A

MURTHY MATCH WORKS, ETC. ETC.

v.

THE ASSTT. COLLECTOR OF CENTRAL EXCISE, ETC.

January 17, 1974

[V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

B

Central Excise & Salt Act, 1944—S. 37 and the notification issued thereunder—whether court can review legislative judgment—Constitution of India—Reasonable classification of principles for determining.

The match industry in India has grown over the decades. From the point of view of manufacturing techniques the safety match industry comprises of two distinct categories: the machanised sector occupied by a few big manufacturers and the non-mechanised sector comprising varying sizes of production units. The
C Government classified the safety match manufacturers into four categories depending on the quantity turn out and other relevant factors. But the Tariff commission recommended the abolition of sub-classification for the purpose of levying excise duty and suggested separate scales of excise duty to be levied for four classes of units, namely, A, B, C and D. Based on these recommendations the slab system of excise duty was abandoned by the Government and the category wise rate was adopted. As a result of the adoption of the differential duty scheme the advantages offered to the 'C' group went to the 'B' group which in turn resulted in fall in production. It also generated pseudo—C category producers from out of the erstwhile B category
D which ultimately eliminated C category producers. The Government, therefore, withdrew the tax concession to C category and equated it with B category.

The Government of India had from time to time issued notifications under s. 37 of the Central Excise and Salt Act, 1944. The notification issued in 1967 levied excise duty on the basis of manufacture of matches of which "any process is ordinarily carried on with the aid of power". As a result of this notification the B and C categories of old were now treated equally. The change in classification of the manufacturers was based on the use of power which in turn had a rational relation
E to the techniques and processes of production and their ability to bear the burden of the levy. This was done on the basis of recommendations of the Central Excise Re-organisation Committee.

The High Court refused to strike down the notification. It was contended in this Court that this unsocialistic step had left the small producers in the cold and virtually compelled them to retire from the industry and is thus discriminatory.

F Dismissing the appeals to this Court,

HELD : This is a criticism of legislative judgment, not a ground of judicial review. The Court is being invited to compel the legislative and executive wings to classify but from the judicial inspection tower the court may only search for arbitrary and irrational classification and its obverse, namely, capricious uniformity of treatment where a crying dissimilarity exists in reality. Unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review. [129 E]

G The question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. The power to classify being extremely broad and based on diverse considerations of executive pragmatism the judicature cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. [130 E]

It is equally well settled that merely because there is room for classification it does not follow that legislation without classification is always unconstitutional.
H The court cannot strike down a law because it has not made the classification which commends to the court as proper. Nor can the legislative power be said to have been unconstitutionally exercised because within the class a sub-classification was reasonable but has not been made. [130 H]

In the present case, a pertinent principle of differentiation, which is visibly linked to production prowess, has been adopted in the broad classification of power-users and manual manufacturers. It is irrational to castigate this basis as unreal. [131 C] A

K.T. Moopil Nair v. *State of Kerala*, [1961] 3 S.C.R. 77, *State of Kerala* v. *Haji K. Haji Kutty Naha*, C. As Nos. 1052 etc. of 1968; judgment dated August 13, 1968 and *Khandige Sham Bhat* v. *The Agricultural Income Tax Officer*, [1963] 3 S.C.R. 809, 817, followed.

B

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1752 to 1769 of 1970

From the Judgment and Order dated the 24th April, 1970 of the Mardas High Court in Writ Petitions Nos. 239, 346, 999, 1000, 1007, 1030, 1071, 1101, 1102, 1223, 1242, 1270, 1271, 1724, 1725, 1748, 2640 and 3252 of 1969.

C

Y. S. Chitle, V. M. Ganpule, K. R. Choudhury and *K. Rajendra Choudhury*, for the appellants.

L. N. Sinha, Solicitor General of India, S. P. Nayar, and *M. N. Shroff*, for the respondents.

The Judgment of the Court was delivered by

D

KRISHNA IYER, J.—The core of the contention urged by the appellants in these various appeals filed by certificate under art. 133(1)(a) & (c) of the Constitution is that the excise duty on matches sought to be levied on these medium-sized manufacturers of Shivakashi wears the mask of equality but in its true face bears the marks of unequal justice violative of art. 14 of the Constitution of India.

E

Shri Chitale, learned counsel for the appellants, has focused his arguments on one grievance only and, we think, with good reason that the discriminatory fiscal treatment of his clients is unconstitutional, the vice being treatment of dissimilar categories similarly. To compress his whole argument in a single sentence, it is that the appellants, small manufacturers of matches, have been subjected by the impugned notification to excise duty at the same onerus rate as has been applied to larger producers, wilfully indifferent to a historically well recognised classification between the smaller and the larger group of, match manufacturers, and the injury sustained flows from this failure to classify and deal differentially with sets of producers who are unequal in their economic capabilities in the matter of production and marketing — a sort of traumatic egality. In brief, equal treatment of unequal groups may spell invisible yet substantial discrimination with consequences of unconstitutionality. That dissimilar things should not be treated similarly in the name of equal justice is of Aristotelian vintage and has been, by implication, enshrined in our Constitution.

F

G

The facts which unfold the case of the appellants may now be set out. The match industry in India has grown over the decades and Shivakashi occupies an important place in the production geography of matches. From the point of view of manufacturing techniques, the safety match industry in our country comprises two distinct categories the mechanised sector occupied by a few big whales and the non-

H

A mechanised sector comprising varying sizes of production units ranging from the small fry organised on a cottage industry basis to considerable producers who have developed manufacturing and marketing muscles sufficient to compete with the power-using big four—the WIMCO, the AMCO, the ESAVI, and the Pioneer. The Tariff commission Report on this industry has stated :

B "Unlike units in the mechanised sector which have power-driven equipment for carrying out all the important operations including manufacture of splints and veneers, frame filling dipping, box making, etc., those in categories 'B' and 'C' follow almost identical manufacturing process, obtaining their splints and veneers from outside suppliers and getting such important operations as box-making and frame filling done by outside C domestic labour on piece-rate basis. Only such of the processes as dipping, box filling, banderolling and packing which under Excise or Explosive Act regulations cannot be entrusted to outside labour are carried out in the factory sheds of the units and the workers employed for these also are mostly paid on piece-rate basis. All the operations, whether, undertaken in the factory premises or passed on to outside piece-work labour to be carried out D in the homes of the latter conjointly with other members of the family. are done by manual process. The same system is followed by 'D' category units as well, except those spon ored by K. & V. I. C. some of which manufacture their own splints and veneers."

E Classified on the basis of quantity turn-out and other germane factors, a fourfold categorisation into 'A', 'B', 'C' and 'D' was extent in the industry roughly corresponding to the techniques of production and the use of power adopted by each. The Tariff Commission explained this aspect and reported on the operation of the differential excise levy system on production and trade practices. Counsel for the appellants has rested his case of discrimination by subversive equality or rather F non-discrimination where a deserving differentiation is the desideratum, on the findings of the Tariff Commission report. We might as well give copious but relevant excerpts from it to discern the foundation of the argument. The Report runs on to state :

"As indicated in Appendix II, according to the excise tariff classification units in the match industry now stand grouped G into four classes, namely 'A', 'B', 'C' and 'D' not on any technological differentiation but on the basis of output—'A' class comprising factories whose annual output exceeds 4,000 million match sticks, 'B' class comprising factories whose annual output exceeds 500 million match sticks but does not exceed 4,000 million match sticks, 'C' class comprising factories whose annual output exceeds 50 million match sticks but does not exceed 500 H million match sticks and 'D' class comprising factories whose annual output does not exceed 50 million match sticks. According to this classification the factories belonging to WIMCO, AMCO and ESAVI fall under category 'A', the rest comprising the units

in the non-mechanised sector fall under the other three categories, namely 'B', 'C', and 'D'.

A

. . . .

"Selling system :

(iv) Small producers.—The system of selling adopted by these manufacturers varied according to their status and financial resources. The system almost universally followed by such producers is to make outright sales, without any discount or commission to wholesalers, both out-station and local. The bigger, among such producers belonging to category 'B' are reported in some cases to sell as well through dealers and sole selling agents. Many of them have also got their own depots and regular stockists in a limited number of out-station centres. As regards 'C' and 'B' class producers, the system of sales covers the following variants according to facilities available to them : (i) outright sales to wholesale merchants, local or out-station; (ii) sales through joints schemes of depots which stock different brands from several producers; (iii) sales by sending goods in their own vans in bulk to distributors and dealers in nearby states; and (iv) sales through their own salesman who deliver goods in local markets on the shopkeepers on bicycles (a special feature of 'D' class units).

B

C

D

From the replies received by us from units in the small scale sector it would appear that those in category 'B' situated in the Shivakasi/Sattur/Kovilpatti area have over some years in the past established contacts and devel oped a fairly wide selling system enabling them to cater to the markets in distant States including West Bengal, U.P., Delhi, Gujarat and practically all the States in the South. The size of their operations has all along enabled them to undertake supply in wagon loads at the concessional rates, which is an important consideration for developing distant markets to be served by rail transport."

E

"Although they are not comparable to WIMCO in having a country-wide distributive organisation, these units evinced till recently all the symptoms of a steady and healthy development, some of them having reached the maximum limit (4,000 million sticks) of Category 'D' with a reputation for their brands in far off markets. They had the resources to support this progressive development and a few of them have represented that with an improvement of the climate of the trade which has been completely vitiated by the slab system of excise duties (see paragraph 11) and given necessary facilities they would be able to re-establish the markets they had assiduously built up and even initiate a scheme of gradual mechanisation of important processes in their factories for the betterment of the quality of their products. In the present context, it is worth taking note of the fact that the credit for an expanding market for matches produced in the non-mechanised sector is attributable largely to the sales endeavours of factories which had grown to be 'B' class units that had necessary resources for the purpose and were able the maintain quality."

F

G

H

* * * *

A "In contrast to the 'B' class units, the selling system of those in category 'C' betokens a position of serious weakness. Except the 'C' class units which have been brought into existence by fragmentation of bigger units and still operate under the protecting wing of the sponsor (see paragraph 11), the new-comers in this class who have no tradition, functions mostly with meagre financial resources and have no comparable advantage. Unable
B to sell their output in wagon loads they are compelled to dispose of it to local financing-cum-trading agencies at rock bottom prices dictated by the latter for what has now come to be called consignments of "assorted labels". This, in effect, involves a complete surrender by the 'C' class producers to the benefit of differential excise rebate allowed to them to the detriment of others as well. The low purchase prices of the goods enable
C such agencies to send consignments of mixed brands to distant places in wagon-loads and find a market by offering to the wholesalers there extremely competitive rates *vis-a-vis* the usual rates charged by 'B' class units, the retail selling prices being the same for both. Our examination of the problem of the small scale units in category 'C' indicates that basically their problem is not different from other small industries suffering similar
D exploitation by middlemen. As in other cases they can best be extricated from the grip of the middlemen by the establishment of suitable sales co-operatives. We draw the attention of the State Governments to this problem for initiating necessary measures for the purpose, particularly of the Government of Madras, as the concentration of such units is in that State where the problem presents itself in the most acute form, but offers favourable
E prospects for the establishment of several full-fledged sales co-operatives with adequate membership."

* * * *

"There is sufficient evidence to indicate that the effects have been quite widespread and recourse has been taken to fragmentation on a fairly extensive scale."

* * * *

F "The Sivakasi Chamber has stated as follows "In the face of such unhealthy competition from 'C' factories and the disadvantages over 'A', the 'B' is unable to market its production resulting in heavy accumulation of stocks. It is now felt by 'B' class factories that there is no other salvation for them except to convert 'B' into 'C' class factories in benami names, as few have since done. It may be pointed out that 16 long established 'B'
G factories have reduced themselves to 'C' class with effect from 1st April, 1963 in this Division alone in addition to the numerous factories who have already converted from 'B' to 'C'." As regards similar fragmentation of the larger units in category 'C' almost identical views have been expressed by the Tirunelevely Match Association, representing 150 'C' class match factories, in the following words :"In view of the vast difference of excise
H duty between 1st and 3rd slab of excise duty in 'C' Class there is a tendency and prectice among the manufacturers to work in the first slab only and to stop therewith. In this way starting of small new units with the motive to enjoy rebate in the first slab

of excise duty has become common and this has clearly resulted in loss of revenue, as well as working of units in less than the permitted capacity. It has been brought to our notice that the situation has deteriorated to such an extent as a result of the slab system that some erstwhile 'B' units have suspended their manufacturing activities altogether and instead found it more profitable to patronise a number of newly established 'C' class units. Their taking over the products of the latter in their new role as a trading-cum-financing agency has been facilitated by their established market connections and resourcefulness. Instances of 'B' category units owned by individual proprietors downgrading themselves into category 'C' and having a number of 'C' class units set up in the name of near relations have also been noticed by us in the course of our visits to factories in the Sivakasi/Sattur/Kovilpatti area. The allegations about extensive fragmentation were not denied by anybody at the public inquiry."

* * * *

"The volume of evidence, both direct and indirect, that we have received in this connection fully testifies to the fact that large scale fragmentation of 'B' and 'C' class units has taken place directly as a result of the slab system—all motivated by the attraction offered by the large duty differential of 65 np for the lowest slab rate under category 'C'".

* * * *

"From the evidence received by us "B" and "C" class units have to offer their match boxes generally at a discount of Rs. 2 to Rs. 3 per bundle of 5 gross boxes, *i.e.* at about 40 to 60 nP. per gross less than the price charged by WIMCO. While the quality of matches produced by 'B' class manufacturers has the reputation of being generally good and comparable to WIMCO's matches, the 'C' class units do not have such reputation in the market. The 'C' class manufacturers are handicapped by a further disadvantage on account of the lower scale of their production, inasmuch as they cannot usually offer a wagon-load of matches at a time for despatch to the upcountry markets for sale and have generally to bear the central sales tax. After carefully considering all aspects of the case including estimates of costs of the manufacturers, we are of opinion that a differential of 20 nP. in the rates of excise duty per gross of match boxes between 'A' and 'B' class units and a differential of 30 nP. between 'B' and 'C' class manufacturers would be quite adequate to safeguard their respective interests. On similar considerations a differential of 35 nP. between 'C' and 'D' class units would also be justified. For reasons stated in paragraph 11 and as stressed therein we are definitely against continuance of the slabs introduced in classes 'A', 'B' and 'C' carrying differential rates of excise duty, which have entailed serious repercussions on the entire industry. We, therefore, recommend the following scales of excise duty to be levied for the four classes respectively :

For 'A' class	Rs.4.60 per gross boxes
For 'B' class	Rs.4.40 per gross boxes
For 'C' class	Rs.4.10 per gross boxes
For 'D' class	Rs.3.75 per gross boxes

A The Tariff Commission recommended the abolition of sub-classification for the purposes of excise duty and suggested separate scales of excise duty to be levied for the four classes of units, namely, 'A', 'B', 'C' and 'D'. Based on these recommendations, the slab system of excise duty was abandoned by Government and the category-wise rate was adopted. The impact on production of the differential duty scheme was a process of splintering of the 'B' group to inhale the advantages offered B to the 'C' group resulting in a reduction in total production, thanks to the thinning tendency in the 'B' group. Indeed, the fiscal misdirection, by showing concessional rates to the 'C' category as against 'B' category, generated pseudo-'C' category producers from out of the erstwhile 'B' category so that the bona fide small scale manufacturers falling in the 'C' category were flooded out. Moreover, the genuine 'C' category manufacturers were exploited by the middlemen who snapped C up the margin of tax concession for themselves, defeating the object of concessional duty for the small producer. This dilemma induced Government to revise its fiscal thinking and led to the impugned notification which withdrew the tax concession to the 'C' category and equated it with the 'B' category.

Section 3 of the Central Excise and salt Act, 1944 empowers the levy D and collection of duties on goods produced or manufactured in the State, the rate being set forth in the First schedule to the Act. Item 38 in the First Schedule relates to matches. Section 37 contains the rule-making power and s. 37(1) confers power on the Central Government by rules to exempt any goods from the whole or any part of the duty imposed by the Act. Under this power the Central Government issued E a notification adopting a "classification" approach for extending concessional rates. Originally, a broad classification was made as between matches manufactured by use of machinery and those by other means. Among the second category a sub-classification was made as 'B', 'C' and 'D' for the purposes of concessional rates. In 1966, a uniform leavy F of Rs. 4·15 per gross of match boxes was made doing away with 'B' to 'D' classes. In 1967 this position was revised by notification No. 162 of 1967, which is challenged before us. It reads :

> "In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1955, and in supersession of the Notification of the Government of India in the Ministry of G Finance (Department of Revenue and Insurance) No. 115/67 Central Excise, dated the 8th June, 1967, the Central Government hereby exempts matches specified in column (2) of the Table below, falling "under Item No. 38 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) and cleared by any manufacturer for home consumption, from so much H of the duty of excise leviable thereon as is in excess of the rate specified in the corresponding entry in column (3) of the said table :

TABLE

Category	Description of matches	Rate (Rs per gross of boxes 50 matches each)
1.	Matches in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power	.. 4·60
2.	Matches in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power	.. 4·30

Provided that--

(1) Matches referred to in category 2 and cleared for home consumption during the financial year from a factory from which the total clearance of matches during that year is not, as per declaration made by the manufacturer under this notification, estimated to exceed 75 million matches, shall be allowed to be cleared at the rate of Rs. 3·75 per gross of boxes 50 matches each, upto 75 million matches and the quantity of matches, if any, cleared in excess, and upto 100 million matches shall be allowed to be cleared at the rate of Rs. 4·30 per gross of boxes of 50 matches each; and if the clearance in such factory exceeds 100 million matches during the financial year, the manufacturer shall be required to pay at the rate of Rs. 4·30 per gross of boxes of 50 matches each, on the entire quantity cleared during the financial year....."

The upshot of this system of duty is that 'B' and 'C' categories of old will now be treated equally and the grievance of the petitioners, who are 'C' category manufacturers is that clubbing them together with the far stronger 'B' type manufacturers is virtually condemning them to gradual extinction. Treating unequals as equals and compelling both to bear equal burdens is to show the 'C' type manufacturers the way out. It is urged that the test of capacity of each group in the industry to bear the levy, recognised in the past and approved in the Tariff Commission Report, is given the go-bye now.

The contention, in reply, by the State is that at present the classification of the manufacturers is based on the use of power which in turn has a rational relation to the techniques and processes of production and their ability to bear the burden of the levy. It is further argued that the Government did give effect to the recommendations of the Tariff Commission regarding the four-fold classification but, finding certain evils developing, the Central Excise Re-organisation Committee went into the subject and suggested methods to re-orient the scale and scope of excise duty. This Committee's report led to the current notification and the dichotomy between mechanised and non-mechanised industry proceeds on a rational differentia which has a substantial relation to the legislative end.

There is no doubt that in the past among the non-mechanised manufacturers of matches a further classification based on viability

A had been made. It is also true that the financial resources, the capacity to command a market on their own without depending on intermediaries, etc., marked off the 'B' category from the 'C' category. But then experience gathered subsequently disclosed certain evils which the State took note of and endeavoured to set right. Ultimately, the present notification was issued obliterating the distinction which gave a concessional edge to the 'C' group over the 'B' group.

B

The learned counsel for the appellants persuasively pleaded that this unsocialistic step has left the small producers like his clients in the cold and virtually compelled them to retire from the industry. May be, there is force in this grievance. Instead of protecting the tiny manufacturer from the injurious intermediary and inhibiting the larger producer from resorting to the device of self-division and other make-
C believe tactics, the State has resorted to a policy of equal levy from both which, according to the counsel, hits the poor and helps the better-off. This is a criticism of legislative judgment, not a ground of judicial review.

We agree that bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle.
D Anatole France's cynical statement comes to our mind in this context :

> "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

The forensic focus turns on unconstitutional non-classification of the 'B' and 'C' categories and the vice of lugging all non-mechanised
E producers together into one mass. The Court is being invited to compel the legislative and executive wings to classify, but we feel that from the judicial inspection tower the Court may only search for arbitrary and irrational classification and its obverse, namely, capricious uniformity of treatment where a crying dissimilarity exists in reality.

Right at the threshold we must warn ourselves of the limitations of judicial power in this jurisdiction. Mr. Justice Stone of the Supreme
F Court of the United States has delineated these limitations in *United States* v. *Butler*(1) thus :

> "The power of courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wis-
G dom. The other is that while unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic government."

In short, unconstitutionality and not unwisdom of a legislation is
H the narrow area of judicial review. In the present case unconstitu-

(1) 297 U.S. 1=56 Sup.Ct.312=80 L.ed.477 (1936)=American Constitutional Law—third edn. by Tresolini and Shapiro.

tionality is alleged as springing from lugging together two dissimilar categories of match manufacturers into one compartment for like treatment. A

Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevent and artificial ones. The constitutional standard by which the sufficiency of the differentia which form a valid basis for classification may be measured, has been repeatedly stated by the courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the means must have nexus with the ends. Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this contest, we have to remember the relationship between the legislative and judicial departments of government in the determination of the validity of classification. Of course, in the last analysis courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. B C D E

One facet of the equal protection clause, upheld by the Indian Courts and relevant to the present case, is that while similar things must be treated similarly, dissimilar things should not be treated similarly. There can be hostile discrimination while maintaining a facede of equality. Procrustean cruelty cannot be equated with guarantee of constitutional equality, and we have to examine whether such is the lot of the appellants. F

This Court has in several rulings highlighted this sensitive underside of equal protection. Indeed, the complaint of the petitioners is that by abolition of the difference in fiscal burden between categories 'B' and 'C' an insidious subversion of equal treatment has been effected. G

Another proposition which is equally settled is that merely because there is room for classification it does not follow that legislation without classification is always unconstitutional. The court cannot strike down a law because it has not made the classification which commends to the court as proper. Nor can the legislative power be said to have been unconstitutionally exercised because within the class a sub-classification was reasonable but has not been made. H

A It is well-established that the modern State, in exercising its sovereign power of taxation, has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not. In the famous words of Holmes, J., in *Bain Peanut Co.* v. *Pinson*(1) :

B "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints."

In the present case, a pertinent principle of differentiation, which is visibly linked to productive prowess, has been adopted in the broad classification of power-users and manual manufacturers. It is irrational to castigate this basis as unreal. Indeed, the soundness of this distinction is not denied. The challenge is founded on the failure to mini-
C classify between large and small sections of manual match manufacturers. But ours is not to reason why, that being a policy decision of Government dependent on pragmatic wisdom playing on imponderable forces at work. Our jurisdiction halts where the constitutional touchstone of a rational differentia having a just relation to the legislative and of revenue raising is satisfied. Gratuitous judicial advice on the
D socialistic direction of fiscal policy is *de trop*. We desist from that enterprise and leave the petitioners and men of his ilk to seek other democratic remedies in that behalf, it being beyond our area normally to demolish the tax structure because micro-classification among a large group has not been done by the State. Absolute justice to every producer is a self-defeating adventure for any administration and general direction, not minute classification, is all that can be attempted. For
E these reasons we find ourselves in agreement with the High Court in its rufusal to strike down the notification under S. 3 of the Central Excise and Salt Act, 1944.

Before concluding we may make a passing reference to the few decisions cited by appellants' counsel. In *K. T. Moopil Nair* v. *State of Kerala*(2), Sinha, C.J., emphasized that art. 14 may be violated even though the law may, on the face, be equal if in substance unequal things
F are treated equally. In *State of Kerala* v. *Haji K. Haji Kutty Naha*(3), Shah J., observed :

> "There objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality."

G A similar view has been taken in *Khandige Sham Bhat* v. *The Agricultural Income Tax Officer*(4).

It is sound law that refusal to make rational classification where grossly dissimilar subjects are treated by the law violates the mandate of art. 14. Even so, where the limited classification adopted in the present case is based upon a relevent differentia which has a nexus to the

H (1) [1930] 282 US 499; 501.
(2) [1961] 3 S.C.R. 77.
(3) C.As. Nos. 1052 etc. of 1968; judgment dated August 13, 1968.
(4) [1963] 3 S.C.R. 809, 817.

legislative and of taxation, the court cannot strike down the law on the score that there is room for further classification. Refusal to classify is one thing and it bears on constitutionality, not launching on micro-classification to work out perfect justice is left to executive expediency and legislative judgment and not for forensic wisdom. "The relationship between the legislative and judicial departments of government in the determination of the validity of classification is well-settled.....the authorities state with unanimity that the question of classification is primarily for the legislature and that it can never become a judicial question except for the purpose of determining, in any given situation, whether the legislative action is clearly unreasonable. The legislative classification is subject to judicial revision only to the extent of seeing that it is founded on real distinctions the subjects classified, and not on artificial or irrelevant ones used for the purpose of evading the constitutional prohibition." (American Jurisprudence 2d : vol. 16; para 496).

"In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. The constitutional command for a state to afford equal protection of the law sets a goal not attainable by the invention and application of a precise formula. Classification in law, as in the other dapartments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars, and differ from other things in those particulars. It is almost impossible in some matters to foresee and provide for every imaginable and exceptional case, and a legislature ought not to be required to do so at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the laws. Hence, a large latitude is allowed to the states for classification upon any reasonable basis, and what is reasonable is a question of practical details into which fiction cannot enter." (*ibid :* para 504).

We have said enough to delineate the finer frontiers of the jurisdiction of the court and the legislature. Having sensitive regard to the obligation of the State to bring the law, including the tax law, into pulsing relationship with life, including the life of the country's economy, we see nothing so grossly unfair as to attract the lethal power of the court to strike down the notification under challenge.

We dismiss the appeals but in the circumstances without costs to the respondents.

P.B.R. *Appeals dismissed*