

Notification under the Customs Act, 1962

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRI JAGANATH PAHADIA) : I beg to lay on the Table a copy of Notification No. G. S. R. 697 published in Gazette of India dated the 13th April, 1968, under section 159 of the Customs Act, 1962. [Placed in Library. See No. LT-1070/68].

Guest Houses, Staff Cars, etc., maintained by them.

MR. DEPUTY-SPEAKER: Mr. Dinesh Singh...

SHRI SRINIBAS MISRA (Cuttack) : On a point of order, under article 117 of the Constitution...

MR. DEPUTY-SPEAKER : Regarding what ? Is it regarding the Report of the Committee on Public Undertakings ?

ESTIMATES COMMITTEE

Minutes

SHRI CHINTAMANI PANIGRAHI (Bhubaneswar) : I beg to lay on the Table Minutes of the Sittings of the Estimates Committee relating to (i) Thirty-sixth to Forty-third Reports on the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Agriculture)—Fisheries, (ii) Forty-eighth to Fiftieth Reports on the Ministry of Petroleum and Chemicals—Petro-chemicals, Fertilisers and Petroleum and Petroleum Products, and (iii) Fifty-third Report on the Ministry of Education—Indian School of International Studies, New Delhi.

SHRI SRINIBAS MISRA : This is about that Statutory Resolution. You called Mr. Dinesh Singh...

MR. DEPUTY-SPEAKER : He has not yet moved...

SHRI SRINIBAS MISRA : He cannot move it. My point is that he will not be entitled to...

MR. DEPUTY-SPEAKER : There must be some business before the House. Then you can raise the objection. Let him first move. Afterwards, you can restrain him, not now.

COMMITTEE ON PUBLIC UNDERTAKINGS

(I) Minutes

SHRI MANUBHAI PATEL (Dabhoi) : I beg to lay on the Table Minutes of the Sittings of the Committee on Public Undertakings relating to the Third, Fourth, Sixth to Fourteenth and Sixteenth to Twenty first Reports, and Procedural and Miscellaneous Matters.

(II) Twenty-first Report

SHRI MANUBHAI PATEL : I beg to present the Twenty-first Report of the Committee on Public Undertakings on action taken by Government on the recommendations contained in the Fiftieth Report of the Estimates Committee (Third Lok Sabha) on Public Undertakings—Accommodation rented in principal cities ;

14 25 hrs.

STATUTORY RESOLUTION RE-EXPORT DUTY ON SNAKE SKINS

THE MINISTER OF COMMERCE (SHRI DINESH SINGH) : I beg to move :

"In pursuance of sub-section (2) of section 4A of the Indian Tariff Act, 1934 (32 of 1934), this House approves of the Notification of the Government of India in the Ministry of Commerce No. S. O. 1340, dated the 10th April, 1968, enhancing the export duty on snake skins from 10 per cent *ad valorem* to 25 per cent *ad valorem*."

SHRI SRINIBAS MISRA (Cuttack) : This Act, the Indian Tariff Act was passed in 1934. This refers to section 4A of the Tariff Act. Section 4A, sub-section (2) refers to notification in emergency and says that the Central Government is empowered

to change the tariff. Sub-section (2) says that every such notification shall be laid before Parliament if it is sitting as soon as may be. This notification was issued on the 10th, now it was laid on the 15th. No explanation is forthcoming from the Minister why it was not laid as soon as possible. He has not come forward with explanation. Parliament was sitting by that time. On 10th this House was sitting, Sir. Then again, this change in the tariff is a tax under the definition of the constitution. Article 366, Clause (28) refers to 'taxation'. It says: "Taxation" includes the imposition of any tax or impost, whether general or local or special, and 'tax' shall be construed accordingly. I would like to refer here to Art. 117 and Art. 110. Both of them come together. This amounts to an amendment of the schedule to the Traffic Act imposing taxation. Article 117 says that a Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced... Article 110 (1) (a) says: "The imposition, abolition, remission, alteration or regulation of any tax. "So, this comes under art. 117 and all the procedure envisaged therein must be followed. By a Resolution he cannot get the approval.

MR. DEPUTY-SPEAKER : Article 110. What section are you referring to ?

SHRI SRINIBAS MISRA : Article 110 (1) (a) says : 'Imposition, abolition, remission, alteration or regulation of any tax'. By means of a resolution it cannot be done. One argument I am anticipating regarding section 4A. This 1934 Act was before the Constitution came. After the Constitution makes it mandatory by Article 117 that it must be placed under the law, under that Article, under Article 265 no taxation can be imposed without law. He cannot get approval by means of a resolution after the constitution has come into force. So he cannot move it.

SHRI RANGA (Srikakulam) : Let them take it up tomorrow or day after tomorrow.

SHRI K. NARAYANA RAO (Bobbili) : The entire argument of Shri Srinibas Misra has been based...

MR. DEPUTY-SPEAKER : Arguing on the same point of order ?

SHRI K. NARAYANA RAO : You may call it 'meeting' or 'countering' whatever it is. Shri Misra has just now referred to the point that no tax can be levied except by authority of law. He will be pleased to see what is meant by law. 'Law'—you will be quite familiar—has been given a wider connotation. 'Law includes—I would like to invite my hon. friend's attention to Art. 13—on many occasions bye-law, notification—all these various aspects of legislative processes. Art. 13 (3) (a)—I am quoting only as an instance says :

“ 'Law' includes any Ordinance...

SHRI TENNETI VISWANATHAM (Vishakhapatnam) : For what purpose ?

SHRI K. NARAYANA RAO : "... order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

Here 'authority of law' means any law which has authority or legislative authority. Now we have to see whether this particular notification has been properly issued by the Government. The important point is whether the Government has been empowered by virtue of any law or enactment or even under the present Finance Bill. The Finance Bill itself contains a provision empowering the Central Government to bring about what we call regulatory taxes from time to time. This comes virtually within what is called the domain of delegated legislation. If you bring in this, we have a Committee on Subordinate Legislation which looks, year after year, into all regulations, rules, bye-law, etc. to see whether the powers delegated are properly exercised. All these things have been approved and accepted, even by judicial authority. So far as Art. 110 and 117 are concerned, they indicate how, when any Bill relating to financial matters is brought forward, it should be processed.

MR. DEPUTY-SPEAKER : I have followed your argument. There is no point of order. I would like to point out that the parent Act under which this Notification has been issued has empowered under Sec...4A.

SHRI SRINIBAS MISRA : Perhaps I have not made myself clear. Not that it has empowered, but, after the Constitution comes into force, can any amendment be made in any Act without following Art. 110 and 117? That is my point. My point is : after the Constitution comes into force, can an amendment be made under the authority of Sec. 4A without following Art. 117 or 110?

MR. DEPUTY-SPEAKER : This Act with modification was passed and the Indian Tariff Act 1934 was modified and again approved by the House in 1964, after the Constitution came into force. At that time this point was mentioned. You will appreciate what I think is—that there is no point at all.

श्री कंवरलाल गुप्त (दिल्ली सदर) : उपाध्यक्ष महोदय, एक्ट में जो भी पावर दी गई हो और इस सदन ने चाहे उस को एप्रूव कर लिया हो, लेकिन क्या कोई एक्ट संविधान के प्राविज्ञान के बाहर जा सकता है, क्या वह संविधान को बाईपास कर सकता है? मेरा कहना है कि नहीं कर सकता है। अगर इस सदन ने कोई कानून पास किया हो और वह संविधान के प्राविज्ञान के खिलाफ हो, तो वह इल्लीगल होगा। मैं अपने माननीय मित्र की इस बात से सहमत हूँ कि वह एक मनी बिल है क्योंकि मंत्री महोदय ने एक्सपोर्ट ड्यूटी को इनक्रीज करने की बात कही है और वह इनक्रीज टैक्स के अन्तर्गत आती है। आर्टिकल 110 (2) में स्पष्ट कहा गया है :

"A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker..." etc.

मंत्री महोदय एक्सपोर्ट ड्यूटी में जो चेंज करना चाहते हैं, वह किसी लोकल एथारिटी से सम्बन्धित नहीं है; वह सेंट्रल गवर्नमेंट से सम्बन्धित है। मनी बिल के बारे में आर्टिकल 110 (2) में जो एग्जम्प्लान्स दी गई हैं, संविधान में उसके अलावा और कोई एग्जम्प्लान्स नहीं हैं, जिसके तहत मंत्री महोदय यह चेंज कर सकते हैं। संविधान में ऐसा कोई प्राविजन नहीं है कि जो कानून संविधान के लागू होने से पहले बना हो, उस पर संविधान के प्राविज्ञान एप्लाई नहीं करेंगे। जैसा कि माननीय सदस्य ने कहा है, श्रुति संविधान के मुताबिक यह एक मनी बिल है, इस लिए मनी बिल के लिए जो प्रक्रिया रखी गयी है, उसी के अनुसार यह चेंज किया जाना चाहिए। यह चेंज एक प्रस्ताव के जरिये से नहीं किया जा सकता है।

MR. DEPUTY-SPEAKER : I may tell the hon. Member that he is confusing the issue. It is a clever method of confusing the House also. I am very sorry to say this...

SHRI DINESH SINGH : The main point is that, as you have rightly pointed out, this provision has been incorporated after the Constitution has been passed, by an Act of this House. Whether an Act of this House is constitutional or not is not for us to judge. There are other agencies to decide that. Therefore, this is only an attempt, as you have very rightly said, to confuse the issue. The issue is quite clear.

SHRI TENNETI VISWANATHAM : There is not much cleverness or confusion in these things. It is a very straight issue namely whether by delegated legislation Government can increase the taxes. They may take power by delegation. But the question is whether Parliament has got the right even to delegate the power of taxation.

The increase of taxation within limits is permitted even by the courts. If you put a ceiling, sometimes the courts have not frowned at it. The executive is given sometimes the power to alter the rates up to a particular limit; that much alone has been accepted by the courts. But it is not

right that Government take the authority to increase a tax without any limits whatsoever. No government can have that power; the executive cannot have this power, but as the hon. Minister says, it is not for us to decide, and let it be decided in a court of law.

MR. DEPUTY-SPEAKER : That is not the question here. I am quite clear in my mind. Let me read out the section for his benefit. This power has been delegated by the Parliament.

SHRI TENNETI VISWANATHAM : But the Constitution also says that Parliament shall not delegate to the executive the power of taxation. So, it is more fundamental than that. Parliament is also the creature of the Constitution. The Constitution says that there shall not be taxation except by authority of law. Law does not mean notification, rules or any such thing. The section quoted by my hon. friend has been quoted out of context, as you might recall.

Here, what does the hon. Minister propose to do. Under the power of delegation he wants to raise the tax. This matter went up to the courts not only in India but in other countries, how far the power of taxation can be delegated to the executive. In some cases, in order to give some elbow-room to the governments, the courts have said that if a ceiling is fixed in the legislation itself, in the original law itself, then to that extent they may exercise that discretion and impose the tax. But the taking of the power of taxation by means of delegated legislation will not be accepted by courts. But if he says that let it be tried in a court, then that is all right, let it be tried there.

MR. DEPUTY-SPEAKER : What the hon. Member says is the general practice in the Western countries that while power is delegated, care is taken to specify certain limits within which the executive could impose a tax without the sanction of the legislature. In the parent Act under which this notification has been issued, it has been clearly stated that :

"Where in respect of any article, whether included in the Second schedule or not, the Central Government is

satisfied that the export duty leviable thereon should be increased or that an export duty should be levied and that circumstances exist which render it necessary to take immediate action, the Central Government may by notification in the Official Gazette direct an amendment of the Second Schedule to be made so as to provide for an increase.."

—the word used is 'increase'; there is no limitation specified there—

"...in the export duty leviable or as the case may be, the levy of an export duty on that article."

SHRI TENNETI VISWANATHAM : But the whole point of my objection, and that of the Opposition, is that the section is worded too wide to be acceptable. This power is to increase to an extent too wide, whether the article is mentioned in the schedule or not. It means that they are taking unlimited power. If it goes before the courts, naturally they will object...

MR. DEPUTY-SPEAKER : This law was passed here.

SHRI TENNETI VISWANATHAM : If you sit, I can stand. If you stand I cannot.

You are reading from the section. I have got objection to the section itself. When the Constitution says that the power of taxation cannot be delegated to the executive or that the executive cannot impose the tax, you cannot read the section and then say that it authorises it. It is like a Sanatanist arguing where is God? The Veda says it. What is Veda? That is the word of God. It is just like that. How do you do it.

MR. DEPUTY-SPEAKER : We will put an end to this.

श्री कंबर लाल गुप्त : उपाध्यक्ष महोदय, मेरा कहना यह है कि अभी आपने सेक्शन 4 पढ़ा, इसी सदन ने एक कानून पास किया तथा एक दूसरी चीज विधान में लिखी हुई है—मैं आपसे पूछना चाहता हूँ कि क्या कोई भी कानून विधान को ओवर राइड कर सकता है ?

श्री विनेश सिंह : यहां तब नहीं कर सकते हैं ।

श्री कंवर लाल गुप्त : यहां स्पीकर साहब कर सकते हैं ।

श्री विनेश सिंह : सुप्रीम कोर्ट कर सकेगी ।

श्री कंवर लाल गुप्त : अगर नहीं कर सकते, तो जो विधान में लिखा है उसको माना जायगा । विधान में इसकी प्रक्रिया स्पष्ट लिखी है और यह कानून चाहे कुछ भी हो, उसको प्रोवर राइड नहीं कर सकता । इस लिये मेरा अनुरोध है कि विधान की बात को मानना चाहिये । अगर इस तरह से नहीं करेंगे तो इस के डेजरेस कन्सीक्वेंसेज हो सकते हैं । मेरी आपसे प्रार्थना है कि विधान सुश्रीय है, अगर हम किसी कानून में बदल करते हैं तो वह बदल नहीं माना जायगा, जब तक संविधान में बदल नहीं होता है । अगर आप अपनी पावर रेस्ट्रिक्शन लगाना चाहते हैं तो विधान में बदल होना चाहिये । जब तक विधान में बदल नहीं होता, तब तक इसको नहीं माना जा सकता ।

SHRI TENNETI VISWANATHAM :
Our point is there. You may overrule it and proceed, if you like.

MR. DEPUTY-SPEAKER : That is one way. Another is that you can exercise your vote and decide it.

श्री अटल बिहारी वाजपेयी (बलरामपुर) :
यह वोट से कैसे तय हो सकता है ।

SHRI KANWAR LAL GUPTA : You are very much convinced by our argument. But your mind is hesitating. You must say it boldly.

Mr. DEPUTY-SPEAKER : Even if the argument of Shri Viswanatham's is accepted, that it has bypassed or exceeded the limits of authority, that could be delegated by this House, this matter could be decided not in this House. Ultimately, it will be the Supreme Court which will decide. I suggest there is no point of order and we proceed.

SHRI SRINIBAS MISRA : Before you close it, let me say this. Whether there is excess of delegation or not is one straight issue. The article says if it is a Bill or an amendment—a law of taxation increase the rate; therefore it becomes a Money Bill.

SHRI KRISHNA KUMAR CHATTERJI (Howrah) : Are we discussing your ruling ?

MR. DEPUTY-SPEAKER : This is a different point altogether. That amendment refers to a Bill, not to a notification. You must be clear on that.

SHRI SRINIBAS MISRA : No, Bill or amendment.

MR. DEPUTY-SPEAKER : The amendment is to a Bill. It cannot be to a notification, and power under notification is exercised here. On that I am very clear.

MR. DEPUTY-SPEAKER : I am quite clear in my mind that your interpretation regarding the amendment does not apply to the notification. It is very clear.

SHRI SRINIBAS MISRA : I have not clarified my point. Even an amending Bill is a Bill. The amendment does not refer to notification. An amendment will also come under the title Bill.

MR. DEPUTY-SPEAKER : Legal quibbling will not convince anyone on this point. The interpretation is clear. It does not apply to the notification. I have disposed of the first point.

SHRI VIKRAM CHAND MAHAJAN (Chamba) : The Act was passed in 1964, that is, after the Constitution came into force. Parliament delegated the power to raise the tax under that Act to the executive. But the executive has to come to Parliament, as it has come now. Therefore it is Parliament which is deciding whether the tax should be raised or not. After delegating that power, it is now Parliament which is itself deciding. There is nothing wrong with that resolution.

MR. DEPUTY-SPEAKER : No absolute authority is given to the executive; they have to come to the Parliament under the existing scheme of things.

SHRI DATTATRAYA KUNTE (Kolaba) : It is clear that section 4 gives the authority to the Government to issue the notification. Whether the delegation of such an authority is right or wrong will be decided by the competent court. But it does not give a blanket authority. It says that this power should be exercised under certain exceptional circumstances, meaning thereby, that it was not possible for Parliament to do this because it was not in session or something like that. But this notification simply raises the rate of duty from 10 to 25 percent. No circumstances are given as to why this notification ought to be issued. The authority granted under section 4 is not wide enough as the Minister is trying to justify.

MR. DEPUTY-SPEAKER : You have not read it correctly; I shall read the relevant portion... "circumstances existing render it necessary to take immediate action..."

SHRI DATTATRAYA KUNTE : That is exactly the point. The notification does not say anything about the circumstances.

MR. DEPUTY-SPEAKER - This is a resolution regarding that notification. When it comes before the House, he will explain the circumstances that necessitated immediate action. It is for the House to decide.

SHRI DATTATRAYA KUNTE : The notification itself ought to say that circumstances existed then which warranted immediate action. If he makes a statement now, it can only be an after-thought. The requirements of section 4 were not satisfied at the time of issue of the notification. The notification does not give any justification.

THE DEPUTY PRIME MINISTER AND MINISTER OF FINANCE (SHRI MORARJI DESAI) : Section 4 does not require that all these things should be mentioned in the notification itself. He will explain the reasons when he moves the Re-

solution. But how much time will be spent on this issue where there is no point whatsoever ?

SHRI SHIVAJI RAO S. DESHMUKH (Parbhani) : Nowhere does section 4 say that the reasons are to be mentioned in the notification. (Interruption)

MR. DEPUTY-SPEAKER : Order, order. It is for him to justify. We have just had half an hour for this. We have to finish it and then take up the Finance Bill.

SHRI DINESH SINGH : At the time of the devaluation of the rupee on 6.6.1966, an export duty at the rate of 10 percent *advalorem* was levied on hides, skins and leather exported. The purpose of the levy was partly to mop up consequential profits as also to help protect the unit value of this important export item. As the rupee earnings from exports were to appreciate by 57.50% it was expected that the balance amount of extra rupee realisations would leave a sufficient margin to serve as incentive both for export of hides, skins and leather and for the development of the industry as a whole.

A number of representations were received from the trade to the effect that the export duty imposed from the 6th June, 1966, together with increase in raw skin prices following the devaluation of the rupee, had made the price of Indian leather uncompetitive in the foreign market. It was, therefore, urged that there was a case for abolition of export duty on leathers.

While recently reviewing the entire range of commodities liable to export duties, the representations from the leather trade were considered in detail. In this connection, the export performance of different categories of hides, skins and leather during the last three years, is set out in a statement which I lay on the Table of the House. [Placed in Library. See No. LT-1109/68.]

In respect of finished leather it was found that the finished leather of goat, sheep cattle and their young-ones, exports of which account for nearly Rs. 2. crores per year, were not doing well and as such it was decided to abolish the export duty on these finished leathers.

[Shri Dinesh Singh]

In the case of snake skins, it was observed that export of this item was fairing exceptionally well. From the price of about Rs. 80 per kg. in the year 1965, the price realised from the foreign buyers had gone up to over Rs. 217 per kg. in July-September 1967. The value of exports of snake skins had been correspondingly going up from about Rs. 19 lakhs per quarter in 1965 to as high as Rs. 87 lakhs in the quarter July-September 1967. Snake skins were having tremendous popularity in U. S. A., West Germany and U. K. Taking all these factors into account, it was decided that export of snake skins should be able to bear an additional incidence of duty without impairing its competitive strength in the international markets. The rate of export duty on snake skins was accordingly raised from 10% *ad valorem* to 25% *ad valorem*.

The necessity of doing this by a notification as required under the Act was that we had abolished the export duty on other leathers and if we had not increased this the duty on that would have also been abolished with it, and there would be an unnecessary loss to the public revenues and therefore it is felt that this should be increased.

MR. DEPUTY-SPEAKER : Resolution moved :

"In pursuance of sub-section (2) of section 4A of the Indian Tariff Act, 1934 (32 of 1934), this House approves of the Notification of the Government of India in the Ministry of Commerce No. S. O. 1340, dated the 10th April, 1968, enhancing the export duty on snake skin from 10 per cent *ad valorem* to 25 per cent *ad valorem*."

SHRI DATTATRAYA KUNTE : I want to say a few words about this. This hon. Minister in his speech just now has made the position very clear, that it was as early as July-September, 1967 that Government found that the price had gone up from Rs. 80 to Rs. 217 or Rs. 270, whatever he has read. So, therefore, it was as early as July-September, 1967 that Government found this. The Government slept over it for all these months. The House was in session from February till 10th April, and then all of a sudden they issued a notification on the 10th April,

Therefore, excepting the words "authorised under section 4—that is all the notification says—no other circumstances are explained in that notification making the position very clear as regards why this notification was necessary to be issued on that particular date, 10th April. Except the words, as they say, "under section 4", they do not satisfy the condition of section 4. He has not even in his speech, even though the hint was dropped, made it clear, because I had raised that point.

Even in his speech, he has not said that any special circumstances had arisen on 10th April. Therefore, the conditions required to be satisfied under section 4 are not satisfied. Therefore, he should withdraw the notification and come before the House again. If he could afford to wait from July-September 67 upto April 68 and waste all the duty that would have been collected during this period, he should honour the letter and spirit of section 4 by withdrawing that notification without standing on any false prestige. Nothing is going to be lost if he withdraws it and comes to this House again tomorrow with another thing.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, वाणिज्य मन्त्री जी ने जो स्पष्टीकरण दिया है उससे स्थिति साफ होने के बजाय और उलझ गई है। उन्होंने कहा है कि कुछ चीजों पर हमको निर्यात शुल्क खत्म करना पड़ा और सरकार को घाटा न हो इसलिये यह नोटिफिकेशन जारी करने की आवश्यकता पड़ी। लेकिन इस कथन से यह स्पष्ट नहीं होता कि इस चीज पर निर्यात शुल्क में वृद्धि करने के कारण क्या थे।

श्री विनेश सिंह : यही बताया है, आपने शायद सुना नहीं।

श्री अटल बिहारी वाजपेयी : क्या नोटिफिकेशन जिस दिन जारी किया गया, उसी दिन जारी करना जरूरी था ? क्या सरकार सदन के सामने एक विधेयक को लेकर नहीं आ सकती थी ? अभी भी मुझे इस मोशन के बारे में शंका है। मनी बिल के रूप में आता तो स्थिति भ्रमल होती। मैं जानना चाहूंगा, अगर

मोशन राज्य सभा में गया यह मनी बिल नहीं है और राज्य सभा को इस पर विचार करने और इसमें संशोधन करने का अधिकार होगा— और अगर राज्य सभा ने इसमें ड्यूटी कम कर दी, क्या सरकार उसको स्वीकार करेगी? क्या वह इस सदन के अधिकारों का अपहरण नहीं होगा? जहाँ तक ड्यूटी बढ़ाने या कम करने का सवाल है, यह इसी सदन के पूरे अधिकार में आता है और दूसरे सदन को इस प्रकार की छूट नहीं दी जा सकती है। लेकिन विधेयक न लाकर पहले नोटिफिकेशन जारी किया गया और अब इसका प्रस्ताव लाकर सरकार राज्य सभा में भी इसमें संशोधन करने की छूट दे रही है। इससे भविष्य में कठिनाइयाँ पैदा हो सकती हैं।

इसके अतिरिक्त यह भी स्पष्ट नहीं होता कि जिस तारीख को नोटिफिकेशन जारी किया गया उसी दिन जारी करने की क्या आवश्यकता थी? क्या सरकार थोड़े दिन नहीं रुक सकती थी और क्या सरकार के लिये इस प्रस्ताव को वित्त विधेयक में शामिल करके सदन के सामने आना सम्भव नहीं था?

मैं चाहूँगा वाणिज्य मन्त्री महोदय इन प्रश्नों का ठीक उत्तर दें नहीं तो सदन को यह प्रस्ताव ठुकरा देना पड़ेगा।

श्री अमृत नाहाटा (बाड़मेर) : उपाध्यक्ष महोदय, इस सारी बहस से यह चीज बिल्कुल साफ हो गई है कि पॅरेन्ट ऐक्ट इस पार्लियामेंट का पास किया हुआ है, उस पॅरेन्ट ऐक्ट में सरकार को अधिकार दिया गया है कि वह इस ड्यूटी को बढ़ा सकती है लेकिन यह शर्त है कि सरकार जब इस ड्यूटी बढ़ाये तो फौरन पार्लैमेंट के सामने प्रस्ताव लाये। अब हमारे कुछ माननीय सदस्यों का कहना है कि 10 अप्रैल को ही ड्यूटी क्यों बढ़ाई गई। इसके बाद वे यह भी कह सकते हैं कि 10 तारीख को दस बजकर तीन मिनट पर ही क्यों बढ़ाई गई। इसलिये यह कोई सवाल नहीं है। विदेशों में भाव अच्छे आने लगे और मुनाफा मिल रहा

है तो सरकार को भी उसका हिस्सा मिलना चाहिये, सरकार ने उस पर विचार किया, लोगों से सलाह-मशविरा किया और यह फैसला किया कि ड्यूटी बढ़ाई जानी चाहिये और वह ड्यूटी बढ़ाई गई और फिर जितनी जल्दी हो सका, सरकार इस सदन के सामने प्रस्ताव लाई। यह जो प्रस्ताव है वह पॅरेन्ट ऐक्ट के मातहत है। यह अमेन्डिंग बिल नहीं है इसलिये मनी बिल भी नहीं है। पहली बात तो यह हुई।

दूसरी बात यह है कि इसमें कोई अनौचित्य नहीं हुआ है। सारा विचार विमर्श करने के बाद यह किया गया और फिर जितनी शीघ्र हो सका सरकार ने ड्यूटी बढ़ाई और जितनी शीघ्र हो सका इस सदन के सामने प्रस्ताव लाया है। मैं इस सदन से निवेदन करूँगा कि इस प्रस्ताव को स्वीकार किया जाय।

15.00 hrs.

SHRI SRINIBAS MISRA : Sir, section 4(a) does not give power to levy a tax retrospectively. Here in the notification retrospective effect has been given. It says : "This Notification shall be deemed to have come into force with effect on and from 7th February, 1968". This the Government is not empowered to do. The Government has no power to levy a tax retrospectively.

Secondly, section 4(a) (1) says : "The Government may by notification in the official Gazette direct an amendment of the Second Schedule". Here the Second Schedule is being amended by the resolution itself. We will be setting a dangerous precedent if Acts can be amended by resolutions.

As has been already submitted, there is no justification for the hurry. It can be brought in as a Bill with retrospective effect and if the House agrees to give retrospective effect the Bill could be passed amending this Act. (Interruptions)

MR DEPUTY-SPEAKER : I would request the Minister to clarify the position regarding retrospective effect,

श्री विनेश सिंह : उपाध्यक्ष महोदय, माननीय सदस्यी कुंटे ने जून के बारे में कहा कि इसे हम जून में क्यों नहीं लाये ? पता नहीं जून और जुलाई की जो तारीख दी मेरे सामने उसका कोई महत्व नहीं है। मैंने बतलाया कि एक क्वार्टर था उसके अन्दर किस तरीके से कीमतें बढ़ीं ? जाहिर है कि वह पिछले क्वार्टर की होगी जिसके कि आंकड़े हमने आपकी बतलाये। भविष्य के क्वार्टर के आंकड़े हम नहीं दे सकते हैं।

जहां तक माननीय सदस्य श्री मिश्र ने इस ऐक्ट के बारे में टीका टिप्पणी की है उसके बारे में मैं इस वक्त नहीं जाना चाहता हूं न वह मेरा इस वक्त मकसद है। ऐक्ट सही है या गलत है या इसमें पावर्स ज्यादा दे दी गई हैं या कम दी गई हैं वह तो ऐक्ट सदन के सामने आया था और मैं समझता हूं कि माननीय सदस्य जो उस समय उपस्थित थे उन्होंने पूरी बहस की होगी। अब माननीय सदस्य इस में फिर भी कोई तबदीली करना चाहते हैं तो उसके भी नियम बने हुए हैं लेकिन आज तो हम इस ऐक्ट की हैसियत से काम कर रहे हैं।

अब उन्होंने एक बात जिसके कि बारे में उन्होंने कहा कि क्यों यह एक खास तारीख को किया गया तो मैंने अभी अर्ज किया कि एक फरवरी को हमने जो बाकी चमड़ों पर ऐक्सपोर्ट ड्यूटी थी उसको हमने हटाया। उस वक्त हमें यह मालूम था कि जो स्नेक का चमड़ा है उस पर बहुत ज्यादा फायदा हो रहा है उस पर ऐक्सपोर्ट ड्यूटी हटाने की जरूरत नहीं है बल्कि जिस पर यह ऐक्सपोर्ट ड्यूटी बढ़ाने की जरूरत है तो हम यही कर सकते हैं कि उस का खाली 10 फीसदी छोड़ दें। एक महीने बाद फिर उसको बढ़ा दें तो उससे कोई फायदा नहीं होता था जबकि बाकी हम सब ऐक्सपोर्ट ड्यूटी चमड़े पर छोड़ रहे थे। एक पर रखना चाहते थे तो उस पर जो मुनासिब ऐक्सपोर्ट ड्यूटी हो वही रखनी चाहिए थी उसको बीच में छोड़ देने से कोई फायदा नहीं था।

जहां तक माननीय सदस्य श्री मिश्र ने कहा कि उसमें रिट्रोस्पेक्टिव एफेक्ट का कोई इंतजाम नहीं है तो मैं उन्हें बतलाना चाहूंगा कि उसमें इसके लिए कोई मुमानियत नहीं है। उसमें यह लिखा हुआ है यह रेजोलूशन सरकार ला सकती है। पहले अगर चाहे तों नकट करे। इस तरीके से हमने यह नकट किया। और रेजोलूशन को सदन के सामने लाये हैं। इस तारीख का मतलब सिर्फ यह है कि इस तारीख को हमने बाकी ऐक्सपोर्ट ड्यूटी हटा दी थी। हम यह नहीं चाहते कि इस वजह से तब से अब तक इस ऐक्सपोर्ट ड्यूटी का नुकसान हो। कानून में कोई ऐसी मुमानियत नहीं है।

SHRI DATTATRAYA KUNTE : Sir, before you put it to vote I want a ruling from the Chair whether according to the Constitution the Government have authority even by notification or anything except by proper legislation to retrospectively levy a tax.

SHRI AMRIT NAHATA : It does not prohibit the Government.

SHRI DATTATRAYA KUNTE : I am asking for a ruling from the Chair on the point raised by Shri Misra. The Chair can say that it will not give a ruling, the party will have to go to the court. I do not mind. But I want a ruling.

MR. DEPUTY-SPEAKER : I have read the section. It does not prohibit giving retrospective effect to any notification.

SHRI SEZHIYAN (Kambakonam) : It does not empower either.

MR. DEPUTY-SPEAKER : On that point the section is silent. Therefore, Government have taken this step. Now the question is :

'In pursuance of sub-section (2) of section 4A of the Indian Tariff Act, 1934 (32 of 1934), this House approves of the Notification of the Government of India in the Ministry of Commerce No. S. O. 1340, dated the 10th April,

1968, enhancing the export duty on snake skins from 10 per cent *ad valorem* to 25 per cent *ad valorem*."

The motion was adopted

15.06 hrs.

FINANCE BILL, 1968

THE DEPUTY PRIME MINISTER AND MINISTER OF FINANCE (SHRI MORARJI DESAI) : Sir, I move.*

"That the Bill to give effect to the financial proposals of the Central Government for the financial year 1968-69, be taken into consideration."

In my Budget speech, I had explained the rationale and the main features of the provisions of the Finance Bill. The details of these provisions have been fully set forth in the Explanatory Memorandum circulated to Hon'ble Members. I am gratified that the Budget proposals have been generally welcomed both in this House and outside. Yet it is only to be expected that there should be some criticism of the proposals. The various constructive suggestions that have been made, for which I am grateful, relate mainly to the field of implementation. I shall try to explain later as to how I intend this aspect to be taken care of in order to avoid genuine hardship.

I have not attempted to undertake any major reform of the tax system, or indeed any thorough going rationalisation. Such major changes can be effected only after examination in depth of the suggestions put forward after careful study by various experts and those that may be made by the Administrative Reforms Commission and others. It would not have been fair to the authors of these reports if hasty decision had been taken. Nor would it have been proper to come to conclusions without availing of the advice of the many experts in this country, both in the House and outside.

Among the proposals relating to direct taxes, the one which has evoked the maximum comments is the increase in penalties leviable under the Wealth-tax Act for concealment of wealth. The purpose underlying the proposals is too obvious to be

disputed. The real cause of concern seems to be that honest assesses may have to suffer hardship in the course of implementation. I would straightaway agree that there can be differences in opinion even among experts on the proper value of an asset, and that therefore concealment should not be too readily presumed when the assessed value of an asset is greater than the value returned. It will therefore be necessary to ensure that the taxpayer, who has made an honest effort to value his assets properly, is not penalised and that in any event penalty is collected only after the correct value has been determined by an independent authority. I propose therefore to increase from 20 percent to 25 percent the permissible margin of difference between wealth assessed and wealth returned before the onus of proof in penalty proceeding is shifted from the Revenue to the taxpayer, while extending this principal to concealment of wealth through under-statement of the value of any asset and over-statement of the value of any debt. Further, there should ordinarily be no occasion for the levy of penalty for under-statement of the value of an asset in cases in which the assessee supports his valuation by the report of an approved valuer; and the taxpayer can thus readily protect himself from the possibility of penalty proceedings. In due course a departmental valuation organisation will be set up; and when this is done, the services of the official valuers—whose valuation will be naturally binding on the tax authorities will be available to taxpayers also. I propose to have administrative instructions issued that penalty for concealment of wealth through under-valuation of assets be recovered only after the valuation has been adjudicated upon by the Appellate Tribunal. I am sure that Hon'ble Members will agree with me that, given these safeguards, the honest will have no difficulties. If those who have hitherto not taken the trouble to value their assets carefully as is their obligation, now do so, a useful purpose will have been served by the proposed provision. I hope it will be appreciated that people having assets should not be above knowing within reasonable variation as to that their assets are really worth. But those who dislike this mundane drudgery can handover the task to approved valuers and the official valuation machinery.

*Moved with the recommendation of the President.