14.12 hrs.

CENTRAL EXCISES AND SALT (AMENDMENT) BILL

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH): Mr. Chairman, Sir, I rise to move* that the Bill further to amend the Central Excises and Salt Act, 1944, be taken into consideration.

Clause 2 of the Bill seeks to substitute section 4 relating to valuation. Correct valuation of the goods is important for purposes of Central Excise levy where the goods carry an *ad valorem* rate of duty. There has been a progressive shift from the specific duties in favour of *ad valorem* levies. Presently, of the 123 items in the Central Excise Tariff, over 72 per cent are subject to *ad valorem* rates of duty.

The definition of value contained in the existing Section 4 was incorporated in the Act, in the year 1955. Its operation has been presenting certain practical difficulties, some of which have got highlighted in a recent judgement of the Supreme Court. The use of the expression 'capable of being sold' in Clause (a) of the existing Section introduces a notional concept of value and sometimes creates difficulties. Even in *bona fide* transactions goods of like kind and quality may be sold genuinely at different prices to different classes of buyers; however, in view of this expression they will all have to be assessed at the same price. This part of the definition does not take into account the price at which the goods under assessment are actually sold by the manufacturer, but looks to the price of the goods of like kind and quality in the wholesale market. It also tends to ignore the genuine contract of sale entered in advance for delivery of the contracted goods at the time of removal. The existing definition further provides that if a wholesale market does not exist at the place of manufacture then the wholesale cash price at the nearest place where such market exists will be the basis of assessment. This implies that even the freight for transportation of the goods from the factory to such market would not be excluded for purposes of assessment.

Clause (b) of the current definition is residuary in nature and comes into operation only when wholesale cash price envisaged in Clause (a) is not ascertainable. This clause again provides for assessment of the goods at the price at which an article of like kind and quality is sold or is capable of being sold by the assessee at the place of manufacture or, failing that, at any other place nearest thereto. The explanation appended to this definition provides for deduction from the assessable value only of the trade discount and of excise duty payable on such goods. But there are several other types of post-manufacture levies, such as sales-tax, octroi etc., for exclusion of which no specific stipulation has been made. Further, the definition does not clearly provide for assessment of goods which are not capable of being marketed, such as some types of office machines which are not sold but are only hired out.

The definition of value contained in Section 4 is modelled on Section 30 of the Sea Customs Act of 1878. The concept embodied in the said Section 30 has since been given up even on the Customs side when the Customs Act of 1962 replaced the Sea Customs Act of 1878. We have now tried to revise the definition of 'value' having regard to the changing needs of the expanding trade and industry and the growing complexities of the Central Excise tariff and tried to make it more precise and explicit so that the concerned trade and industry is left in no doubt as to its obligations under the law in regard to valuation, and the Central Excise officers who have to enforce the law clearly understand the valuation provision and are able to effectively enforce it. Our aim has been two-fold, namely (i) to have an objective test for valuation, providing, as far as practicable, for assessment of the excisable goods which are subject to *ad valorem* rates of duty at their transaction value, except in areas where there can be scope for manipulation, such as the sales to or

*Moved with the recommendation of the President.

[Shri K. R. Ganesh]

through related persons; and (ii) to make specific stipulations in the section itself with respect to situations frequently encountered in the sphere of valuation so as to reduce the scope for disputes and ambiguity.

According to Clause 2 of this Bill the assessable value will be the price at which the excisable goods are ordinarily sold by the assessee to an independent buyer in the course of wholesale trade; and different prices charged to different classes of buyers, such as industrial consumers, Government etc. would be acceptable for purposes of assessment. Where the goods are generally not sold, except to or through a related person such as a subsidiary, distributor or a relative, the assessable value of the goods so sold will be the price at which such related person sells such goods to an independent dealer. The underlying idea is that the duty should be assessed on the basis of the price in the first transaction with an independent dealer, ignoring for this purpose the related intermediaries, if any. Where prices are controlled and goods are sold at a price fixed under any law, that price will be the basis of assessment for the goods so sold. We are also making specific stipulations in the provision itself with respect to such elements as trade discounts, taxes, freight, cost of packing etc., with a view to clarifying the situations in which they will be included or excluded for purposes of determining the assessable value.

To cope with the situations which will not be covered by the main definition, power is being taken, on the lines of the corresponding provision in the Customs Act of 1962, to make rules to determine for purposes of assesment, the nearest ascertainable equivalent to the value as defined in this provision. Such rules will be published and will also be laid before Parliament.

While drafting this provision, we have kept in view not only the practical difficulties experienced in the working of the existing provision and the judicial pronouncements made in this regard from time to time, but also the points made in the evidence tendered with regard to the subject of valuation before the Select Committee which considered the Central Excises Bill of 1969. The further advantage of this amending Bill would be that the Department as well as the concerned trade and industry will have the benefit of the practical working of the new provision, so that adjustments, should any become necessary in the light of the experience gained, can be made in this provision before it is included in the comprehensive Central Excises Bill which would come up before Parliament in due course soon.

The next important provision of the Bill is Clause 5 which seeks to substitute section 40. Sub-section (2) of the existing section 40 has been recently interpreted by the Supreme Court to mean that the protection envisaged therein is not confined to Government or Government servants, and applies to prosecutions of all individuals, with the result that no prosecution or other proceedings can be initiated even against an offender after expiry of six months from the date of the offence. This was not intended. Accordingly, it is proposed to amend this provision on the lines of the corresponding provision contained in Section 155 of the Customs Act, 1962, with a view to making the intention clear.

With these words, Sir, I move.

MR. CHAIRMAN: Motion moved:

> "That the Bill further to amend the Central Excises and Salt Act, 1944, be taken into consideration."

SHRI SOMNATH CHATTERJEE (Burdwan): The Central Excises and Salt Act was first enacted in 1944, and since then there have been several amendments from time to time. We find that in 1963, a committee was constituted, called the Central Excise Reorganisation Committee to go into the whole matter and to suggest methods for improving

the functioning of the Central Excise Department and also for enacting a proper law. But there has been no thinking on the part of the Government or the Ministry to bring about overall changes to remove the defects in the 1944 Act. This is why this type of piecemeal legislation is being brought forward which creates more problems to be solved than solves problems which are already there. The main justification for the present amending Bill is to undo a decision of the Supreme Court in the case *A. K. Roy and another vs. Voltas Ltd.* This decision followed an old Privy Council decision, and in the meantime there were several decisions by the various High Courts in India which came to contrary findings.

I agree with the hon. Minister that the law should be settled. But the question is whether by the amendments now proposed the uncertainties in the law are being removed or whether further ambiguities and uncertainties are being created. It appears that there is a near-bankruptcy in the thinking process of the Ministry or of the Legislative Department, I do not know which. The main difficulty which has been faced or felt by all the courts and also by the officers concerned is the determination of what is known as the wholesale price. Under the previous Act, it was called the wholesale cash price. Now, the wholesale price concept is being still maintained under the section concerned without any guideline for deciding how this wholesale price is to be ascertained.

If we see the Bill we find the words:

> ". . . goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery...".

Without any guidelines, and without any principles being laid down about what wholesale trade should be, it is difficult to determine what should be treated for the purpose of valuation to be the wholesale trade or what should be treated to be the wholesale price. Nothing is indicated in the Bill, and the position remains as vague as it was before, leaving it to the courts again to decide these ambiguous provisions in the law.

Again, the word 'ordinarily' has crept in without any indication in the statute as to what the word would mean. Also, in the proposed proviso, reference is made to the normal practice. This will again open up an inquiry into an uncharted field in regard to what the normal practice in respect of a particular transaction means. This means that the previous ambiguities which were there and the difficulties which the courts felt in properly construing the already existing provisions still continue.

Again, take, for instance, the proviso and especially clause (ii) thereof. We find there that notwithstanding anything contained in clause (iii) of the proviso, the price to be taken into account is:

> ". . . the price or the maximum price, as the case may be, so fixed under any particular law.".

Then we find the phrase:

> ". . . in relation to the goods so sold, be deemed to be the normal price thereof."

Now, in respect of a transaction, if the goods are sold at a particular price, supposing there is a maximum controlled price, then what is the basis on which it is to be valued ? That is not indicated. Problems are raised here, but no solution is indicated.

Then, in clause (iii) of the proviso, we find:

> . . . . where the assessee so arranges that the goods are generally not sold by him in the course of the wholesale trade . . .".

Again, we are getting into difficulties. The concept of 'related person' has been introduced here. I quite agree that that is the proper approach that transactions

[Shri Somnath Chatterjee]

between related persons should not provide the guideline or should not be accepted as the basis for valuation. But what will happen when there are those transactions between related persons? Nothing is indicated.

Then there is definite objection to subclause (b), page 2 where it says:

> "where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed...".

This is very important. Why should Parliament give up its right to decide a very important aspect of taxing legislation? We do not know what will be the prescription. We do not know what are the rules which will be laid down. It may be that they will come before Parliament, but in matters of taxation, it should not be left to delegated authority to fix the rate or the basis for ascertainment of the quantum of the tax. This is a matter which I would request the hon. Minister to take into consideration.

Similarly excessive delegation is provided in cl. 3(ia) which says that rules will be prescribed to define and specify the kinds of trade discount to be excluded. No guidelines, nothing, has been indicated in this Bill as to what would be the nature of the trade discount and it is left completely to the executive authority by means of delegated power to fix the rates of trade discount. This means that uncertainty will be there. Not only that. I strongly object to Parliament giving up its power to decide the basis of taxation or the rate of taxation. It is only Parliament which should decide; it should not be left to delegated authority.

Then I come to cl. 5 dealing with sec. 40. Previously it was provided that no suit, prosecution etc. shall be instituted after the expiration of six months. Now what is being done is that double protection is sought to be given to the Government. It is said that not only have the proceedings to be instituted within three months from the accrual of such case but a month's previous notice has also to be given. Why this double protection for Government? If somebody has acted wrongly or illegally, why this double protection for the officer or the Government when the ordinary people do not enjoy this protection? Here we have got our objection.

So far as the working of the Central Excise Department is concerned, the Committee of 1963 has made various suggestions. I wish to refer to the report of the Comptroller and Auditor General of India for 1971-72 on the functioning of this department. It has been said that for various reasons, the real amount of excise duty is not realised. They are under-assessment due to incorrect classification, incorrect refunds being granted, under-assessment due to adoption of incorrect rate, under-assessment in respect of various items of goods, levy of lower rate of duty etc. All these have been indicated

But this is the trouble with piecemeal amendment. Various important suggestions made by one of the highest constitutional authorities in the country, namely, the Comptroller and Auditor General of India, are not taken note of. You bring a piece of piecemeal legislation to avoid only temporary difficulties. This *ad hoc* basis of legislation should be changed. This does not solve the problem; it only creates problems.

There are other points which have been indicated here, namely, irregular concession of duties being given, avoidance of duty on the basis of incorrect exemptions which are granted etc. These matters are not at all considered and dealt with in the amending Bill, although this report was already there when this Bill was drafted.

With regard to arrears of Union excise duties, it makes a pathetic reading. It shows clearly how this department is functioning. The total of the demands outstanding without recovery on 31 March, 1972 was Rs. 51,68.75 lakhs. I am reading from the report for 1971-72, page 33, where it says that the outstanding demands were over Rs. 50,00 lakhs, and the break-up has been given. Some of them are pending for more than one year. Why should there be so much of outstanding, and what is the Government doing?

Then there have been remissions and write-offs to the extent of Rs. 10,99,621. It is amazing. Some of the assessees have left India and there are assessees who are alive but are incapable of paying the duty. What is being done to plug the loopholes so far as the tax evasion is concerned? I do not know whether you have ever seen these figures. It appears that the total value of goods seized during one year was more than Rs. 163 lakhs. Out of that the total value of goods confiscated was only Rs. 60,28,793. So far as one-fourth of the goods are concerned, what has happened to it? It was neither confiscated nor sold because the price that was recovered out of the goods sold after confiscation was only Rs. 73,000 What has happened to the Rs. 1 crore worth of goods which have been seized? This is very important, because, under the Constitution of India, the proceeds from the Central excise duty will go to the divisible pool, and the States get their share on the basis of the Finance Commission's recommendations and the law that we pass on that basis. The States are losing a vital amount, a considerable amount of their share of these excise duties because of the defective working of this department and the loopholes in the law. No estimate is being made. Once a Supreme Court decision is given, you bring a Bill, and when another decision comes you will bring another Bill! A real, co-ordinated approach is not being made for the purpose of removing these defects, ambiguities and uncertainties in this respect.

Therefore, I request the hon. Minister —as I have not been able to give amendments to this Bill—to take into consideration these matters, and apply his mind to bring out a totally new law with regard to the central excise that will avoid the defects and ambiguities and really help in assessing and collecting the central excise duties and not allowing the big fishes to go out of the net.

SHRI Y. S. MAHAJAN (Buldana): Mr. Chairman, Sir, I rise to support the Central Excises and Salt (Amendment) Bill brought forward by the hon. Minister of State for Finance. These taxes are the most important forms of commodity taxation in our country. They yield more than 50 per cent of the tax resources of the Central Government. In 1970-71, out of Rs. 3,620 crores of tax revenue, these taxes alone yielded Rs. 2,081 crores.

At present there are about 90 and odd items in the excise tariff schedule, and though this number is large, there are three main groups, namely, petroleum products, tobacco and tobacco products and textiles, which contribute about 65 per cent of the total tax revenue. These excise duties, apart from yielding revenue, have also certain regulatory purposes to fulfil. Under the Central Excises and Salt Act, 1944, which is amended every year by the Finance Act, the basic excise duties are levied and they yield about 90 per cent of the total excise revenue.

These taxes are collected on an *ad valorem* basis, that is, they are levied according to the value of the article. The determination of the value of an article is there, which is the most important problem from the administrative as well as fiscal points of view. But certain difficulties were encountered in determining the value of an article as revealed by the Supreme Court judg-

[Y. S. Mahajan]

ment in the Voltas case, and these amendmends have been brought forward to remove those difficulties in determining the value of the articles. This Bill, therefore, propose to amend section 4 to ensure that the excuseable goods are assessed at the transaction value. An hon. Member on the other side just now that instead of solving the problem, more problems would be added. I believe that the Bill will go a long way in enabling officers concerned to determine the character and value of the commodity because the Bill says that the value should be the wholesale price fixed at the place of removal of the commodity at the time of the contract. The time and the place of removal thus enable one to fix the price more or less correctly.

The Bill says further that this price will not be accepted where there is manipulation of values to or through related persons. The amendment gives a clear definition of assessee, place of removal, packing, wholesale trade, etc The amendment to section 37 lays down that the rules shall define or specify the kinds of trade discount which should be excluded from the value of articles in section 4 and the conditions and the circumstances under which such discount is granted Clause 40 provides the normal protection to Government servants who act under the Act or who contemplate taking action under the Act.

There is one lacuna and I hope the hon Minister will pay attention to it. The second part of this clause says that no case or prosecution will lie against the Central Government, the officers of the Central Government and the State Government. It does not specify the officers of the State Government. Even the State Governments have to act through their officers and the immunity should be extended to the officers of the State Government also. With these words I commend the Bill for the acceptance of the House.

श्री भान सिंह भौरा (भटिंडा) : चेयरमैन साहब, जो बिल मंत्री जी ने पेश किया है बेशक यह बहुत छोटी सी बात है। जैसा मिनिस्टर साहब ने कहा है कि सुप्रीम कोर्ट ने एक लफ्ज़ पौइंट आउट किया उस को दूर करने के लिये यह बिल लाये हैं। मगर यह एक पौलिसी की बात ऐसी है कि सरकार ने जो पौलिसी बनायी है ऐक्साइज ड्यूटी को बढ़ाते चले चलो, यह एक खतरनाक बात है। जब हम यह देखते हैं कि इस साल जितनी ऐक्साइज ड्यूटी या ऐडीशनल ड्यूटीज से आमदनी हो रही है 276 करोड़ की, उस में से 118 करोड़ की आमदनी इनडायरेक्ट टैक्सेज और ऐक्साइज ड्यूटी से हो रही है और इससे महंगाई बढ़ती है, इस में कोई शक नहीं है। जब यह ड्यूटी बढ़ाते हैं तो कारखानेदार लोग जो है वह ड्यूटी उस में जोड़ कर के कनज्यूमर पर डाल देते हैं और महंगाई बढ़ती जाती है। हर चीज पर आप देखते हैं कि जो ऐक्साइज ड्यूटी बढ़ाने को कहते हैं आप का कहना है कि सुप्रीम कोर्ट ने कह दिया इस लिये हम ने एक बिल बना दिया। लेकिन जिस मशीनरी से काम चल रहा है वह मशीनरी बिल बना भी देती है और उसमें लूपहाल रख कर उन को बता देती है कि यह लूपहाल है जिससे और टैक्स इवेड हो सकता है और कोई भी कारखानेदार इस के बिना कि वह आप की मशीनरी से न मिले, कभी टैक्स इवेड नहीं कर सकता है और हम रोज देखते हैं कि जो अफसर इन्सपैक्शन करने वाले हैं टैक्स की वसूली की, वे सब के सब मन्थली बंधी हुई रकम कारखानेदार लोगों से लेते हैं। इसलिये वह क्या उन से कहेंगे कि आप टैक्स इवेड न करो? इस वजह से टैक्स तरियम है और महंगाई बढ़ती जा रही है।

मैंने पहले भी कहा था कि जैसे वेजिटेबिल घी है जो इस वक्त बाजार में नहीं है। लेकिन जब कीमत बढ़ा देंगे तो वह मंडी में आ जायगा। और भी बहुत सी चीजें हैं जिस पर ऐक्साइज ड्यूटी का कोई झगड़ा होता है और कीमत बढ़ा देते हैं तो मार्केट में फौरन चीज आ जाती है। इसलिये जो दिनों दिन महंगाई बढ़ रही है वह आप की डिफ्लेशन नीति के कारण बढ़ रही है।

आप को एक बिल लाना चाहिये ताकि जो इंडायरेक्ट टैक्सेशन ज्यादा है इस को कम किया जा सके । क्योंकि हम समझते हैं कि इंडायरेक्ट टैक्सेज लोगों के खिलाफ जाते हैं, वे महंगाई बढ़ाते हैं । इसलिये डायरेक्ट टैक्सेज ऐट सोर्स आप लगाये और जो बिल आप लाते हैं, छोटी मोटी बातों को छोड़ कर, मैं कहूंगा आप एक ओवर ऑल बिल लाइये जिनसे महंगाई ज्यादा न बढ़ सके । ऐसे छोटे बिल लाने के कोई काम नहीं चलेगा ।

मैं समझता हूं कि मिनिस्टर साहब जरूर इस बारे में सोचेंगे और ऐसे अफसरों पर कड़ी निगाह रखेंगे । तब तो लोगों को कुछ फायदा हो सकता है, वर्ना इन छोटी-छोटी बातों से काम नहीं चलने वाला है । मुझे उम्मीद है कि मिनिस्टर साहब इसी सेशन में एक काम्प्रिहेंसिव बिल लायेंगे, जिस से महंगाई पर काबू पाया जा सके ।

श्री अनेश्वर प्रसाद यादव (कटिहार) : सभापति महोदय, केन्द्रीय उत्पाद-शुल्क तथा नमक (संशोधन) विधेयक के संबंध में मुझे कहना है कि जब न्यायालय से कुछ आदेश होता है, या जब न्यायालय सरकार के मार्ग में बाधक होता है, तभी सरकार की ओर से कोई संशोधन लाया जाता है । आवश्यकता इस बात की है कि उत्पाद-शुल्क, एक्साइज ड्यूटी, संबंधी पुराने कानून के सभी प्रावधानों पर विचार करके, उनकी कमियों को दूर करने के लिए, एक काम्प्रिहेंसिव-पूर्ण-बिल लाया जाये और उस की कार्य-पद्धति में आमूल चूल परिवर्तन किया जाये । उच्चतम न्यायालय ने ए० के० राय तथा अन्य बनाम बोम्बाय लिमिटेड के केस में जो फैसला दिया है, उस को ध्यान में रखते हुए सरकार ने अधिनियम की धारा 40 और 37 (2) में संशोधन करने के लिए यह विधेयक सदन के सामने रखा है ।

इस विधेयक के उद्देश्यों और कारणों के कथन में कहा गया है :

> "अधिनियम की धारा 40 अधिनियम के अधीन सद्भावपूर्वक किए गए किसी कार्य के लिए वाद, अभियोजन या अन्य विधिक कार्यवाही को वर्जित करती है और उसमें यह उपबंध है कि वाद हुलुक के प्रोद्भूत होने से छह मास की समाप्ति के पश्चात् कोई विधिक कार्यवाही नहीं की जाएगी । हाल ही में उच्चतम न्यायालय ने उस धारा की उपधारा (2) का यह निर्वचन किया है कि उससे यह अभिप्रेत है कि उस में जिस संरक्षण की बात कही गई है, वह सरकार या सरकारी सेवकों तक ही सीमित नहीं है और वह संरक्षण सभी व्यक्तियों के अभियोजन को लागू होता है ।"

मंत्री महोदय ने यह भी कहा है कि सरकार को सरकारी कर्मचारियों की संख्या में वृद्धि करनी पड़ेगी जिस पर लगभग एक लाख रुपयों का वार्षिक व्यय होने का अनुमान है । इस के अतिरिक्त कर्मचारियों के लिए फर्नीचर आदि खरीदने और उनके प्रशिक्षण का आयोजन करने पर लगभग 24,000 रुपये का व्यय होने का अनुमान है । प्रशिक्षण के लिए जो व्यवस्था की जा रही है, वह तो ठीक है । लेकिन इस विभाग में जो करप्शन, भ्रष्टाचार, है, उस को मिटाने की दिशा में भी कुछ प्रयास किया जाना चाहिए और मंत्री महोदय को इस संबंध में उचित कदम उठाने चाहिए ।

SHRI C. M. STEPHEN (Muvattupuzha): Mr. Chairman, Sir, I have three points on which I want to seek clarifications. In clause 4(1)(a), the Minister has given notice of an amendment. The original draft of the amendment reads like this:

> "Where the assessee and the buyer have no interest, directly or indirectly",

That is now sought to be substituted with the words:

> "Where the buyer is not a related person"

I, for one, am not able to understand why this new concept must come in. Would it not be safer to let the old phrase remain? The essence of the matter is that the seller and the buyer have no interests in the matter of the transaction.

[Shri C. M. Stephen]

The question whether a person is related or not is only one of the methods by which you can determine the fictional extent of the interest and buyer and seller might be having. What has actually happened is, persons who will be having interests between them are left free and whatever is shown in the transaction is accepted as the correct thing. But I may be having a brother with whom I may be at loggerheads. If a transaction gets through between us, merely because he is my brother, that is discounted. So far as the definition of 'related person' is concerned, husband and wife is understandable, member of a Hindu Undivided Family is understandable. But the definition as per section 6 of the Companies Act is also included which means three generations including my son, son's son, daughter, daughter's son, their wives and husbands, my father, father's father, their children, sister, brother, their husband and wife—the entire circle comes in. It is not possible under the present social conditions that people will keep such intimate relationship to the second and third generation. Merely because you happen to be having some blood relationship, how can you cast the net and say that these transactions must be presumed to be benami? Would not the original draft of the amendment have been more sensible and reasonable? Why remove that, keep those shady transactions free and bring in this notional concept of having interest because they are blood relations?

Under section 4(1) (a), the price is to be determined at the figure at which transaction takes place between persons who are not related. That is the leading sentence. If that is the leading sentence, then the proviso should not take into account transactions conducted between related persons. It is a question of interpretation. You could bring the whole thing under sub-clause (b), whereas under section 4(1) (a), proviso (iii) a new sort of definition comes in. I cannot at all understand it. Under this proviso (iii) two types of transactions are contemplated; First is

"where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person."

In that case you say,

"the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal."

So, if I am selling my goods to a related person, the price will be determined at the figure at which the buyer will be selling it in the course of wholesale transaction to another dealer, provided that dealer is not a related person.

Then you come to the second clause "provided the buyer is a related person". Then you say that if the buyer is a related person, then the price at which that related person will sell to the retail dealer will be taken into account. I am not able to understand the distinction that is sought to be made out. The concept is that I sell my goods to a related person and the related person sells the goods to a dealer. Where the dealer buying from me is not a related person, then the price at which the related person sells it to the dealer would be the price. But if the dealer buys from the related person as a related person, then the price will be determined at the amount at which that related person will sell to another retail dealer, that is to say, the price at which the related person is selling. What exactly is the distinction that is drawn between the two, I am not able to understand. This is a point on which I am seeking clarification. If you analyse the whole thing, you will come to this that the price at which the related person purchases from me, irrespective of that, the price at which he will sell to somebody else

will be the price at which it has to be determined. Why have this circumlocutory definition and wording? A person who buys from me can sell to two types of persons. If the person who buys from me is not a related person, that will be taken as the price. But if he is a related person, then the price will be the price at which he sells to the retail dealer. I am not able to understand this distinction.

I am afraid this fiction of "a related person being actually interested", a related person to the extent of the definition given in the company law being really interested in this sort of transaction is rather too much of a fiction and that need not be imported into this legislation.

These are the submissions that I wanted to make and I would like to have some clarifications on the points I have raised.

*SHRI J. MATHA GOWDER (Nilgiris) : Mr. Chairman, Sir, I rise to say a few words on The Central Excises and Salt (Amendment) Bill, 1973. This amending legislation has been introduced before this House in order to overcome the various difficulties experienced in the working of the Central Excises and Salt Act, 1944.

I have no hesitation in saying that this Bill seeks to plug some of the loopholes contained in the principal Act. As you are aware, Sir, the central excise contributes a mojor share in the tax revenues of the Central Government. But, the manufacturers and the producers take advantage of the loopholes in the Central Excise Act for their personal benefits. As was pointed out by the hon. Member who preceded me, there is large scale evasion of central excise, running to several crores of rupees. This is made possible by the loopholes and deficiencies contained in the Act. The manufacturers and the producers are able to circumvent the legal provisions with the assistance of legal experts who are on their pay-roll. On the one hand the Government are deprived of their tax revenue and on the other the consumers are made to pay exorbitant prices. You know, Sir that the consumers have neither the legal knowledge to set right the wrongs done to them nor they have resources enough to engage legal experts to fight for them. The blame for this unfortunate situation rests squarely on the shoulders of the Central Government for formulating legislation with all kinds of defects and loopholes

One Mr. A. K. Roy and his friend took the issue to the Supreme Court against Voltas Limited. This manufacturer was selling a small percentage of the production through a distributor and the rest directly to the consumers at a much higher price. The Court in its judgment held that the sale to the distributor constituted transactions in the wholesale market and therefore the entire production should be assessed on the basis of the price charged to the distributor. The Supreme Court has given its judgment in favour of the producer and immediately the Government have rushed to this House for amending the principal Act. It is regrettable that the Government do not spontaneously take up such amendments. That is because they do not have either the machinery to look into the implementation of the Acts or the existing machinery does not take active interest to study such questions. I need not say that this case of Voltas is not just a solitary case. I am sure that there must be innumerable such cases on account of which the Government would be losing heavily the excise revenue.

If you look at the Statement of Objects and Reasons, you will find the statement that the Government propose to suitably substitute the section to make the intention clear in the Central Excise Act, on the lines of the corresponding provision contained in the Customs Act, 1962. This means that similar provisions in the Customs Act passed in 1962 are clear

*The original speech was delivered in Tamil.

[Shri J. Matha Gowder]

and specific. It is normally expected of the Government that, when they formulate legislation, they should bear in mind such similar provisions in the other Acts also and in case those Acts need amendments they should be brought forward. Here, 11 years after passing the Customs Act, the Government have come to realise the need for amending the Central Excise and Salt Act and substituting a section on the lines provided for in the Customs Act. I wonder whether the hon. Minister of State will have anything substantial to clarify this inordinate delay. As I pointed out earlier, such delays are also exploited by the producers and the manufacturers for their personal benefits.

Before I conclude, I would refer to another important issue This Bill is entitled The Central Excises and Salt (Amendment) Bill, 1973. The principal Act is entitled The Central Excises and Salt Act, 1944 I want to point out to you that the word 'Salt' is there in this legislation. I make bold to say that the Government should in fact be ashamed to have Salt Act in this independent country The father of our nation, Mahatma Gandhi, staged salt satyagraha very successfully against the British Imperialists. His strong faith in this movement was that the salt, which was the common man's food item, should be exempted from any tax. The entire nation stood as one man behind him in this movement The salt satyagraha movement was one of the strongest weapons used by the father of our Nation in our Independence Movement The ruling party which owes its power and prestige to him and which does not hesitate to swear by his ideals should exempt salt from any tax. The hon. Minister of State in the Ministry of Finance, Shri Ganesh, might not be aware of this because he was then a member of the Communist Party. Now that he is a Minister of the Central Government run by the Congress Party, he should see that the salt is immediately exempted from any taxation proposal of the Government. I would say that the memory of Mahatma Gandhi need not be honoured by having a Raj Ghat. The truest memorial for him would be to remove the excise duty on salt forthwith. That would be giving life to his long-cherished dream. The Government should not hesitate to honour him by removing tax from all kinds of taxation laws of the country.

I would conclude by saying that the Government are not serving any public purpose by bringing forward such piece meal legislations in a half-hearted manner and in a huff because of the judgments given by the Supreme Court or by some other Court. They should bring forward a comprehensive legislation plugging all the loopholes in the Central Excise Act Then only they will be able to put an end to large-scale evasion of excise duty by the producers and the manufacturers in the country.

With these words I conclude.

SHRI K R. GANESH : Mr. Chairman, Sir, I am thankful to the hon. Members who have taken part in this brief debate. This amendment Bill, as has been pointed out by hon Members themselves, is a very short Bill comprising about four Clauses. Sir, the House is aware that a comprehensive Bill on Central excise is under preparation. Actually, there was another Bill which had gone through the Select Committee, but, which lapsed because of the dissolution of the Fourth Lok Sabha Now, it is the intention of the Government to bring forward this comprehensive Bill as early as possible, so that the Central excise law may be brought in conformity with the needs and requirements of the country and in line with the expanding tax structure that we have now in our country.

Sir, there are a few points about which I wish to take the House into confidence. As has been pointed out by hon. Members, as a result of certain judicial pronouncements, the question of valuation became difficult both for the trade as well as for the valuation officers. In the existing provision, the notional concept of value was there, the wholesale cash price

at which goods are sold or are capable of being sold, was the wording used there. This meant that even if the goods are sold at four different prices, even though the prices may be genuinely different in various sectors, the officers had to make the assessment on the bases of one price only; we could not value the goods on the precise transaction value, at which the goods were sold. This amending Bill seeks to remove this difficulty. In genuine cases, it will be possible to accept transaction value of the goods at which the goods are sold.

15 Hrs.

At the same time, steps are being taken to ensure that prices to "related persons" will not be accepted at the face value. The "related persons" have been defined in the Bill itself. In relation to them, we will not accept the price.

Many loopholes were there. The dealers/manufacturers will sell about 10 per cent to their distributors at a lower price and 90 per cent at higher prices. As a result of the phraseology of the Act, what happened was that 10 per cent price was to be accepted.

In regard to the point that Shri Stephen raised, the need for the amendment was only to bring in harmony between clause 4(1) (a) and the definition of "related persons" as is given in the Bill. The price to "related persons" will be discarded. However if the price to an independent dealer is the same, the assessment will be made on the same price. If the sales, generally, are to "related persons" only, the assessment will be on the basis of price charged by the "related person" to an independent person.

Some points were made by Shri Somnath Chatterjee. He pointed out about notional concept. This is being eliminated. The provision now, is, as I indicated earlier to make assessment on the basis of the price at which goods are sold in the course of wholesale trade, it is as precise for the purpose of valuation as could be possible.

As the hon. Members know, the valuation is a very complicated process. It cannot be easily settled in one Section of the law. The expression "wholesale trade" has now been defined in the Bill itself and the precise definition is given in the Bill itself.

About clause (d) on p. 2 of the Bill. this is an ordinary rule-making power to attend to situations where the goods are not sold, that is cases of captive consumption where the goods are used by the manufacturers themselves for their own purposes or where the goods are generally given on hire.

As far as clause (5) is concerned, this wording has been taken from the Customs Act, 1962. It is precisely the same. There is no ambiguity about it.

Shri Mahajan raised some particular point. I think, a proper reading of this clause will indicate that the State Government is not involved. The officers of the Central Government as well as the State Governments have been given protection under this clause.

There are other very general points which the hon. Members have raised, that is, about the working of the Central Excise Department, about arrears and various other things. As the House is aware, the Central Excise Department has been an expanding Department. The resources mobilised are from Rs. 7.6 crores in 1937-38 to an estimated Rs. 2623.68 crores in 1973-74. The bulk of the resources that are mobilised in this country are done by the Central Excise Department. Out of this, arrears amount to Rs. 69.39 crores as on 1-3-1973.

Arrears are there, but if you see the total collection that is made by the Central Excise Department, you will find that these arrears constitute a very insignificant part of

[Shri K. R. Ganesh]

the total collection that is made. These arrears are also locked up in court cases. Out of 69.39 crores, in court cases there are Rs. 18.26 crores; in revision applications Rs. 3.75 crores; in appeals with the Board Rs. 1.19 crores; in appeals with Appellate Collectors Rs. 18.98 crores; in adjudication with Collectors and Assistant Collectors, Rs. 3.13 crores. Like that it indicates that an amount of Rs. 53.41 crores, *i.e.* about 77 per cent of the total arrears, is locked up in disputed assessments. Only an amount of Rs. 15.98 crores or 23 per cent of the arrears can be treated as effective arrears for which appropriate action is already being taken by the Collectors and various procedures have already been gone through.

As regards the question of leakage, and other factors, as far as Central excise is concerned, the problem is much simpler than that on the direct taxes side because the goods can be taken out only after payment of duty However, this is constantly engaging the attention of the Government, A Committee to review the working of the Self Removal Procedure under the Chairmanship of Shri Venkatappiah was set up and it is completing the final stage of its report. In the interim report they have recommended that the Self Removal Procedure on matches is not the appropriate procedure and, therefore, the physical control was reimposed on matches from October 1972, and further steps are being taken to see that decisions are taken on the question of banderols and other things.

Another Committee with Shri B. Sivaraman, Member, Planning Commission, has been set up in respect of tobacco which is the only commodity which is not covered by the Self Removal Procedure.

We are conscious of the fact that the whole structure of the organisation of Central Excise has got to be geared up to the task, but the immensity of the task of collecting about Rs. 2,600 crores and the figures of arrears I have given does indicate that this Department is doing its best, whatever is possible.

I have already indicated that a comprehensive Bill will be brought before parliament, so that the working of Central Excise Department could be further improved as well as the complex requirements of the very expanding taxation system could be dealt with.

With these words, I commend the Bill.

MR. CHAIRAMAN: The question is :

"That the Bill further to amend the Central Excises and Salt Act, 1944 be taken into consideration."

The motion was adopted.

CLAUSE 2—(*Substitution of new section for section 4*)

MR. CHAIRMAN : There is one amendment to Clause 2 by Government. Is the Minister moving that?

SHRI K. R. GANESH : Yes. Sir. I beg to move :

pages 1 and 2, lines 17 and 1 respectively,—

for "where the assessee and the buyer have no interest, directly or indirectly, in the business of each other"

substitute "where the buyer is not a related person" (1)

I have already, in reply to Mr. Stephen's question, described this amendment. Still I will explain again.

As I have explained in my remarks on the motion for the consideration of the Bill, our intention is to provide, as far as practicable, for assessment of the excisable goods which are subject to *ad valorem* rate of duty, at their transaction value, except where the sales are to or through related persons. Clause (a) of the proposed sub-section (1) of Section 4 envisages the price at which goods are ordinarily sold to an independent buyer.

This provision should not, therefore, apply to the sales to a related person. The object of the amendment which I have moved is to make this intention clear beyond doubt.

MR. CHAIRMAN: I am now putting pages 1 and 2, lines 17 and 1 respectively,—

for "where the assessee and the buyer have no interest, directly or indirectly, in the business of each other"

substitute "where the buyer is not a related person" (1)

The motion was adopted.

MR. CHAIRMAN: The question is:

"that Clause 2, as amended, stands part of the Bill"

The motion was adopted.

Clause 2, as amended, was added to the Bill

MR. CHAIRMAN : I am now putting all the other clauses to the vote of the House. There are no amendments. The question is:

"That clauses 3 to 5 and 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 3 to 5, and 1, the Enacting Formula and the Title were added to the Bill

SHRI K. R. GANESH : Sir, I beg to move:

"that the Bill, as amended be passed."

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

RESOLUTIONS RE. RAILWAY CONVENTION COMMITTEE

MR. CHAIRMAN: Item Nos. 12, 13 and 14 will be discussed together. Shri Qureshi.

THE DEPUTY MINISTER IN THE MINISTRY OF RAILWAYS (SHRI MOHD. SHAFI QURESHI): Sir, I beg to move the following Resolution :

(1) "That this House approves the recommendations made in paras 1.2 and 1.3 of the Sixth Report on 'Rate of Dividend for 1969-70 and 1970-71 and other Ancillary Matters' of the Committee appointed to review the rate of dividend payable by the Railway Undertaking to General Revenues as well as other Ancillary Matters in connection with the Railway Finance *vis-a-vis* the General Finance which was presented to Parliament on 30th April, 1973, and that this House further directs that the action taken by Government on the other recommendations made in this Report as well as in the Second, Third, Fourth and Fifth Reports of the Committee should be reported to the next Parliamentary Committee which may be appointed to review similar matters."

I beg to move the following Resolution:—

(2) "That this House do resolve that a Parliamentary Committee consisting of 12 members of this House, to be nominated by the Speaker, be appointed to review the rate of dividend which is at present payable by the Railway Undertaking to General Revenues as well as other ancillary matters in connection with the Railway Finance *vis-a-vis* the General Finance and make recommendations thereon."