Act is much more favourable to the landowners than under the relevant sections of Act No. 8 of 1873, and I fail to see what legitimate grievance the appellants can have if the State Government, considering that the acquisition of the Land is for a public purpose, proceeds under the Land Acquisition Act and not under section 57 of Act No. 8 of 1873.

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I would, therefore, dismiss the appeal, but in the circumstances of the case make no order as to costs.

H. R. KHANNA, J.—I agree.

Khanna, J.

INDER DEV DUA, J.—So do I.

Dua, J.

B.R.T.

LETTERS PATENT APPEAL

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

M/S RUBBER CHAPPAL MANUFACTURERS ASSOCIATION, —*Petitioners*

versus

THE UNION OF INDIA AND ANOTHER, —*Respondents.*

L.P.A. 56-D of 1964.

1965

April, 6th.

Rubber Act (XXIV of 1947) as amended by Rubber (Amendment) Act (XXI of 1960)—S. 12—Whether violative of Art. 14 of the Constitution or suffers from the vice of excessive delegation of legislative power to Executive—Rubber (Amendment) Rules, 1961—Excise duty on rubber—Whether can be imposed on the consumers of rubber—Method of collection of tax—Whether affects the nature of tax—Practice— Letters Patent Appeal—Point of law not raised before single Judge—Whether can be raised in Letters Patent Appeal.

Held, that section 12 of the Rubber Act, 1947, as amended by the Rubber (Amendment) Act, 1960, is not violative of Article 14 of the Constitution nor does it suffer from the vice of excessive delegation of legislative power to the Executive. The perusal of section 12(1) clearly shows that the levy of duty is on all rubber produced in India and is consequently a levy on production or manufacture of the goods produced in the country. Sub-section (2) of section 12 deals merely with the collection of the duty. If the levy is on the production or manufacture, there can be no objection to a provision being made for the collection of the duty either from

the producer or manufacturer or from the consumer of rubber like the appellants.

The fact that the legislature decides to collect the duty at a stage where it is most convenient or lucrative does not affect the nature of the tax. That is merely a matter relating to the machinery of collection but not a matter affecting the essential nature of the tax. The method of collection of tax is an accident of administration and so long as it does not affect the nature of the tax, no exception can be taken.

Held, that it is well settled that the legislature may leave details to the regulation by the executive. The purpose of the Rubber Act is development of the rubber industry and that is evidenced by the preamble. Reading of section 12(1)(2) and (7) shows that the duty of excise is intended to be utilised for the purposes of the Act. The rules contemplated by section 14(2) are for purposes of making the collection of duty levied under section 12(1). The purpose for which the rules are required to be made is a sufficient guiding principle to the rule-making authority. The exigencies of the tax collection do require such matters to be committed to subordinate agencies. Rules have, therefore, to be framed in furtherence of the object of the statute, namely, the realisation and collection of tax. The legislature has laid down a meaningful standard by providing that the tax can be collected either from the producer or the manufacturer. There is nothing wrong in the rule-making authority being asked to lay down by rules the cases and circumstances in which the duty of excise shall be payable by the owners and the manufacturers, respectively and the manner in which the duty may be assessed, paid or collected. In the present case the legislature has also retained an effective voice in the exercise of power in as much as under section 25(3) of the Act, every rule made under section 25 is required to be laid before each House of the Parliament.

Held, that pure points of law can be raised in Letters Patent Appeal even though they were not raised before the Single Judge.

Letters Patent Appeal under clause 10 *of the Letters Patent against the order, dated* 29*th April,* 1964, *passed by the Hon'ble Mr. Justice Shamsher Bahadur, whereby His Lordship dismissed the Writ Petition No.* 226-*D of* 1962 *and held that under section* 12 *of Rubber Act,* 1947, *as amended by Act XXI of* 1960, *the Central Government was competent to issue notification for the collection of cess on rubber from the manufacturer also. The Judgment has been reported in I.L.R.* (1965) 1, *Punjab,* 125.

C. B. AGGARWAL, BHAWANI LAL, H. S. SIDHANA, ADVOCATES, for the appellants.

S. N. SHANKAR, ADVOCATE, for the Respondents.

ORDER

The following Judgement of the Court was delivered by;—

KAPUR, J.—This judgment will dispose of L.P.As. Nos. 52-D of 1964 to 58-D of 1964. Kapur, J.

The appellants in all these cases carry on the business of making chappals and consume rubber for the purpose. In 1947 the Central Legislature enacted the Rubber (Production and Marketing) Act, 1947 (Act 24 of 1947) the name of which was changed to Rubber Act, 1947 by the Rubber (Production and Marketing) Amendment Act. 1954. The said Act was again amended by the Rubber (Amendment) Act, 1960 (Act No. 21 of 1960). We are mainly concerned with section 12 of the Act. Before the amendment in 1960 the duty of excise levied on all rubber produced in British India was payable by the owner of the estate on which rubber was produced. The amended section 12, however, provides that the excise levy shall be collected by the Board in accordance with rules made in this behalf either from the owner of the estate on which the rubber is produced or from the manufacturer by whom such rubber is used. The terms "manufacturer" and "rubber" have also been defined by section 3 of the Act. Any person engaged in manufacturing of any article in the making of which rubber is used falls within the definition of the term "manufacturer". It is appropriate to set out section 12 as amended by Act 21 of 1960:—

"12 (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be levied as a cess for the purposes of this Act, a duty of excise on all rubber produced in India at such rate, not exceeding fifty naye paise per kilogram of rubber so produced, as the Central Government may fix.

(2) The duty of excise levied under sub-section (1) shall be collected by the Board in accordance with rules made in this behalf either from the owner of the estate on which the rubber is produced or from the manufacturer by whom such rubber is used.

(3) The owner or, as the case may be, the manufacturer shall pay to the Board the amount of the

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duty within one month from the date on which he receives a notice of demand therefor from the Board and, if he fails to do so, the duty may be recovered from the owner or the manufacturer, as the case may be, as an arrear of land revenue.

(4) For the purpose of enabling the Board to assess the amount of the duty of excise levied under this section—

(a) the Board shall, by notification in the Official Gazette, fix a period in respect of which assessments shall be made; and

(b) without prejudice to the provisions of section 20, every owner and every manufacturer shall furnish to the Board a return not later than fifteen days after the expiry of the period to which the return relates, stating,—

(i) in the case of an owner, the total quantity of rubber produced on the estate in each such period; provided that in respect of an estate situated only partly in India, the owner shall in the said return show separately the quantity of rubber produced within and outside India;

(ii) in the case of a manufacturer, the total quantity of rubber used by him in such period out of the rubber produced in India.

(5) If any owner or manufacturer fails to furnish, within the time prescribed, the return referred to in sub-section (4) or furnishes a return which the Board has reason to believe is incorrect or defective, the Board may assess the amount of the duty of excise in such manner as may be prescribed.

(6) Any person aggrieved by an assessment made under this section may, within three months of the service of the notice under sub-section (3), apply to the District Judge for the cancellation or modification of the assessment, and the Dis-

trict Judge shall, after giving the Board an opportunity of being heard, pass such order (which shall be final) as he thinks proper.

(7) The proceeds of the duty of excise collected under this section reduced by the cost of collection as determined by the Central Government shall first be credited to the Consolidated Fund of India, and then be paid by the Central Government to the Board for being utilised for the purposes of this Act, if Parliament by appropriation made by law in this behalf so provides."

On these facts the appellants filed writ petition which were dismissed by Shamsher Bahadur, J. on 29th April, 1964. One of the main grievances of the appellants put forth by Mr. C.B. Aggarwal, the learned counsel is that duty of excise can be levied only on the producers of rubber and not on those who use rubber for the purposes of making chappals or for the matter of that on any consumer of rubber. Mr. Aggarwal refers us to the demand notices served on the appellants calling upon them to pay the excise duty and to the Rubber (Amendment Rules), 1961 which require every manufacturers to furnish returns in form 'M' showing the details of quantity of rubber purchased or otherwise acquired and consumed or used in the process of manufacture. The contention of Mr. Aggarwal is that since the duty of excise can be levied only upon a manufacturer or producer in respect of commodity manufactured or produced the consumers cannot be called upon to file any return or to subject themselves to asessment proceedings. He relies on the decision of the Judicial Committee is *Governor-General in Council* v. *Province of Madras* (1), and particularly the following observations of Lord Simonds :—

"Consistently with this decision *In the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act*, 1938 (2), their Lordships are of opinion that a duty of excise is primarily a duty levied upon a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax upon goods not

(1) A.I.R. 1945 P.C. 98.
(2) 1939 F.C.R. 18=A.I.R. 1939 F.C. 1.

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upon sales or the proceeds of sale of goods. Here again their Lordships find themselves in complete accord with the reasoning and conclusions of the Federal Court in the *Province of Madras* v. *Badder Padama and Sons* (3). The two taxes, the one levied upon a manufacturer in respect of his goods, the other upon a vendor in respect of his sales, may, as is there pointed out, in one sense overlap."

He further relies on the observations of their Lordships of the Supreme Court in *R. C. Jall* v. *Union of India* (4), where the Supreme Court approved of the above observations of Lord Simonds. We are unable to accede to the contention of the learned counsel. Perusal of section 12(1) clearly shows that the levy of duty is on all rubber produced in India and is consequently a levy on production or manufacture of the goods produced in the country. Subsection (2) of section 12 deals merely with the collection of the duty. If the levy is on the production of manufacture we see no objection to a provision being made for the collection of the duty either from the producer or manufacturer or from the consumer of rubber like the appellants. The fact that the legislature decides to collect the duty at a stage where it is most convenient or lucrative does not affect the nature of the tax. That is merely a matter relating to the machinery of collection but not a matter affecting the essential nature of the tax. As a matter of fact in *R. C. Jall's case*, the rules provided for collection of excise duty from the consignee in certain eventualities. Their Lordships of the Supreme Court dealing with such rules observed—

> "Rule 3 of the Rules made by the Central Government provides, for the recovery of excise duty on the coal produced; under the said rule it would be collected by the Railway Administration by means of a surcharge on freight and such duty of excise shall be recovered from the consignor, if the freight charges are being prepaid, at the time of consignment or from the consignee, if the freight charges are collected at the destination of the consignment. The machinery provided for the collection of the tax is, in our

(3) A.I.R. 1942 F.C. 33=I.L.R. [1942] F.C. 72.
(4) A.I.R. 1962 S.C. 1281.

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view, a reasonable one. Having regard to the nature of the tax, that is, the tax being an indirect one to be borne ultimately by the consumer, it cannot be said that there is no rational connection between the tax and the consignee. When the consigner pays, it cannot be denied that it is the most convenient stage for the collection of the tax, for it is the first time the coal leaves the possession of the consignor. The fact that the conginee is made to pay in the contingency contemplated by rule 3(b) of the Rules cannot affect the essence of the tax, for the consignor, if he had paid the freight, would have passed it on to the consignee and instead the consignee himself pays it. The Central Government was legally competent to evolve a suitable machinery for collection without disturbing the essence of the tax or ignoring the rational connection between the tax and the person on whom it is imposed."

The method of collection of tax is an accident of administration and so long as it does not affect the nature of the tax no exception can be taken. Mr. Aggarwal contends that his main objection is to the appellants being called upon to file returns and to the assessments being made on them. If the appellants can, in law, be made liable for payment of the excise duty, the filing of the return and the assessment would be necessary for determining their liability. That is in our view the object of the rules requiring the filing of the return and determination of liability and we see no objection to the same.

Mr. Aggarwal next contended that the amended section 12 delegated an absolute and uncanalised power of making rules providing for collection of duty either from the producer or from the consumer and that no guiding principles had been formulated for the exercise or discretion committed to the agency. He submitted that many vital issues had been left to be administratively determined, with no legislative guidance and control. An objection was raised by the learned counsel for the respondent that this plea and another plea with which we are going to deal a little later could not be permitted to be raised since they were not raised before the learned

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Single Judge. The learned counsel submits that the scope of the Letters Patent Appeal is very much limited and the Letters Patent Bench cannot permit even a pure point of law to be raised in an appeal for the first time. Mr. Aggarwal disputes that proposition and relies on *Braham Dutt and others* v. *Peoples' Co-op. Transport Society Ltd. New Delhi and others* (5), *Ram Rakhi* v. *Peoples Bank of Northern India* (6), *Ram Sarup* v. *Ram Chander* (7). In agreement with th aforesaid decisions we are of the view that the points sought to be agitated by Mr. Aggarwal, which are pure points of law, can be raised in Letters Patent Appeal. Having regard to the importance of the points we have considered it advisable to deal with them. This takes us back to the contention of Mr. Aggarwal regarding the validity of section 12, on the grounds that (a) it is violative of Article 14 and (b) it illegally delegates Legislative power to the executive. Whether or not it suffers from the vice of excessive delegation or is violative of Article 14, the answer will depend on the view we take regarding the prescription of standards by the legislature for the exercise of power by the rule-making authority in the matter of collection of the excise duty. It is well settled that the legislature may leave details to the regulation by the executive. The purpose of the Act is development of the rubber industry and that is evidenced by the pre-amble. Reading of section 12(1)(2) and (7) shows that the duty of excise is intended to be utilised for the purposes of the Act. The rules contemplated by section 14(2) are for purposes of making the collection of duty levied under section 12(1). In our opinion the purpose for which the rules are required to be made is a sufficient guiding principle to the rule-making authority. The exigencies of the tax collection do require such matters to be committed to subordinate agencies. Rules have, therefore, to be framed in furtherence of the object of the statute, namely, the realisation and collection of tax. The legislature has laid down a meaningful standared by providing that the tax can be collected either from the producer or the manufacturer. There is nothing wrong, in our view, in the rule-making authority being asked to

(5) I.L.R. [1961] 1 Punj. 283=A.I.R. 1961 Punj. 24.

(6) A.I.R. 1942 Punj. 42.

(7) I.L.R 1948 Punj. 365=A.I.R. 1949 E. P. 29.

lay down by rules the cases and circumstances in which the duty of excise shall be payable by the owners and the manufacturers respectively and the manner in which the duty may be assessed, paid or collected. It is not as if the executive has been given an uncanalised power to realise duty in one case from the manufacturer and in another case from the producer. They have to formulate precise rules in the matter of collection and clearly provide when and in what circumstances duty has to be paid by the consumers. In other words no discretion has been committed to the executive to discriminate between two consumers or two producers equally placed and circumstanced. The legislature has also retained an effective voice in the exercise of power in as much as under section 25(3) every rule made under section 25, is required to be laid before each House of the Parliament. It is also of importance to note that any person aggrieved by assessment made under section 12 has been given a right to apply to the District Judge for cancelation or modification of the assessment. In these circumstances we find it difficult to hold that there is either any excessive delegation or violation of Article 14 of the Constitution. Reference to section 25(xxa) would also show that the rules must precisely provide the cases and circumstances in which the duty of excise has to be paid by the owner and or the consumer respectively. In case the rule-making authority in the exercise of its power frames certain rules which are on their face discriminatory they may be open to challenge but that is different from saying that the power to frame rules itself suffers from the vice of excessive deletion of violation of Article 14. It cannot be presumed that in framing those rules the rule-making authority will act in violation of the mandate of the Constitution. We may also point out that the press note dated the 8th February, 1961 issued by the Rubber Board clearly laid down the policy with respect to the collection, etc. It has been stated in the said press note that with effect from the 1st of April, 1961 the duty shall be levied on all rubber produced in India, and collected from the manufacturers on the basis of rubber purchased or otherwise acquired by them except in respect of sole crape. Again reference to the Rubber (Amendment) Rules, 1961 would show that all the consumers are required to submit half-yearly returns in form 'M'. Rule 33-D(2) provides that "the Board shall, after checking the return and after making such further

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enquiry as it deems fit, either through its own officer or through officers of the State Government of the Central Government or such other authorities, assess the amount of excise duty payable by such manufacturer." Rules 33(e) and 33(f) also shaw that after the Rubber. (Amendment) Rules, 1961 came into force the liability for payment of duty shall be on the manufacturers (consumers) except in cases provided under section 33(c). These rules clearly eliminate any possibility of discrimination.

This takes us to the third contention of Mr. Aggarwal, namely, that under section 12(2) the duty can be collected from the manufacturers only in accordance with the rules made in this behalf and since no rules have been made as required by section 25(xxa) laying down cases and circumstances in which the duty shall be payable by the manufacturers, the appellants can neither be assessed nor called upon to pay. The short answer to this argument is the Rubber (Amendment) Rules, 1961 which clearly lay down that the duty shall be payable by manufacturers except in cases provided in rule 33(c). In the result the appeal must fail and is dismissed with costs.

R. S.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J., and Harbans Singh, J.

TIKKA BALBIR SINGH BEDI AND OTHERS,—*Appellants*

versus

BAKHSHI SALIG RAM AND OTHERS,—*Respondents*

Letters Patent Appeal No. 389 of 1964.

1965

April, 22nd.

Punjab Co-operative Societies Act (XXV of 1961)—S. 28—Scope of—Property—Whether—includes immovable property—Interpretation of Statutes—Word capable of bearing different meanings—How to be interpreted in the particular context.