1) of the "1957 Act" or the 1944 Rules". (Para 33C)

The additional duty of excise is levied and collected under Sec. 3(1) of the "1957 Act" on specified goods including man-made fabrics produced or manufactured in India, at the rate or rates, specified in the First Schedule to the Act, in addition to the duty imposed by the "1944 Act" and the Rules framed thereunder. By virtue of Sec. 3(3) of the "1957 Act", the provisions of "1944 Act" and the Rules made, thereunder, including those relating to exemption from duty are made applicable in relation to the levy and collection of additional duty. There is no dispute about the fact that it is by virtue of these provisions that the Central Government has been issuing the exemption Notifications under Rule 8(1) of the "1944 Rules" and the impugned Notifications are also issued under the said provisions. There is no manner of doubt that the Central Excise Authorities are entitled to claim duty on the date of actual removal of the goods at the rates prevailing at that time (Stage of removal) irrespective of the date of manufacturing of the said goods pursuant to the provisions of Sec. 3 of the "1957 Act" read with Rule 9A of the "1944 Rules." (Para 36)

P. M. Ashwathanarayan Shetty v. State of Karnataka (1), Maheshwari Mills Ltd. v. Union of India (2), Walles Flour Mills v. Collector of Central Excise (3), R. C. Jal v. Union of India (4), Orient Paper Mills v. Union of India (5), relied on.

K. S. Nanavaty, for the Petitioners.

Haroobhai Mehta, Senior Standing Counsel for the Respondents.

BHATT, J. The main question in focus in this group of 13 petitions, under Art. 226 of the Constitution of India, is whether the classification of goods and the

(1) 1989 (Supp.) (1) SCC 696 (2) 1988 (35) ELT 252 (Guj.)
(3) 1989 (44) ELT 598 (4) AIR 1962 SC 1281 (5) AIR 1967 SC 1564

structure of excise duty, effected by the taxing statutes for the purpose of imposing different and staggered rate of duty in relation to the relevant processed and blended Man-made fabrics, are illegal, and unconstitutional being violative of Arts. 14 and 19(1)(g) of the Constitution of India ?

2. Since the common questions are raised in all these petitions, it was, jointly, submitted by the learned Advocates appearing for the parties to decide all the petitions together and, therefore, they are being disposed of by this common judgment.

3. In this group of petitions, the petitioners have challenged the legality and validity of four Notifications : (1) No. 254 of 1987 dated November 25, 1987; (2) No. 262 of 1987 dated 9th December 1987; (3) No. 4 of 1988 and (4) No. 5 of 1988 both dated 19th January 1988, issued in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 ("1944 Rules" for short) read with sub-sec. (3) of Sec. 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ("1957 Act" for short) by the Central Government in relation to the structure of the excise duty and certain exemptions for Man-made fabrics.

4. The petitioners are in the business of manufacturing various fabrics including blended Man-made fabrics classifiable under Tariff Headings No. 54.09, 50.02, 55.08, 55.11, 55.12 and 60.01, of the Central Excise Tariff Act, 1985 ("1985 Act" for short). The porcessed blended Man-made fabrics have always been excisable goods under the Act as well as under Central Excise and Salts Act, 1944 ("1944 Act" henceforth). The petitioners are holding L-4 Licence, covering their product of fabrics.

5. Prior to the enactment of the Central Excise Tariff Act, 1985, blended Man-made fabrics were classified under the erstwhile Tariff, Item 22 of the 1st Schedule, to the said Act. The Central Government by issuing a Notification No. 79 of 1982, dated 28-2-1982, partially exempted certain such blended Man-made fabrics from the duty leviable thereon. However, with effect from 28-2-1986, the Central Excise Tariff Act, 1985 was brought into operation in supersession of the erstwhile 1st Schedule to the said Act. As a result, the goods earlier classified under the Tariff Item 22 are sought to be classified under Chapters 54 and 55 of the "1985 Act". The Central Government, partially, exempted the relevant processed blended Man-made fabrics from additional duty as before, by virtue of the Notification No. 60 of 1987, dated 1-3-1987.

6. However, on 25-11-1987, Notification No. 254 of 1987 came to be issued in supersession of the Notification No. 60 of 1988, changing the structure of exemption and position as to classification of the relevant Man-made fabrics. Thereafter, considering the various representations, in partial modifications, the Central Government again issued a Notification No. 264 of 1987, dated 9-12-1987. Cerntain partial reliefs were granted in modification of the earlier Notification.

7. Again, considering various representations, the Central Government issued Notifications Nos. 4 of 1988 and 5 of 1988 dated 19th January 1988, as an amendment, to earlier Notification No. 254 of 1987.

8. The petitioners have questioned legality and validity of the aforesaid four Notifications by filing these petitions under Art. 226 of the Constitution, contending

that they are violative of Arts. 14 and 19(1)(g) of the Constitution. The petitioners have also contended that they are not liable for any excise duty on the goods manufactured prior to the date of the said Notifications. It is, thus, pleaded that the Notifications can only apply to the goods manufactured after the issuance of the Notification. The petitioners have also challenged vires of the Rule 9-A of the Central Excise Rules, 1944.

9. In resisting the petitions, the respondents have, *inter-alia* contended that the impugned Notifications are legal and valid and are not assailable under Arts. 14 and 19(1)(g) of the Constitution. The allegations made in the petitions with regard to the arbitrariness, unreasonablesness and non-application of mind in relation to the aforesaid Notifications are denied. It is, also, specifically, denied that on account of aforesaid Notifications, the petitioners have suffered any additional burden or faced any adverse effect on the profit of the concerned manufacturers. The respondents have also pleaded that the exemption notifications in question are issued under delegated legislative powers after interaction between the Trade and the Government and also with a view to achieve the object of the Act and the Rules. According to the respondents, applicability of the revised rates to the goods manufactured earlier but removed after the issuance of the impugned Notifications could not be said to be retrospective action or application of the Notifications concerned. It is also contended that Rule 9A is quite consistent with and is in consonance with the provisions of "1944 Rules" and is legal and valid.

10. In short, the legality and validity of the aforesaid impugned Notifications and the provisions of Rule 9A of "1944 Rules" is in challenge in this group of petitions mainly on the following premises :

(1) That the impugned notifications are discriminatory and hostile being violative of the provisions of Art. 14 of the Constitution as —
   (a) width of the fabric is not a proper and rational criteria; and
   (b) it is not based on capacity to pay of the consumer; and
   (c) flat rates irrespective of quality treat, unequals as equals.

(2) That the impugned Notifications are also violative of Art. 19(1)(g) and unreasonable restrictions on freedom of trade.

(3) That the impugned Notifications cannot apply to the goods manufactured prior to the date of their issuance as Rule 9A being *ultra-vires* and illegal.

11. In petition Nos. 492, 493 and 494 of 1988, challenge is against two impugned Notifications being Nos. 4 of 1988 and 5 of 1988 dated 19th January 1988, and in rest of eleven petitions, challenge is against all the impugned Notifications, including Notifications Nos. 4 of 1988 and 5 of 1988, dated 19th January 1988.

12. The impugned Notifications are issued in exercise of the powers conferred by sub-sec. (1) of Rule 8 of 1944 Rules read with sub-sec. (3) of Sec. 3 of 1957 Act.

13. The provisions of Sec. 3 of 1944 Act, provide for levy of the duty of excise on Man-made excisable goods. It creates charge and defines nature of the charge. Thus, it is a levy on excisable goods produced or manufactured in India. Sec. 4

of the "1944 Act" provides measure by reference to which a charge is to be levied. It is, thus, clear from the provisions of Sec. 3, that there shall be levied and collected in such a manner, as may be prescribed, levy of excise on all excisable goods. The duty has to be levied and collected in such a manner as may be prescribed, that is, prescribed by the Rules from time to time under the provisions of Sec. 37 of the 1944 Act. The Section empowers the Central Government to make the Rules *inter-alia* to exempt amy goods from the whole or any part of the duty imposed by the Act. The Central Government pursuant to the powers under Sec. 37, have also framed the Rules.

14. Rule 8 of the 1944 Rules gives powers to authorise exemption of duties in special cases. It would, therefore, be profitable to refer the said Rule. Relevant Rule 8 at the relevant time which was in force reads as under (as it then stood) :

"8. *Power to authorise exemption from duty in special cases—*

(1) The Central Government may, from time to time by notification in the Official Gazette exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of duty leviable on such goods :

Provided that, unless specifically provided in any notification issued under this sub-rule, any exmption therein shall not apply to excisable goods produced or manufactured in a free trade zone and brought to any other place in India :

Provided further that, unless specifically provided in any notification issued under this sub-rule, any exemption therein shall not apply to excisable goods produced or manufactured in a hundred per cent export oriented undertaking and allowed to be sold in India.

(2) The Central Board of Excise and Customs may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, any excisable goods.

(3) An exemption under sub-rule (1) or sub-rule (2) in respect of an excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-rule shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation. -- "Form or method", in relation to a rate of duty of excise, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable."

The provisions of Rule 8 subsequently came to be omitted by virtue of Notification No. 19 of 1988 dated 1-7-1988.

15. It may also be mentioned that Rule 9 provides that no excisable goods shall be removed from, any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the statutory authority in this behalf, whether for consumption, manufacturing of any other commodity or export in or outside such place or places until the levy of the duty is made at such a place, and in such a manner, as is prescribed under the Rules.

16. The constitutionality of Rule 9A is also under challenge in these petitions. It would, therefore, be necessary to refer the relevant part of the provisions of Rule 9A. It reads as under :

"9A. *Date for determination of duty and tariff valuation :*

(1) The rate of duty and tariff valuation, if any, applicable to any excisable goods shall be rate and valuation in force, -

(i) in the case of goods removed from the premises of a curer on payment of duty, on the date on which the duty is assessed; and

(ii) in the case of goods removed from a factory or a warehouse, subject to sub-rules (2), (3) and (3A), on the date of the actual removal of such goods from such factory or warehouse."

17. Additional duty of excise is levied and collected under Sec. 3(1) of the 1957 Act on the specified goods including Man-made fabrics produced or manufactured in India, at the rate or rates, specified in the Ist Schedule to the said Act. Sub-section (3) of Sec. 3 of the "1957 Act" provides that the provisions of "1944 Act", and the Rules made thereunder including the provisions relating to exemption from duty are made applicable with regard to the levy and collection of additional duties as they apply in relation to the specified goods under the "1944 Act". The Central Government by virtue of the provisions of Sec. 3(3) of "1957 Act", has been issuing exemption Notifications under Rule 8(1) of the "1944 Rules". The impugned Notifications are, admittedly, issued by the Central Government in the exercise of the powers conferred by sub-rule (1) of Rule 8 of the "1944 Rules", read with Sec. 3(3) of "1957 Act", in supersession or in partial modification of the earlier Notifications in relation to the Man-made fabrics. The effect of the impugned Notifications is to prescribe rates of additional excise duties compared to the tariff rate which was 20 per cent, *ad valorem.*

18. It has been contended on behalf of the petitioners that on the grounds stated earlier, the impugned Notifications are arbitrary, unreasonbale and affecting freedom of trade and, therefore, they are violative of the provisions of Arts. 14 and 19(1)(g) of the Constitution. It is the case of the petitioners that the width of the fabric is not proper and rational criteria and the provisions made in the impugned notifications are not based on capacity to pay of the consumers. It is also contended that the flat rates irrespective of the quality, treat unequals with equals.

18A. As against this, the revenue has pleaded that the effect of the exemption Notification is to prescribe reduced rates of additional duty compared to the duty which is 20 per cent *ad valorem.* It is further contended by the revenue that the impugned Notifications are perfectly, legal and valid and the same are issued by the Central Government by invoking the statutory powers.

18B. Firstly, it may be noted that the impugned Notifications are issued by the Central Govt. under the statutory powers. The Scheme and the structure of the Scheme of levy of duty is required to be borne in mind. Section 3 of the "1944 Act" prescribes for the levy. Section 4 of the 1944 Act", provides that where the duty is chargeable on all excisable goods with reference to its value, such value shall be deemed to be the price at which such goods are ordinarily sold by the assessee to the buyer in the course of wholesale trade or delivery at the time and place of

removal. "1944 Rules", are framed pursuant to the powers under Sec. 37 of the "1944 Act". Exemption Notifications in question cannot be assailed on the ground that the width cannot be criteria for the purpose of exemptions. It is also rational and proper criteria dependent upon the facts and the circumstances and the policy of the Central Government and in relations to the statutory parameters. It is not necessary that while exercising the statutory powers for levy of duty or for exemption purpose, capacity of the consumer to pay should always be the basis. The contention that flat rates based on the width of the fabric irrespective of quality treat unequals as equals is also not sustainable.

19. It must be noted at this juncture that the State enjoys widest latitude where measures of economic regulations are concerned. It cannot be disputed that the measures for fiscal and economic regulation and evaluation of deffered and quite often conflicting economic criteria and adjustment and balance of rival interest and percuniary aspect ought to be considered. It is for the State to decide as to which economic and social policy it has to follow and adopt within the statutory boundaries. In fact, it is incumbent for the State which is wedded to the doctrine of *"Welfare State"* to examine all the relevant aspects and conflicting criteria for balancing and seeking the aim and object of its policy in light of the relevant provision of law. The following observations of the Apex Court in the case of *P.M. Ashwathanarayan Shetty v. State of Karnataka,* 1989 (Supp.) (1) SCC 696, are very relevant :

> "It is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policy."

20. It is, amply clear from the above decision that in the matter of policy of the State, the State, thus, enjoys latitude where the measures of economic regulations are concerned. In order to invalidate the impugned Notifications, the criteria of the width of the fabrics cannot be said to be improper or irrational criteria. It is also not, successfully, shown that the criteria of capacity to pay of the consumer should always be the basis for the exercise of statutory powers for granting exemptions. Nothing has been shown as to how the revenue has exercised statutory powers, unreasonably, and arbitrarily. Assuming that the criteria of capacity to pay of the consumer and the flat rates irrespective of quality is adopted for granting certain exemptions, then also, it could not be said that those criteria are illegal or arbitrary or unreasonable in the circumstances of the case. In order to succeed in challenge and to invalidate the statutory powers and the provisions, it is for the petitioners to show as to how the impugned Notifications are illegal or irrational or arbitrary. There is nothing on record to show that the impugned Notifications are, in any manner, assailable on the basis of the provisions of Arts. 14 and 19(1)(g) of the Constitution.

21. In Art. 14, very important doctrine of "Equality" is enshrined. It reads as under :

> "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India."

In determining the validity of such impugned provisions, the Courts in India have followed the general principle that equal protection of laws means the right to equal treatment in similar circumstances. The Courts have upheld legislation containing apparently discriminatory provisions where the discrimination is based on a reasonable basis. By expression *"reasonble"* it meant that the classification must not be arbitrary but must be rational. The classical test as judicially enunciated requires the fulfilment of two conditions, namely :

(1) The classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others ;

(2) The differentia must have a rational relation to the object sought to be achieved by the law or the provisions under challenge.

It is a settled proposition of law that the equality clause contained in Art. 14, requires that all persons subjected to any legislation should be treated alike under the like circumstances and conditions. No doubt, it is true that the classification must not be arbitrary but is must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in some persons grouped together and not in others who are left out but those qualities or characteristics must have reasonable relation to the object of the legislation.

Equals have to be treated equally and unequals ought not to be treated equally. What provisions of Art. 14 prohibit, is a class-legislation. It does not forbid classification for the purpose of implementing doctrine of equality guaranteed by it. It is also very well settled that in order to pass the test, following two conditions ought to be established :

(i) that the classification must be based on intelligible differentia which distinguishes those that are grouped together from the others; and

(ii) that the differentia must have a rational relation to the objects sought to be achieved by the Act, while the classification may be founded on different basis or criteria. What is required and significant, is that there must be a nexus between the basis of classification and the objects of the impugned provisions under consideration.

22. In the light of the factual scenario drawn hereinbefore, the impugned notifications and the provisions of Rule 9A, clearly, satisfy the aforesaid conditions. The revenue has considered various representations and after meaningful dialogue with the representatives of the trade and the views of the various authorities in charge of the executive, criteria are followed and accepted in the impugned Notifications which have direct and material bearing with the object of the provisions of relevant provisions of the Excise law. The differentia and criteria which is the basis of classification and the object of the impugned Notifications and the provisions of "1994 Rules" have nexus with the object of the relevant Central Excise law. It cannot be said even for a moment that the equals have been treated unequally or that the unequals are sought to be treated equally. Under Art. 14 in clear terms does not forbid classification for the purpose of advancing the object and the cause of the Act and the right of equality. Since the impugned Notifications and the differentia and criteria adopted and followed in the impugned Notifications could not be said to be unreasonble in the factual background discussed, hereinbefore, on the point,

it is found that the aforesaid two material conditions are established so as to hold the impugned Notifications as legal and valid.

It is true under our Constitutional law, the impugned provisions or any other law for that purpose should not be arbitrary, unreasonable or irrational, unconnected with the object of the Act. The four impugned Notifications and the provisions of Rule 9A of the "1944 Rules" successfully, pass through the test or requirements of Art. 14. It is not shown successfully in this group of matters that, the criteria or the basis of classification makes any actionable hostile discrimination by conferring privileges or imposing liabilities upon the person arbitrarily selected out of large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed. The contention that the impugned Notifications and the provisions of Rule 9A of *"1944 Rules"* violate the provision of Art. 14, is unsustainable. The basis for the imposition of duty and the criteria enunciated in the impugned provisions could not be said to be arbitrary, for the simple reason that they do not involve negation of equality for equals. It is for the State to decide the basis for the imposition of duty or exercise discretion for exemptions. If such discretion is shown to be arbitrary, unjust or unconnected with the object of the relevant provisions, then in that case, one can seek rescue from the doctrine of Art. 14 to invalidate the same. So is not the factual scenario here. Apart from the fact that the petitioners have failed to show that the impugned Notifications and the provisions are hit by the provisions of Art. 14, the Revenue has, successfully, placed on record that there is a rational basis, logical approach and reasonable classification having, nexus with, the object of the provisions of the "1944 Act," and "1957 Act". Therefore, challenge in respect of the impugned provisions is a futile attempt, and, therefore, it must end in smoke. The exercise of discretion under the statutory provisions while fixing criteria and the basis for levy of duty and also for the purpose of exemption are not at all violative of the provisions of Art. 14 and, therefore, contention that the impugned provisions are violative of Art. 14, must fail and accordingly it is rejected.

23. Likewise, the contention that the impugned Notifications and the provisions of Rule 9A are also contrary to the provisions of the Constitution and hit by Art. 19(1)(g) of the Constitution is also found without any merits in light of the facts and circumstances narrated hereinbefore. Art. 19, prescribes provisions giving protection of certain freedom. It is true, under Art. 19(1)(g), there is a freedom to practise in profession or to carry on occupation or business. However, such freedom is subjuct to reasonable restrictions as provided under Art. 19(5) & (6). It cannot be said even for a moment that the criteria or the basis adopted in the impugned Notifications is affecting freedom of trade of the petitioners. The petitioners have not, successfully, shown from the record that their business is in any way adversely affected on account of the impugned provisions of the said four Notifications and Rule 9A. Apart from that, mere fact that the impugned provisions, incidentally, remotely or collaterally has the effect of abridging or abrogating those rights, will not fulfil required test to invalidate the impugned provisions under Art. 19(1)(g). Even in case where some adverse effect on the business on account of exercise of statutory discretion is generated, it is incidental and collateral which could not be said to be unreasonable restriction. It is true that the impugned provisions

in order to be invalidated on the basis of Art. 19(1)(g), it must be shown that there are unreasonable restrictions inhibited in Art. 19. Nothing of this sort has been shown from the record to convince the Court that the impugned Notifications and the provisions of Rule 9A are in any way violative of Art. 19(1)(g). We may make it clear that even if the impact of the impugned provisions is merely incidental, indirect, remote or collateral as is dependent upon the factor which may or may not come into play and therefore, Art. 19 should not be pressed into service for faulting its legality and validity. The petitioners have failed to show from the record that the impugned provisions are, in any way, violative of the provisions or such principles of Art. 19(1)(g) of the Constitution and, therefore, the contention raised in this behalf must fail. It is, therefore, rejected.

24. The contention that the criteria of flat rates irrespective of quality has adversely affected freedom of trade is not sustainable. The impugned Notifications could not be said to be unreasonable restrictions on freedom of trade. It is legal and open for the revenue to prescribe structure on the basis of width and also on flat rates. The State has to consider various aspects and it has to consider various conflicting social and economic value and legal parameters while fixing duty structures while exercising the statutory powers.

25. The respondents have denied all the allegations in the counter and have, elaborately, stated the background and the aspects examined and considered before the issuance of the impugned Notifications. Effectvie duty structure in the field which was existing in the field of additional duty in lieu of sales tax on Man-made fabrics, was based on the value of fabrics. Notification No. 79 of 1982 and 60 of 1987 were based on the value of fabrics. However, it was noticed by the Central Government upon the receipt of many complaints and representations in connection with the basis of valuation of Man-made fabrics. The question whether the duty payable should be computed on the basis of job charge only or should be based on entire process of fabrics is for the revenue to consider while forming a policy and in exercise of statutory powers. It was also, *inter alia,* contended by the revenue that it was noticed that the correct value of the fabrics with a view to indulge in tax evasion, assessee had been indulging in several unhealthy *modus - operandies.* The Central Government had also found that there was a substantial decrease in the revenue realised from the Man-made fabrics compared to the budgetory estimates. In order to overcome the loopholes and pitfalls in valuation of the fabrics which were noticed for the evasion, the Central Government introduced a new Scheme of additional duty for Man-made fabrics, by virtue of Notification No. 254 of 1987, dated 25th November, 1987. Specific rate of duty is provided in the said Notification. The manner and mode of computation of duty is provided in the said Notification. The computation of duty provided, therein, is in relation to the area of the fabrics coupled with the criterion of width and in respect of certain fabrics basis is of weight. This Notification covers, broadly, shirtings, sarees and suitings for the purpose of levy of taxes and exemptions in certain cases and area of Man-made fabrics.

25A. It, clearly, transpires from the counter that the review of the duty structure prescribed in Notification No. 254 of 1987 was undertaken in the light of the reports of the working of the machinery in relation to the said notifications. For this purpose, a letter, dated 25th November, 1987, was addressed to all the Collectors of the Central

Excise with a view to ascertain the feasibility and the resultant effect on account of change in the duty structure. The representations were also received by the Central Government in order to ascertain the over all impact of new duty structure pursuant to the notification No. 254 of 1987 and, thus, extensive exercise was undertaken. It would be necessary and relevant to quote the contents of the letter dated 25th November, 1987 addressed to all the Collectors of the Central Excise by the Department of Revenue of the Central Government. It reads as under :

> "In order to ascertain the impact of this new duty structure, it is proposed to collect data as per the proforma enclosed. In Annuexure I to the proforma, details regarding width of the fabrics, weight per sq. mtr., assessable value, total duty incidence and average duty incidence per sq.mtr. have to be indicated for the various varieties of fabrics specified in column (2) of the said Annexure. The duty incidence should be determined under the duty structure existing prior to the introduction of the new scheme. In Annexure II, data regarding the quantity cleared, the value of clearance and revenue realised during April-September, 1987 have to be furnished for various categories of fabrics such as shirtings, sarees, dhotis, suitings and others. The above information in the proforma prescribed should be submitted by name to Shri P. R. Chandrashekharan, Sr. Technical Officer, Tax Research Unit, Room No. 146G, Department of Revenue, Ministry of Finance, North Block, New Delhi 110 001 so as to reach latest by 31st December, 1987.
>
> The Collectors should also bring out clearly in their report the various difficulties that are faced on account of introduction of the new duty structure and also report specific cases where the duty incidence has gone up very high. The Collectors may also make suggestions in any of the specifications regarding width and weight have to be changed so as to cover the fabric under a particular category. The revenue implications on account of the changes now brought about should also be clearly reported so that the continuation or otherwise of the above duty structure could be examined in proper perspective. If any change in the pattern of clearance is noticed by manipulation to the notice of the board immediately.
>
> If the above scheme is found to be successful, it is proposed to introduce a similar scheme in respect of cotton fabrics falling under Chapter 52. For this purpose, information as per Annexures I and II should be furnished in respect of cotton fabrics also. The Collectors may also offer their suggestion in this regard."

After considering the reports received and various aspects, information data and suggestions as also the representations from the trade, a review was undertaken of the said duty structure as a result of which, the impugned Notification No. 262 of 1987 came to be issued, on December 9, 1987. Thus, duty structure prescribed in the impugned Notification No. 254 of 1987 came to be reconsidered and revised.

Before issuing the impugned Notification No. 262 of 1987, all the aspects were taken into consideration. It is also evident from the record that, besides providing for more detailed categorisation of fabrics, type of raw-material used in the manufacture of the concerned Man-made fabrics also was taken into consideration and the resultant effect is given in the impugned Notification No. 262 of 1987. Thus, the revenue has pleaded that the Notification No. 262 of 1987 is aimed at to re-introduce criteria of value of the fabrics while categorising type of fabrics and providing different rates fixed area wise. It is also very clear from the affidavit-in-reply that the concessions granted by the impugned Notifications Nos. 4 of 1988 and 5 of 1988 dated 19th January 1988 would benefit cheaper varieties of fabrics.

Modifications are also made in the width and weight criteria so as to reduce the duty incidence on certain types of shirtings and dhotis under the said Notifications Nos. 4 of 1988 and 5 of 1988. The duty rate is, no doubt, increased in certain cases but it is also found from the affidavit-in-reply that the addition is made in the constlier fabrics including knitted fabrics. Notification No. 4 of 1988 relates to fabrics of fibre or yarns of cellulosic origin and fabric of nylon filaments falling under Chapters 54.09 and 55.08. It is also clear from the said Notification that there is reduction of rates in respect of certain categories of fabrics.

26. The impugned Notification No. 5 of 1988 relates to the fabrics containing polyester etc. and is covered by Chapter Heading 54.09, 54.12, 55.08, 55.11 and 55.12. It is also found from the said Notification No. 5 of 1988 that the rates in respect of the fabrics of width not more than 100 Cms have remained unchanged. However, weight criteria has been raised to 150 Gms. per Sq. Mtr. as against 125 Gms prescribed earlier. By virtue of the said Notification, no more categories have been created in respect of width more than 100 Cms but more than 130 Cms by complying with criteria of value of the concerned fabrics. Likewise, some more categories are also created which are not specified in any other category on the basis of the value of the fabrics.

27. It transpires from the facts emerging from the record that the changes broadly are made in the subsequent Notifications Nos. 4 of 1988 and 5 of 1988, in which certain categories, rates of duty have been brought down in respect of fabrics of value not exceeding Rs. 40/- and the rate of duty is increased in respect of the fabrics exceeding Rs. 100/- per square metre compared to the provisions made in the previous Notifications. The contentions raised in the affidavit-in-reply have remained uncontroverted.

In view of the uncontroverted specific averments made in the counter by the respondent authorities, the factual premises on which the impugned Notifications are questioned and upon correct assessment thereof, such a challenge is, undoubtedly, found incorrect and unsustainable.

28. There is nothing on record to, even remotely, indicate that the overall effect of the impugned Notifications is to give better reliefs to cater to the needs of the people in the higher income group as alleged. It is also not acceptable that the new tax structure is intended to benefit a few units. The allegation about the additional burden having made or raised adverse impact on the profit of the manufacturing concerns is also not established. Such contention is specifically denied in the affidavit-in-reply. Even such a effect would be incidental. The petitioners have, totally, failed to substantiate such an allegation.

29. In view of the facts and the circumstances emerging from the record of the present case, the grounds on which the Notifications are challenged are without any substance and, hence, not acceptable and sustainable. In light of the factual back-ground in this batch of petitions, it cannot be contended that the Notifications impugned in these petitions are, in any way, sustainable. The petitioners have not been able to satisfy and justify the allegations of arbitrariness, unreasonableness and discrimination. Such bald averments made in the petition are not substantiated. On the contrary, in light of the uncontroverted everments in affidavit-in-reply, the

allegations made in the petitions are not found correct. They are meritless; therefore, challenge against the impugned notifications on the aforesaid factual and legal grounds must fail. The petitioners have not been able to, successfully, show that there is any violation of the provisions of Arts. 14 and 19(1)(g) of the Constitution. There is no material worth the candle on record to show even remotely indicating unreasonable restrictions on freedom of trade, pursuant to the impugned notification. The contention that the impugned notifications are violative of the Constitutional provisions of Arts. 14 and 19(1)(g), therefore, must fail, being without any merits.

30. The change in basis of exemption granted in the impugned notifications cannot be said to be *ultra-vires* when the basic additional duty is not enhanced. It is not disputed that there is no increase in the basic additional duty levied under Sec. 3(1) of the "1957 Act", by the impugned notifications. Rate of duty is fixed in the Ist Schedule to the "1944 Act" which prescribes outer limit for the maximum ceiling. Under Rule 8, the Government is empowered to exempt any goods from the whole or any part of the duty imposed under the "1944 Act." It is, clear, from the allegations made in the petitions and the impugned notifications that on Man-made fabrics only, the additional duty of excise is levied under Sec. 3(1) of the "1957 Act." Under Rule 8(1), partial exemption came to be granted in respect of certain Man-made fabrics by Notifications No. 60 of 1987, dated 1st March, 1987. This was changed by the impugned notifications. Alterations may have resulted in slight increase in duty in certain cases but admittedly same does not exceed the basic duty prescribed. It is not the case of the petitioners that the duty payable under the impugned notification is more than prescribed under Sec. 3(1) of the "1957 Act." So long as, the duty payable under the impugned notification is concerned, same is less than the basic duty and there is still some exemption and hence such notification could validly be issued under Rule 8(1). The Central Government is empowered to vary the exemptions so long as the duty falls short as the basic duty. Therefore, the challenge against the impugned notifications adopting different criteria while exercising powers under Rule 8(1) cannot be accepted. The Central Government is empowered to grant exemption from the duty of excise. It cannot, therefore, be contended that it has no power to enhance the duty within the statutory limits adopting different criteria, and therefore, such a contention would be without any substance, on merits.

31. It would be interesting to note that this Court in a Division Bench decision in case of *Maheshwari Mills Ltd. v. Union of India*, 1988 (35) ELT 252 (Guj.) had upheld the constitutionality and validity of the Notification No. 254 of 1987 dated 25th November 1987. It is also held in the said decision that it is open to the Government to change basis of exemption so long as the duty does not exceed the basic duty as it is clearly permissible under Rule 8(3) read with explanation, thereto. When there is no increase in the basic additional duty levied under Sec. 3(1) of the "1957 Act", by the impugned Notification No. 254 of 1987, it cannot be said to be illegal or invalid. Same principles would apply to other impugned notifications also. Therefore, the challenge against the aforesaid impugned notifications that they are invalid, illegal and *ultra vires* the Constitution has no merit at all.

32. Next, it brings into sharp focus the question of constitutionality of the provisions of Rule 9A of "1944 Rules." As such, Rule 9A of "1944 Rules" provides that the rate of duty and tariff valuation, if not applicable to any excisable goods, shall be the rate and valuation, in force, in the case of goods removed from the premises of manufacturer on payment of duty on the date on which the duty is assessed and in the case of goods removed from the factory or warehouse on the date of actual removal of such goods. It becomes very clear from the plain perusal of the provisions of Rule 9A of the "1994 Rules", that the First Part applies to the case wherein the goods are removed by curer on payment of duty, whereas the Second Part relates to removal of goods from the factory or warehouse on which duty is yet to be paid.

33. The petitioners have challenged the provisions of Rule 9A of the "1994 Rules", contending that they are *ultra-vires* and illegal. It is also contended on behalf of the petitioners that the exemption notification is applicable only to the goods manufactured after the issuance thereof on proper appreciation of Sec. 3 of the "1957 Act" and Sec. 37(2)(xvii) of the "1944 Act" as well as Rule 8. Relying on the aforesaid provisions, it is further contended that these notifications entirely exempt the goods manufactured prior to the date of notification from the chargeability of duty. Therefore, according to the petitioners, the action of the revenue in levying and charging the duty even on the goods manufactured prior to the date of the respective notifications impugned in these petitions is illegal and invalid. The remarks and the submissions of such a nature (as aforesaid) obviously could herald the erosion of the rule and plain language employed in the original statutory provisions. In this regard, the petitioners have also challenged that the revenue is not empowered to issue the notifications having retrospective effect. It is, also, pleaded that the provisions of the charging Sec. 3 of the "1944 Act" prescribe that the duty shall be levied and collected on all goods *manufactured and produced* in India. Therefore, it is submitted that the revenue is not entitled to charge or impose the duty on the goods manufactured prior to the issuance of the impugned notifications, as otherwise, it will have a retrospective effect which is illegal and not permissible. Thus, the main thrust of the argument is that Rule 9A travels beyond the scope of Sec. 3 of the "1957 Act" and Sec. 37(2)(xvii) of the "1944 Act". Therefore, it is further urged that the impugned notifications and the action thereunder taken by the revenue are *ultra-vires* and illegal. This challenge is, seriously, traversed and countenanced by the revenue authorities.

33A. Rule 9A, specifically, provides to the effect that the date of removal will be the date for deciding what should be the duty of the goods concerned. It is, well settled, that even though taxable event is the production or manufacture of excisable article, duty can be levied and collected at a later stage, from the administrative convenience point of view. Scheme of the Excise Act read with the relevant Rules and particularly Rule 9A, unequivocally goes to show that the taxable event is a manufacture and payment of duty would relate to the date of removal of such article from the factory or warehouse with the result that the goods were unconditionally exempted from duty from the date of manufacturing but were dutiable on the date of removal, thereof, and same would be liable to duty on the basis of Rule 9A. It cannot be contended even for a moment that the revenue is incompetent to apply

the rates prevalent on the date of removal. In this connection, a reference is necessary to the decision of the Hon'ble Supreme Court in *Walles Flour Mills Co. Ltd. v. Collector of Central Excise,* 1989 (44) ELT 598.

In *Walles Flour Mills Co. Ltd. case* (supra), it is held that the scheme of the Excise Act read with the relevant rules and particularly Rule 9A shows that the taxable event is the manufacturing and the payment of duty is related to the date of removal. Therefore, when the goods were unconditionally exempted from the duty of manufacturing but were dutiable on the date of their removal, they would be liable to the duty on the basis of Rule 9A of the "1944 Rules." Therefore, the revenue is entitled and within their statutory competence to apply the rates prevalent on the date of removal of the goods even though produced or manufacture was completed at point of time when the goods were, as such, exempted from the payment of duty.

33B. The recovery of duty "according to the date of removal" does not make removal to be taxable event for the purpose of levy of the central excise.

33C. The contention of the petitioners that Rule 9A is illegal, unconstitutional and void is also not acceptable. Section 3 of the "1994 Act" is charging section which determines taxable event and it clearly prescribes that the duty shall be "levied and collected in such a manner as may be prescribed". Rule 9A of the "1944 Rules" operates in supplementary manner to Sec. 3 of the "1944 Act". When it says that in the case of goods removed from the factory or warehouse as the case may be, the date for consideration and determination of the duty and valuation shall be the date of actual removal. The main object of the charging Sec. 3 is to make clear that the taxable event occurs on the production or manufacture of the goods in India. The other matters are prescribed in such a manner as may be provided under the provisions of the Act. The taxable event in this regard unless otherwise provided or indicated statutorily cannot by itself be deemed to be the date for determination of the duty. The provisions made under Rule 9A are made under the statutory authority. The date of rate or duty and tariff evaluation being the removal of the goods as prescribed in Rule 9A cannot be said to be inconsistent with the provisions of Sec. 3(1) of the "1944 Act" or Sec. 3(1) of the "1957 Act" or the "1944 Rules". It is quite, as such, compatible and in consonance with the taxation policy relating to the imposition of duty. It, therefore, cannot be contended that the said provisions are in any manner *ultra-vires* the charging sections of the said two statutes or any one of them, or rules made thereunder.

34. In addition to the duty imposed by "1944 Act", additional duty of excise is levied and collected under Sec. 3 of the "1957 Act". As observed hereinbefore, by virtue of Sec. 3(3) of the "1957 Act", or the provisions of 1944 Act and the Rules framed thereunder including those relating to exemption from duty are made applicable in relation to imposition and collection of the additional duties as they apply in relation to the specified goods including Man-made fabrics, under the "1944 Act". The impugned notifications are issued pursuant to the aforesaid provisions and in the light of the provisions of Rule 9A of the "1944 Rules". Sec. 37 of the "1944 Act" empowers the Central Government to make the Rules *inter-alia* to exempt any goods from the whole or any part of the duty imposed by the Act. In exercise of

the powers conferred by the said Section, the Central Government has framed the Rules. Rule 9A of the "1944 Rules" cannot, therefore, be said to be illegal or unconstitutional as contended by the petitioners herein. It is also not contrary or inconsistent with the statutory provisions and parameters incorporated in "1944 Act" and "1957 Act." The Scheme of Rule 9A fixing date for levy on the goods removed from the factory or warehouse has been in practice and existence since, January, 1945. Since the Parliament has not thought it fit to make change in the Scheme of this rule for more than Five decades, the contention that Rule 9A is contrary to or inconsistent with the intention of the Parliament as envisaged by Sec. 3 of the "1944 Act" is unsustainable. It may be mentioned that the constitutionality or legality can be urged even if the provisions remained on Statute Book for a very long spell but what we intend to high-light and herald is that the contention that the said provisions of Rule 9A are contrary to the intention of the Parliament as contemplated by Sec. 3 of "1944 Act", cannot be subscribed to. The nature and the rate of duty is fixed by the charging Sec. 3 of the "1944 Act," whereas, the manner of levy and collection of duty has been delegated under that provision. Rule 9A was as such superseded later on. However, the similar provision was inserted on 27th January 1945 as per F. D. (CR) Notification No. 2 Camp. The nature of excise duty has been considered by the Supreme Court in several cases. In case of *R. C. Jal v. Union of India,* AIR 1962 SC 1281, the Supreme Court after referring to several earlier decisions has observed that the excise duty is primarily a duty on the production or manufacturing of the goods or the goods produced or manufactured within the territory of India. It is an indirect duty which the manufacturer or producer will pass on the ultimate consumer that is - its ultimate incidents which will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authority, said tax can be levied at a convenient stage so long as the character of duty imposed that is its duty on the manufacturer or producer is not changed. Although there is nothing to prevent the Central Government from imposing duty of excise on a commondity as soon as it comes into existence, but the taxing authority will not, ordinarily, impose such duty because it is much more convenient from the administrative view point to collect the duty when the commodity is removed from the factory or warehouse, as the case may be. Thus, duty of excise is clearly related to the production or manufacturing of the goods but it does not matter if the levy is not made at the time of production or manufacturing, but at a later stage and that if the duty is collected from the retailer, it would not necessarily be ceased to be the excise duty. Section 3 of the "1944 Act", imposes excise duty on all excisable goods which are *produced or manufactured* in India. It clearly provides that this duty will be "at the rates set forth in the First Schedule to the Act." The manner and mode of levy and collection of duty is, however, left to be prescribed by the Rules. Therefore, we are unable to subscribe to the contention that the qualifying words "in such a manner as may be prescribed" would mean only *"collected"* and not *"levied".* Section 3 of the "1944 Act" can impose the duty at the rate set-forth on all excisable produce or manufacturing, within the territory of India, but does not lay down at which duty to attach or the duty with reference to which the rate has to be applied. It is, therefore, not possible for us to accept the contentFion that Sec. 3 of the "1944 Act" applies rate of duty

as in force on the date of manufacturing or production and not the date of removal. The excise duty as such is tax on the manufacturing and it need not necessarily be levied at that stage, there and then. It may be even levied at the stage of excisable article leaves the factory or reaches the retailer.

In this connection, reference may be made to the provisions of Sec. 4 of the 1944 Act. Section 4 deals with the determination of the value of the article for the purposes of duty. The material point of time with reference to which the value is determined in this section is the time of removal of the goods chargeable with duty and not at a time when it is produced or manufactured. It is, thus, clear from the provisions of Sec. 3 or any other provisions of the 1944 and 1957 Statutes that the excise duty can be levied at the rate prevailing on the date of removal. The Central Government is empowered and authorised to make rules for fixing time with reference to which the rate of duty ought to be recovered or applied. Rule 9A provides that the rate prevailing on the date of actual removal of the goods from the factory or the warehouse and it is valued under Sec. 37 as it carries out the purpose of the Act by prescribing the manner of levy of duty.

35. In *Orient Paper Mill Ltd. v. Union of India*, AIR 1967 SC 1564, the Supreme Court has clearly held that the rate to be applied is the rates, in-force, at the date of removal, under Rule 9A after observing that the removal is the relevant event for collection of duty. It is also observed in the said judgment by the Supreme Court that if the payment is made before removal and the duty is enhanced at the time of removal, the assessee will be liable for the enhanced duty in view of the provisions of Rule 9A of the "1949 Rules." The object and the scope of Rule 9A is to determine the date for imposition of duty and tariff valuation. Under Rule 9A, it is stated that in the case of the goods removed from the factory or ware-house subject to such special Rules (2), (3) and (3A), such date shall be the date of actual removal of the goods from such factory or warehouse.

36. The additional duty of excise is levied and collected under Sec. 3(1) of the "1957 Act" on specified goods including Man-made fabrics produced or manufactured in India, at the rate or rates, specified in the First Schedule to the Act, in addition to the duty imposed by the "1944 Act" and the Rules framed thereunder. By virtue of Sec. 3(3) of the "1957 Act", the provisions of "1944 Act" and the Rules made, threrunder, including those relating to exemption from duty are made applicable in relation to the levy and collection of additional duty. There is no dispute about the fact that it is by virtue of these provisions that the Central Government has been issuing the exemption Notifications under Rule 8(1) of the "1944 Rules" and the impugned Notifications are also issued under the said provisions. There is no manner of doubt that the Central Excise Authorities are entitled to claim duty on the date of actual removal of the goods at the rates prevailing at that time (Stage of removal) irrespective of the date of manufacturing of the said goods pursuant to the provisions of Sec. 3 of the "1957 Act" read with Rule 9A of the "1944 Rules." We are of the clear opinion that the Rule 9A is *intra-vires* and is consistent with the Scheme of the Taxation envisaged in 1944 and 1957 Acts. The impugned Notifications are also issued under the aforesaid statutory provisions. They are quite legal and valid. The provisions of Rule 9A of the "1944 Rules" is not, in any manner, shown to be inconsistent, with the provisions of 1944 and 1957 Acts.

37. In *Maheshwari Mills Ltd. v. Union of India*, 1988 (35) ELT 252 [Guj], this Court has clearly held that Rule 9A is not in any manner inconsistent with the provisions of Sec. 3(1) of the "1944 Act" or Sec. 3(1) of the "1957 Act". Considering the various decisions of the Supreme Court in aforesaid Division Bench decision of this Court, it is held that the provisions of Rule 9A are quite consistent with the taxation policy relating to the excise duty and spirit, thereof. It is further held in the said decision that it is not necessary to read it to save it from being urged *ultra-vires* the charging sections of the said two Statutes or any one of them. In that decision of the Division Bench of this Court, one of the impugned Notification that is Notification No. 254 of 1987 is also held to be legal and valid. While upholding the legality of the said Notification, it is also observed that the rate of duty prevalent on the date of removal is relevant and not the date of manufacturing. This Court has, categorically, observed that the Man-made fabrics manufactured prior to coming into force of the said Notification but removed later on is not governed by the earlier exemption Notification but by the Notification govering on the date of removal as such.

In *Maheshwari Mills case* (supra), this Court while dismissing the challenge against the Notification No. 254 of 1987, has made, after considering the various decisions, the following observations which are quite pertinent :

> "In view of the above discussion, we find no merit in the principal contention. The rate of duty is fixed in the First Schedule to the 1944 Act. It prescribes the outer limit of the maxima. Under Rule 8, the Government is empowered to exempt any goods from the whole or any part of the duty imposed by the 1944 Act on Man-made fabrics any additional duty of excise is levied under Sec. 3(1) of the 1957 Act. Under Rule 8(1) partial exemption was granted in respect of certain Man-made fabrics by Notification No. 80 of 1987. This was altered by the impugned notification dated 1st March, 1987. This alteration may have resulted in a slight increase in duty in certain cases but admittedly the same does not exceed the basic duty prescribed under Sec. 3(1). So long as the duty payable under the impugned notification is less than the basic duty, there is still some exemption and hence such a notification could validly issue under Rule 8(1). The Government which has the power to exempt can vary the exemption so long as the duty falls short of the basic duty. The impugned notification is, therefore, *intra-vires* Rule 8(1) of the Rules. Similarly, it is open to the Government to change duty. This is clearly permissible under Rule 8(3) read with the explanation thereto. Since there is no increase in the basic additional duty levied under Sec. 3(1) of the 1957 Act by the impugned notification, we see no merit in the contention based on Sec. 3 of the Tariff Act."

We are in complete agreement with the aforesaid observations. The petitioners have not been able to persuade us to take a different view. The challenge against the validity and legality of the four impugned Notifications and Rule 9A of the "1944-Rules" must fail. We are of the clear opinion that Rule 9A is *intra-vires* and not being in execss of the Rule making powers of the Government.

It is always open to the Government to alter the criteria or basis of exemption so long as the duty does not exceed the basic duty. The rate of duty is prescribed and fixed in the First Scheule to the "1944-Act". It provides further for maximum limit. The Central Government is empowered to exempt in part or whole any

excisable goods from the levy of duty pursuant to the provisions of Rule 8 of the "1944-Rules". The additional duty of excise is levied under the provisions of Sec. 3(1) of the "1957-Act" on Man-made fabrics. The partial exemption under Rule 8(1) granted in respect of Man-made fabrics earlier could be changed and altered by the Government. The alteration or changes effected in the impugned Notifications by the Central Government adopting different criteria and basis in certain Man-made fabrics are quite legal and valid. The alterations in exemption on different criteria or basis may have resulted in increase on duty in certain cases but the same admittedly does not go beyond the basic duty prescribed under Sec. 3(1) of the "1957-Act", and, therefore, impugned Notifications cannot be said to be illegal or unconstitutional. So long as duty payable under the challenged Notifications is less than the basic duty, Government is competent to revise and review, duty or for that purpose exemptions under Rule 8(1). Such Notifications, therefore, are legal and valid. It is an admitted factual position that there is no rise or increase in the basic additional duty leviable under Sec. 3(1) of "1957 Act" by the impugned Notifications. We have, therefore, no hesitation in holding that entire batch of petitions is meritless.

In our opinion, therefore, the challenge against the impugned Notifications No. 254 of 1987, dated November 25, 1987; No. 262 of 1987 dated 9th December, 1987; Nos. 4 of 1988 and 5 of 1988, both dated 19th January 1988 and also against the provisions of Rule 9A of "1944-Rules" is devoid of any force of law and, therefore, must fail. Rule 9A is legal and valid and *intra-vires* the Constitution. The respondent-Revenue Authorities are entitled to leavy duty at the rate of duty prevalent on the date of removal of goods. The Scheme of "1994 Act" and Rules framed thereunder particularly, Rule 9A it becomes explicit that while the taxable event is the fact of manufacturing or production of an excisable goods, the payment of duty is related to the date of removal of such goods. Therefore, Man-made fabrics manufactured prior to coming into force of the impugned exemption Notifications, but removed later on are obviously governed by the relevant said and such Notification and not earlier exemption Notifications. The excise is a duty on production or manufacture. But the realisation of duty may be deferred to the date of removal of goods for the administrative convenience. The taxable event is manufacture. But the liability to pay the duty is postponed on the date of removal and that is the underlying purpose, policy and philosophy under the provisions of Rule 9A. The object and scope of Rule 9A is to determine the date for imposition of duty and tariff valuation.

In light of the aforesaid discussions and considering the relevant provisions of the law, we have no hesitation in holding that all these 13 petitions are meritless and are required to be rejected. Accordingly, all these petitions are rejected and Rule is discharged in each petition with no order as to costs. Interim relief, if any, obviously, shall stand vacated.

(ATP) *Rule discharged*

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