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THE COLLECTOR OF EXCISE AND OTHERS

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The appellant then applied to the Collector of Excise, Mandsaur, Madhya Pradesh for grant of permission to transport the said goods from Madhya Pradesh to Bombay for the purpose of exporting it to Holland. The appellant claimed that no excise duty is leviable or payable under the Rules of 1959 inasmuch as the Poppy Husks will be despatched from Madhya Pradesh for export across customs frontier of India. The Collector of Excise declined to grant any permit without payment of duty under the Rules of 1959.

The appellant filed writ petitions in the High Court for directing the Collector of Excise to grant permit without payment of duty. In one of the petitions the High Court granted interim relief subject to the condition of the appellant furnishing a bank guarantee in favour of the Registrar of the High Court. Finally, the writ petitions were dismissed by a Division Bench.

On appeal before this Court, it was contended (1) that inasmuch as the movement of poppy husks from Mandsaur district in Madhya Pradesh to Bombay port for export to Holland is part of one single integrated transaction it is a case of "export from India" within the purview of Dangerous Drugs Act, 1930 and therefore outside the purview of Opium Act (2) that the levy of export duty by the Collector of Excise is incompetent; (3) that Section 5 of the Opium Act is in effect ataxing provision and relying on the principles in *Sundera Ramiers*, [1958] SCR 1422 case the parliament is not competent to levy duty on opium; (4) that it cannot be said that the duty of excise is levied by the State in this case in as much as the said Rules are made by the State as a delegate of the parliament; (5) that the levy cannot be justified even on the ground of being a "price for parting with the privilege" and in any event the theory has been negated in *Synthetics and Chemicals* [1990] 1 SCC 109 case; (6) that the duty cannot be justified as a regulatory fees (7) that the duty is excessive (8) and that Section 5 is void on the ground of excessive delegation of legislative power, (9) Since no guidance is provided by the Act and it was open to the State Govt. to prescribe such rate of duty as it thinks appropriate as has been held in *M/s Rameshwar Prasad Krishan Gopal's*, (1973) Tax Law Reporter 2503 : 73 All L.J. 739 case by the Allahabad High Court.

Dismissing the appeals, the court

HELD : 1. The movement of Poppy Husks from Mandsaur district in

- A Madhya Pradesh to the Bombay port in Maharashtra is an export within the meaning of the Opium Act, 1878. The "export from India" begins only from the port of Bombay and is covered by the Dangerous Drugs Act, 1930. These two movements are governed by two different enactments and a case of "string of movements". The appellant cannot disown the liability to pay the said export duty levied under Rule 3-A read with Rule 8 of the M.P. Poppy Husks Rules, 1959 on the ground that it is one single movement commencing in Mandsaur and terminating in Holland. [64-A, B, 66-C]
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Mohd. Serajjuddin v. State of Orissa, [1975] 2 SCC 4, relied on.

- C 2. The primary purpose of Section 5 is controlling and regulating the possession, transport, import/export and sale of opium and not collection of revenue - though the relevance and validity of the said purpose is undeniable in the case of noxious goods. [69-B]

- D *Sunderaramier M.P. v. State of A.P.*, [1958] SCR 1422; *Synthetics and Chemicals Ltd. v. State of U.P.*, [1990] 1 SCC 109 and *Cooverjee B. Bharucha v. Excise Commissioner, Ajmer & Ors.*, AIR (1954) SC 220, relied on.

- E 3. Section 5 of the Act does not purport to levy duty of excise but it only purports to empower the State Government to make rules to permit possession, export etc. of opium subject to such conditions as it may think appropriate to impose including the payment of an amount (duty). [71-E]

- F 4. The duty provided by Rule 3(A) read with Rule 8 of the Madhya Pradesh Poppy Husks Rules is perfectly within the four corners of Section 5. [71-H]

5. The so-called duty is not excessive. Even if it is so, the idea underlying the provisions is to make possession and dealings in opium prohibitive and commercially a non-paying proposition. [72-A,C]

- G 6. The Opium Act is a law preceding the Government of India Act, 1935 and is saved by Article 372 of the Constitution. Hence, the Rules made by the 1959 Rules under Section 5 of the Act of 1878 are equally within the protection. [72-D, 74-E]

- H *South India Corporation Pvt. Ltd. v. Secretary, Board of Revenue*, AIR (1964) SC 207 and *Sardar Indu Singh v. The State of Rajasthan*, [1957] SCR

605 at 619-620, relied on.

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Kanyani Stores v. State, [1966] 1 SCR 865, distinguished.

7. Section 5 is a continuation of Section 4 and it merely empowers the State Government to lift the prohibition on the possession, transport, import/export and sale of Opium in such cases as it deems appropriate and subject to such conditions, as it may deem fit to impose including payment of an amount. The Scheme of the Opium Act furnishes adequate guidance to the State Government. [76-G, 77-B]

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Hari Shankar Bagla & Anr. v. State of M.P., [1955] 1 SCR 380 and *State of Tamil Nadu v. Hind Store*, [1981] 2 SCR 742, relied on.

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Devi Dass Gopal Krishan v. State of Punjab, [1967] 3 SCR 557, distinguished.

8. Section 5 cannot be faulted either on the ground that it delegates essential legislative functions to the State Government or on the ground that it confers rule making power upon the State Government without furnishing any guidance and without laying down any policy in that behalf.

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[78-F]

M/s Rameshwar Prasad Kishan Gopal & Ors. v. The State of U.P. etc., 1973 Tax Reporter 2503 : 73 ALJ 739, distinguished.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 230-233 of 1977.

From the Judgment and Order dated 21.10.76 of the Madhya Pradesh High Court in W.P. Nos. 628/74, 490/75, 367 & 90 of 1974.

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Dr. Shankar Ghosh, Pallav Shishodia, A.K. Sil, G. Joshi and G. Kandpal for the Appellants in C.A. Nos. 230-31/77.

H.N. Salve, Pallav Shishodia, A.K. Sil, G. Joshi and Mrs. Sunanda Ray for the Appellants in C.A. Nos. 232-33/77.

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Joseph Vella Palli, Ashok K. Srivastava, S.V. Deshpande, Satish K. Agnihotri and C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by

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- A **B.P. JEEVAN REDDY, J.** In these appeals, validity of Section 5 of the Opium Act, 1878 and of certain Rules made thereunder by the Madhya Pradesh Government is called in question. Though the Opium Act, 1878 has since been repealed by Section 82 of the Narcotics Drugs and Psychotropic Substances Act, 1985, things done under the repealed Act are saved and continued under the 1985 Act. We shall first state the relevant facts.
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- The appellant-company obtained a whole-sale licence in Form No. I under Rule 5 read with Rule 6 of the Madhya Pradesh Poppy Husks Rules, 1959 in February and March, 1974. In the month of March, 1974, it entered into a contract with M/s. Veregnge Pharmaceutische Fabrieken B.V. Kloosterstraat 6 Oss Holland (hereinafter referred to as the 'Dutch buyer') for supplying to the Dutch buyer 1000 metric tonnes of poppy husks. This contract was entered into in pursuance of "certificate of official approval of import" dated April 5, 1973 granted by the Dutch authorities in favour of the said Dutch buyer to purchase/import 1,000,000 kilograms of poppy husks from the appellant on or before 31st August, 1974. The appellant in turn obtained the "Official authorisation of export" from the Office of the Narcotics Commissioner, Government of India permitting him to export 1,000 metric tonnes of poppy shells (broken and crushed) to the aforesaid Dutch buyer. This certificate dated 14th March, 1974 refers specifically to the aforementioned Import Certificate dated 5th April, 1973 issued by the Dutch Authorities. It further specifies that the said goods shall be exported through the Customs House Bombay, by sea, to Holland within three months from the date of issue of the said Authorisation. On March 30, 1974, the appellant applied to the Collector of Excise, District Mandsaur, Madhya Pradesh for grant of permission to transport the said quantity of poppy husks from Madhya Pradesh. In this application the appellant stated the following facts : the appellant holds a wholesale licence granted under Rules 5 and 6 of Madhya Pradesh Poppy Husks Rules, 1959. It has received an order from the aforesaid Dutch buyer for supply of 1,000 tonnes of poppy husks in Holland. In pursuance of the said order, the appellant has to despatch from Mandsaur poppy husks of the said quantity for transportation across Indian customs frontier to Holland. The appellant has obtained the export authorisation dated 14th March, 1974 from the Narcotics Commissioner of India for despatch of the said poppy husks to Holland - a copy of which is enclosed. The Dutch buyer has also obtained the permit from the Dutch Government on 5th April, 1973 for the import
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of the said goods. The Dutch buyer has also arranged for a ship to call at the Bombay Port on 5th June, 1974 for taking delivery of the said consignment of poppy husks. Accordingly, the appellant is applying "for permission to transport and for the despatch of the said consignment of poppy husks of 1,000 tonnes from Madhya Pradesh for the purpose of executing the said order" Inasmuch as the said consignment of poppy husks will be despatched from Madhya Pradesh for export across customs frontier of India, no excise duty is leviable or payable under the Madhya Pradesh Poppy Husks Rules and hence, no amount is remitted alongwith the application. The appellant requested for grant of permit urgently so as to fulfil the contract within the specified date.

On April 15, 1974, the Collector of Excise, Mandsaur intimated the appellant that permission to transport poppy husks from Mandsaur District to the Port of Bombay would be granted only on payment of the export duty under and in accordance with the Madhya Pradesh Poppy Husks Rules. He declined to grant any such permit without payment of duty.

On April 16, 1974, the appellant approached the Madhya Pradesh High Court for issuance of a writ of mandamus and other appropriate writs directing the Collector of Excise, Mandsaur to grant the permit applied for without insisting on the payment of the export duty as demanded by him. In fact more than one writ petition was filed by the appellant before different Benches of the said High Court. In one of the writ petitions, an interim order was granted directing the Collector of Excise, Mandsaur to permit the export without collecting the export duty but subject to the condition of the appellant furnishing a bank guarantee for the said amount in favour of the Registrar of the High Court. No such interim order was granted in other writ petitions. The writ petitions were heard and dismissed by a Division Bench on 21st October, 1976, against which the appellant approached this Court. Leave was granted on January 28, 1977. Interim orders were passed from time to time permitting the appellant to export poppy husks to Holland either on furnishing bank guarantee or on deposit of a part of the export duty, as the case may be.

The *main issue in these appeals* is whether the State of Madhya Pradesh and its authorities are entitled in law to levy and collect 'duty' as a condition for permitting the export of poppy husks from Madhya Pradesh when the said export is not an export from one State to another State within

- A India but an export across the customs frontier of India, i.e., export to Holland?

Opium is a noxious drug. It is dangerous to the health of human beings. The cultivation and trade in opium leads to problems of law and order. Over the last few decades, the trade in such drugs has become intertwined with crime transcending national borders. With a view to control cultivation, possession, transport and sale of opium and its derivatives, the Opium Act, 1857 was enacted. A few years later Opium Act, 1878 was enacted. (In these appeals we are not concerned with the 1857 Act but only with the later Act. All references hereafter to Opium Act mean references only to the 1878 Act). The provisions of the Opium Act have undergone several amendments, alterations and adaptations over the years. We need not, however, notice all of them except those effected in 1930 and thereafter.

- D India was a State signatory to the Convention relating to dangerous drugs held at Geneva in the year 1925, whereunder the contracting parties resolved to take further steps to suppress the contraband traffic in and abuse of dangerous drugs, especially those derived from opium, Indian hemp and coca leaf, as set out in the said Convention. Accordingly, the Dangerous Drugs Act, 1930 was enacted. Since by that time the Opium Act was already in operation, it was simultaneously amended so as to make both the enactments, viz., Opium Act and the Dangerous Drugs Act, 1930 complimentary to each other, occupying different fields. Of course the Dangerous Drugs Act deals not only with opium but also certain other dangerous drugs. [The expression "dangerous drug" is defined to include coca leaf, hemp and opium and all manufactured drugs - Section 2(h)]. It would be appropriate at this stage to notice the provisions of both the enactments insofar as they pertain to opium.

- G The expression 'opium' has been defined in identical terms in both the enactments, viz., Section 3 of the Opium Act and clause (e) of Section 2 of the Dangerous Drugs Act with a slight difference. We shall set out the said definition from the Opium Act, underlining the portion which is not found in the definition in the Dangerous Drugs Act, 1930 :

- H "3. In this Act, unless there be something repugnant in the subject or context,-

"Opium" means-

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(i) the capsules of the poppy (*Papaver somniferum* L.), whether in their original form or cut, crushed or powdered, and whether or not juice has been extacted therefrom;

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

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(iii) any mixture, with or without neutral materials, of any of the above forms of opium,

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but does not include any preparation containing not more than 0.2 per cent of morphine, or a *manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930.*"

The expressions "import" and "export" have been defined in the Opium Act to "mean respectively to bring into, or take out of, a State otherwise than across any customs frontiers". "Customs frontiers" is defined to mean "any of the customs frontiers of India as defined by the Central Government under section 3A of the Sea Customs Act, 1878."

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Two other expressions defined in the Opium Act are "transport" and "sale". They read as follows :

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"Transport" means to remove from one place to another within the same State.

"Sale" does not include sale for export across customs frontiers, and "sell" shall be construed accordingly."

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The expression 'opium derivative' is defined in clause (f) and the expression 'manufactured drug' in clause (g) of Section 2 of the Dangerous Drugs Act. (These expressions are not defined in the Opium Act.) It is not necessary to notice the said definitions inasmuch as it is stated before us by counsel for both the parties that poppy husks fall within the expression 'opium' and do not represent opium derivative or manufactured drug as defined in the Dangerous Drugs Act. Clause (i) of Section 2 of the Dangerous Drugs Act defines "to import into India" to mean "to bring into India by land, sea or air across any of the customs frontiers defined by the

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- A Central Government" and as including "the bringing into any port or place in India of a dangerous drug intended to be taken out of India without being removed from the ship or conveyance in which it is being carried". Clause (k) defines the expression "to export from India" to mean "to take out of India by land, sea or air across any of the said customs frontiers".
- B Clauses (j) and (l) define the expressions "to import inter-provincially" and "to export inter-provincially" to mean to bring into or to take out of a State, as the case may be, otherwise than across any of the said customs frontiers. Clause (m) defines the expression "to transport" as meaning taking out from one place to another in the same State.

- C Now, coming to the substantive provisions central to both enactments, *in so far as opium is concerned*, the following is the position :

Section 4 of the Opium Act (notwithstanding the heading of the section which does not appear to have been amended correspondingly while amending the body of the section) deals only with possession, transport, import, export and sale of opium. It would be appropriate to set out Section 4 of Opium Act. It reads :

- D "4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall -
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- (a) possess opium;
- (b) transport opium;
- (c) import or export opium; or
- (d) sell opium."

- F Correspondingly, Dangerous Drugs Act deals with cultivation of poppy and manufacture of opium (Section 5) import into India and export from India and transshipment of any dangerous drug (Section 7) - matters which are not dealt with by the Opium Act. It would be appropriate to set out Sections 5 and 7 of the Dangerous Drugs Act :

- G "5. Control of Central Government over production and supply of opium - (1) No one shall -

- (a) cultivate the poppy (*Papaver somniferum* L.) or
- H (b) manufactured opium, save in accordance with rules made

under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules. A

(2) The (Central Government)* may make rules permitting and regulating the cultivation of the poppy (*Papaver somniferum* L.) and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees that may be charged therefore, any other matter requisite to render effective the control of the [Central Government] over such cultivation and manufacture. B

(3) The [Central Government] may also make rules permitting and regulating the sale of opium from Government factories for export or to [State Governments] or to manufacturing chemists. C

"7. Control of Central Government over operations at land and sea frontiers.— (1) No one shall- D

(a) import into India,

(b) export from India or

(c) tranship E

any dangerous drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules. F

(2) The Central Government may make rules permitting and regulating the import into and export from India and the transshipment of dangerous drugs, other than prepared opium, and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported, or transhipped, the form and conditions of licences of licences for such import, export or transshipment, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the Central G

* (a) Substituted for "Governor-General in Council" by A.O., 1937.

A Government over such import, export and transshipment."

Each Act contains machinery provisions providing for regulation, control and other allied and incidental matters relevant to the field covered by each of them.

B It is thus clear that while the Opium Act defines 'import' and 'export' as meaning bringing into or taking out of State otherwise than across any customs frontiers, the Dangerous Drugs Act deals with import into India and export from India across customs frontiers. Evidently, with a view to avoid any confusion, while the Opium Act uses the expression 'import' and 'export' the Dangerous Drugs Act speaks of 'to import into India' and 'to export from India'. The expression "transport" has been defined in identical terms under both the enactments' it means removal of opium from one place to another within the same State. "Transshipment" referred to in Section 7 evidently means transshipment in the course of or as part of import into India or export from India, as the case may be. The two enactments thus operate in two distinct, though complimentary, fields so far as opium is concerned. In the interest of clarity, it may be stated that so far as the manufactured opium and opium derivatives are concerned, all its aspects including possession, sale, export, import whether from one State to another in India or across the customs frontiers are governed by the Dangerous Drugs Act alone.

F Section 5 of the Opium Act empowers the State Government to make rules regulating the possession, transport, import, export and sale of opium subject to payment of duty or subject to such other conditions, as it may impose. In view of the contentions urged before us, it is necessary to set out Section 5 in its full entity :

G "The State Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act, to permit absolutely, or subject to the *payment of duty* or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

(a) the possession of opium;

H (b) the transport of opium;

(c) The importation or exportation of opium; and

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(d) the sale of opium and the farm of duties leviable on the sale of opium by retail:

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs for the time being in force or under the Dangerous Drugs Act, 1930."

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Section 13 empowers the State Government to frame Rules regarding disposal of things confiscated and rewards.

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In exercise of the powers conferred by Section 5 (read with Section 13) of the Opium Act, 1878, the Government of Madhya Pradesh framed the Rules called "Poppy Husks Rules, 1959". Rule 2(e) defines "poppy husks" to mean "such capsules of cleft, cut- open, crushed and powdered poppy seeds as have been drained of juice". Rule 3 prohibits possession of poppy husks of more than specified quantity. Rule 3(A) prescribes the duty chargeable on export of poppy husks. It is 25 paise per kilogram upon export (despatch out) of poppy husks and 50 paise per kilogram upon sale by a wholesale licence holder. Rule 4 prohibits sale of poppy husks otherwise than in accordance with a permit or licence granted under the Rules. Rule 5 prescribes the Collector as the licencing authority. Rule 8(1) says that "none other than the wholesale licence holder shall export (i.e. despatch out) poppy husks". For such export, application for licence has to be made to the Collector and *the duty paid in advance* at the rates prescribed by Rule 3(A), i.e., alongwith the application for licence. It is not necessary to refer to other Rules except to say that they seek to regulate and monitor the movement, export and import of opium.

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Rules have also been framed by the Central Government under Section 7 of the Dangerous Drugs Act called "Dangerous Drugs (Import, Export and Transshipment) Rules, 1957". Rule 2(2) defines "Narcotics Commissioner" as the narcotics Commissioner appointed by the Government of India. Part-IV of the Rules deals with export by sea, land or air. Rule 6, which is the first Rule occurring in this part, says that no dangerous drug shall be exported from India by sea, land or air without obtaining an export authorisation from the competent authority. Rule 7 says that "save as provided in Rule 10, dangerous drugs, other than those mentioned in

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- A sub-rule (2) of Rule 6, shall not be exported by sea from India except under an authorisation granted in accordance with Rule 8 and from a port appointed for the purpose in Rule 9". Rule 8 says that the export authorisation contemplated by Rule 7 shall be granted by the Narcotics Commissioner and that except in the case of special permission of the Central Government, the export of opium shall be on behalf of the Central Government. Rule 9 prescribes that opium shall be exported by sea only from two Ports, viz., Bombay and Calcutta. Rules 11 and 12 deal with export by land while Rules 13, 14 and 15 deal with export by air. Rule 17 in Part-V deals with transshipment. (This Rule incidentally makes it clear that transshipment contemplated by the Rules is transshipment in the course of or as part of import into or export from India.)

- We shall first deal with the contention of Sri Salve, learned counsel for the appellant that inasmuch as the movement of poppy husks from Mandsaur district in Madhya Pradesh to Bombay Port for export to Holland is part of one single integrated transaction, it is a case of 'export from India' within the meaning of Section 2(k) and Section 7 of the Dangerous Drugs Act and, therefore, outside the purview of the Opium Act. Counsel submitted that first the Dutch buyer obtained the import permit from the Dutch authorities for importing the said quantity of poppy husks from the appellant. Correspondingly, the appellant applied for and obtained an export authorisation from the Narcotics Commissioner for exporting the said quantity from Mandsaur district in Madhya Pradesh to the said Dutch buyer. On the basis of the export authorisation issued by the Narcotics Commissioner and the permit for import granted by the Dutch authorities, the appellant applied to the Collector of Excise, Mandsaur for grant of export permit. It was thus not a case of export from Madhya Pradesh to Maharashtra. As per Rules, the poppy husks' packages could not be opened in Maharashtra. In fact, the very same packages transported from Madhya Pradesh were to be loaded on to the ship without breaking bulk and the same packages reached Holland. Thus, there is a continuity and unit of movement. Indeed, there is no sale of poppy husks in Madhya Pradesh; the only sale being to the Dutch buyer. The permit issued by the Collector of Excise, Mandsaur and the permit issued by the Maharashtra Excise Authorities must all be read as part and parcel of one single transaction covered by the import permit issued by the Dutch authorities and export authorisation granted by the Narcotics Commissioner. All these permits dovetail into one another and represent one

unbroken, continuous movement. The levy of export duty, therefore, by the Collector of Excise, Mandsaur under the Rules made under Section 5 of the Opium Act is incompetent. The Opium Act itself has no application to the said transaction. The only Act applicable is the Dangerous Drugs Act - says the learned counsel. A

For a proper appreciation of the said contention, it is necessary to reiterate certain features of both the said enactments. Section 5 of the Opium Act empowers the State Government to do two things, viz., (i) to make Rules permitting absolutely or subject to the payment of duty or to any other conditions, the possession, transport, import/export and sale of opium and (ii) to make Rules regulating the aforesaid matters relating to opium in the whole or any specified part of the territories administered by such Government. The matters specified in the Section 5 are the very same as are specified in Section 4, viz., possession, transport, import/export and sale. (We have already pointed out that import and export as defined in the Opium Act does not mean import into or export from India but import into or export out of a particular State otherwise than across any customs frontiers.) In other words, Section 5 empowers the State Government to permit *inter alia* export of opium subject to such conditions, including payment of duty, as it may deem appropriate to impose, as part of control and regulation over opium. Another feature to note is that import or export, as defined in the Opium Act, does not necessarily involve the element of sale. It is not necessary that the import or export should be occasioned by or result in a sale. Mere movement from one State to another is sufficient to constitute export or import, as the case may be, within the meaning of the Act so long as such movement is not across the customs frontiers. (Sale of opium is dealt with separately from import/export under Sections 4 and 5.) Now coming to the other Act, taking opium out of India across the customs frontiers is 'export from India' within the meaning of the Dangerous Drugs Act and is governed by Section 7 of the Dangerous Drugs Act and the Rules made thereunder. The Rules under the Dangerous Drugs Act, referred to hereinbefore, specifically provide only two Ports from which opium can be exported by sea. They are Bombay and Calcutta. Therefore, any opium to be exported by sea has to first reach either Bombay or Calcutta. Thus, while movement within India from one State to another (not involving crossing of any customs frontiers) is governed by the Opium Act, the movement across the customs frontiers is governed by the Dangerous Drugs Act. In all these matters, the element B
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- A of sale is irrelevant. It is not one of the requirements. Mere movement of goods is enough. The movement may be the result of sale or may not be; that is immaterial. Therefore, so far as the movement of poppy husks from Mandsaur district in Madhya Pradesh to the Bombay Port in Maharashtra is concerned, it is an export within the meaning of the Opium Act. It is export from the State of Madhya Pradesh to the State of Maharashtra. The
- B 'export from India' begins only from the Port of Bombay and is governed by the Dangerous Drugs Act. These two movements may be parts of the same transaction but so far as law is concerned, they are two different movements governed by two different enactments - a case of 'string of movements', if we may borrow the expression with a slight adaptation from
- C the decision of this Court in *Mohd. Serajuddin v. State of Orissa*, [1975] 2 S.C.C. 47. the two movements are links in the same chain but each subject to a different law. As a matter of fact, the principle of *Serajuddin* has a close bearing upon the question at issue herein.

- D Let us first examine the principle of *Serajuddin*. The appellant had entered into four contracts for sale of chrome concentrates. Two of them were directly with the foreign buyers. The other two were with the State Trading Corporation since export of mineral ores was canalised through the said Corporation. The State Trading Corporation in turn entered into contracts with the foreign buyers. So far as the first two contracts entered
- E into directly with foreign buyers were concerned, it was held by the High Court itself that they were sales in the course of export within the meaning of Section 5 of the Central Sales Tax Act [before the insertion of sub-section (3) therein]. But so far as the two contracts entered into with State Trading Corporation were concerned, it was held that they were not export
- F sales since the sales were to the State Trading Corporation and because the State Trading Corporation had in turn entered into separate contracts with the foreign buyers. The said view was challenged by the appellant in this Court. It was argued by the appellant that the said two sales too were really sales to the foreign buyers through the instrumentality and agency of the State Trading Corporation - which was termed as an 'agent of necessity'
- G - and hence, export sales. This court (by majority) rejected the said contention holding *inter alia* :

- H "The appellant sold the goods directly to the Corporation. The circumstance that the appellant did so to facilitate the performance of the contract between the Corporation and the foreign buyer on

terms which were similar did not make the contract between the appellant and the Corporation the immediate cause of the export. The Corporation in regard to its contract with the foreign buyer entered into a contract with the appellant to procure the goods. Such contracts for procurement of goods for export are described in commercial parlance as back to back contracts. *In export trade it is not unnatural to find a string of contracts for export of goods. It is only the contract which occasions the export of goods which will be entitled to exemption.* The appellant was made under no contractual obligation to the foreign buyer either directly or indirectly. The rights of the appellants were against the Corporation. Similarly the obligations of the appellant were to the Corporation. The foreign buyer could not claim any right against the appellant nor did the appellant have any obligation to the foreign buyer. All acts done by the appellant were in performance of the appellant's obligation under the contract with the Corporation and not in performance of the obligations of the Corporation to the foreign buyer."

It was further observed by the majority that :

"The expression "sale" in Section 5 of the Act has the same meaning as in Sale of Goods Act. *String contracts or chain contracts are separate transactions even when there is similarity relating to quantity, quality of goods, shipment, sampling and analysis, weightment and force majeure etc. or other similar terms.* A contract of sale is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for the money consideration called the price. There were two separate contracts. The price was different in the two contracts. This difference also dissociates the two contracts from each other. The High Court was right in holding that the sales of the appellant to the Corporation were exigible to tax because the appellant's sales to the Corporation were not sales in the course of export."

Since *Serajuddin* arose under the Sales Tax enactments, the central concept was the sale of goods, whereas in the enactments concerned herein, we are concerned with the movement of opium and not with its sale, as explained hereinbefore. If we read the expression 'movement' in

- A the place of expression 'sale' in the aforesaid passages from *Serajuddin*, the matter will become self-evident. It would be a case of string of movements - links in a chain of movement. There would be separate movements even where there is similarity relating to quantity and quality of goods, shipment, sampling and analysis. It would thus be a case of string of movements
- B resulting in export of opium. It is only the movement of goods across the customs frontiers that constitutes the 'export from India' and not the earlier movements. The earlier movements, i.e., from one State to another within India not involving crossing of customs frontiers would be governed by the Opium Act and if the Opium Act provides for levy of export duty on such export, it has to be paid. The appellant cannot disown the liability to pay
- C the said export duty levied under Rule 3(A) read with Rule 8 of the Madhya Pradesh Poppy Husks Rules, 1959 on the ground that it is one single movement commencing in Mandsaur and terminating in Holland. So far as the Collector of Excise, Mandsaur is concerned, the permit granted by him is governed by Rule 8 of the Madhya Pradesh Poppy Husks Rules,
- D in Form P-H. It is true that he would not have granted such permit unless the appellant had produced the export authorisation from the Narcotics Commissioner, Government of India but that only shows that the said export authorisation is the basis for grant of export permit by the Collector. It does not mean that the export permit granted by the Collector is not an
- E independent permit. The Collector's permit is limited and operative within the four corners of the Opium Act and the Rules made thereunder. He cannot grant a permit for export of opium from India. It is equally relevant to notice that the Authorisation of export issued by the Narcotics Commissioner mentions 'Bombay' against the Column "(e) Name of the customs house through which export is to be effected" and *under clause (g), which*
- F *requires the route to be followed by the goods to be specified, it says "Bombay to Holland". It does not refer to the presence of poppy husks within Madhya Pradesh or Mandsaur district nor does it say from where the poppy husks should be moved or transported to Bombay. This shows that while the Narcotics Commissioner is concerned only with the movement of goods from*
- G *Bombay across the customs frontiers, by sea, to Holland, it is the Collector of Excise, Mandsaur, who is concerned with the movement of the said poppy husks from Mandsaur district in Madhya Pradesh to a place beyond Madhya Pradesh. As a matter of fact, even for movement within the State of Maharashtra, i.e., from the Madhya Pradesh-Maharashtra border to the Port*
- H *of Bombay, a permit had to be and was obtained from the Maharashtra*

Excise Authorities. The Shipping Bill (found at P.172 of Vol.-V) furnished by the appellant also refers only to the export authorisation granted by the Narcotics Commissioner from Bombay to Holland and not the prior movement. Indeed, it may be said that Narcotics Commissioner was not strictly concerned from which place was the appellant to procure the said quantity for being shipped from the Port of Bombay though it is true, he would not have granted the said export authorisation unless he was satisfied that such quantity was available at some place in India for fulfilling the said export obligation. The Narcotics Commissioner, who is a creature of the Dangerous Drugs Act could not have permitted or authorised the movement of poppy husks from Madhya Pradesh (Mandsaur district) to Bombay Port, since the Dangerous Drugs Act does not deal with or govern that aspect. under the export authorisation granted by the Narcotics Commissioner, the appellant could not have moved the poppy husks from Madhya Pradesh to any other place within the country; the export authorisation does not purport to authorise such movement. There is no provision in the Dangerous Drugs Act saying either expressly or by necessary implication that an export of opium within the meaning of Opium Act shall cease to be an export under the said Act, if that export forms part of 'export from India' as defined in and dealt with by the Dangerous Drugs Act. These are two Acts which operate in two distinct spheres and respect each other's jurisdiction. The amendments effected in Opium Act in 1930 simultaneously with the enactment of Dangerous Drugs Act were meant to achieve this precise purpose. We are, therefore, of the opinion that the appellant cannot refuse to pay the export duty prescribed by Rule 3-A read with Rule 8 of the Madhya Pradesh Poppy Husks Rules on the ground that the movement of poppy husks from Madhya Pradesh was really an integral part of the export of the said quantity from India, i.e., beyond the customs frontiers of India to Holland.

The next contention of Sri Salve pertains to the validity of levy of duty (export duty in this case) under the Rules made by the Madhya Pradesh Government under Section 5 of the Opium Act. The learned counsel contends that Section 5 is in truth and in effect a taxing provision. The Parliament is not competent to levy duty (tax) on opium. Entry 59 of List-I or for that matter Entry 19 of List-III does not encompass the power to levy duty on opium. For this proposition, he relies upon the principle enunciated in *Sunderaramier, M.P.V. v. State of Andhra Pradesh*, [1958] S.C.R. 1422. The learned counsel contends that power to levy duty of excise on opium is the exclusive province of the States under Entry 51 of List-II.

- A The duty levied in this case, it is true - says the counsel - is levied under the rules made by the Madhya Pradesh Government but on that account it cannot be said to be a duty of excise levied by the State inasmuch as the said Rules are made by the State Government as a delegate of the Parliament. Only a State Legislature can levy the duty of excise by means of a law made by it. The learned counsel submits that the said levy cannot be justified even on the ground of being a 'price for parting with the privilege' evolved by this Court in matters relating to intoxicating liquors. The said theory, the learned counsel contends, has in any event been negated by this Court in *Synthetics and Chemicals Limited v. State of Uttar Pradesh*, [1990] 1 S.C.C. 109. The power of regulation conferred by the said section cannot also warrant the levy of duty of excise nor can the duty be justified as a regulatory fees, says the counsel.

- The first question that arises is whether Section 5 is a taxing provision ? We think not. Section 5 is really a continuation of Section 4. Section 4, as it stands after the amendments in 1930, prohibits the possession, transport, import/export and sale of opium by any one *except as permitted by the said Act* or by any other enactment relating to opium for the time being in force *or by the Rules framed under the Opium Act* or any such other enactment. As stated hereinbefore, opium is a noxious drug. It is dangerous to health. Addiction to opium has brought nations to grief. It is several times more dangerous to health than liquor or tobacco. In the modern era, it has got mixed up with international crime and terror. It is but natural that the State should seek to prohibit its possession, movement, sale and all dealings therein except under strict and close control. To start with, there is the prohibition, which prohibition is lifted only to the extent provided for by the statute or the rules made thereunder. Sections 4 and 5 are thus motifs of the same pattern. Section 4 provides the prohibition while Section 5 empowers the State Government to specify situations in which the prohibition will be lifted, either fully or partially and either unconditionally or subject to such conditions, as may be deemed necessary, including 'payment of duty'. Section 5 provides for two things, viz., (a) the State Government may, from time to time, by notification in the Official Gazette make rules consistent with this Act to permit absolutely or subject to the payment of duty or to any other conditions, possession, transport, import/export and sale of opium and the farm of duties leviable on the sale of opium by retail and (b) the State Government may, from time to time, by notification in the Official Gazette make rules consistent with this Act

to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters, viz., possession, transport, import/export and sale of opium and the farm of duties leviable on the sale of opium by retail. The primary purpose of Section 5 is controlling and regulating the possession, transport, import/export and sale of opium and not collection of revenue - though the relevance and validity of the said purpose is undeniable in the case of noxious goods, as emphasised by this Court in *Cooverjee B. Bharucha v. Excise Commissioner, Ajmer & Ors.*, A.I.R. 1954 S.C. 220. The section empowers the State Government to make Rules prescribing the situations in which the possession etc. of opium will be permitted and also to specify in which situations the permission would be absolute, i.e., unconditional and in which situations would it be subject to prescribed conditions. One of the conditions that can be so prescribed is "payment of duty". The other part of Section 5 speaks of regulating possession etc. of opium again by means of Rules. Can it be said in the above situation that Section 5 is a provision primarily concerned with levy of duty. Would it not be more correct to say that it is a provision designed to control and regulate the possession, transport etc. of opium and it is only as a part of such control and regulation (which must be understood in the light of the prohibition contained in Section 4) that it provides that payment of duty can also be insisted upon as a condition for permitting the possession, transport etc. of opium. Much should not be read into the expression 'duty' used in Section 5. Having regard to the context in which the said expression occurs, it cannot be understood in the sense it carries in Entry 51 of List-II. Opium Act is a pre-constitutional Act. Indeed, it is a law preceding the 1935 Act. In the context, the expression 'duty' means an "amount" which shall be collected as a condition for granting the permission to possess, transport, import/export or sell opium. (We need not say anything about "the farm of duties leviable on the sale of opium by retail" referred to in clause (d) of Section 5 since we are only concerned herein only with the validity of the "payment of duty" referred to in the main limb of Section 5.1) All that it means is that it is open to the State Government to make Rules providing for payment of such amount as it thinks appropriate as a condition for granting the permission contemplated by Section 5. The idea is not to allow possession, transport etc. of opium freely (except in those cases where it is to be so permitted having regard to the objects and purposes of Act and public interest) but to make it prohibitive, to make it a non-paying proposition in

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A commercial sense. In this context, it would be appropriate to refer to the decision of this Court in *Har Shankar & Ors. etc. etc. v. The Deputy Excise and Taxation Commissioner & Ors.*, [1975] 3 S.C.R. 254, which affirms the fact that the name given to a particular payment is not always indicative of the true nature of the payment. The following passages bring out the said principle :

B "Section 34 of the Act read with Section 59(d) empowers the Financial Commissioner to direct that a licence, permit or pass be granted under the Act on payment of such fees and subject to such restrictions and on such conditions as he may prescribe. In such a scheme, it is not of the essence whether the amount charge to the licensees is pre-determined as in the appeals of Northern India Caterers and of Green Hotel or whether it is left to be determined by bids offered in auctions held for granting those rights to licensees. The power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter. *Nor indeed does the label affixed to the price determined either the true nature of the charge levied by the Government or its right to levy the same.*

E The distinction which the Constitution makes for legislative purposes between a 'tax' and a 'fee' and the characteristic of these two as also of 'excise duty' are well-known. "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered". A fee is a charge for special services rendered to individuals by some governmental agency and such a charge has an element in it of a *quid pro quo*. Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. The amounts charged to the licensees in the instant case are, evidently, neither in the nature of tax nor excise duty. But then, the 'Licence fee' which the State government charged to the licensees through the medium of actions or the 'Fixed fee' which it charged to the vendors of foreign liquor holding licences in Forms L-3, L-4 and L-5 need bear no *quid pro quo* to the services rendered to the licensees. *The word 'for' is not used in the Act or the Rules in the technical sense of the expression. By 'licence fee' or 'fixed fee' is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting*

them to the licensees. As the State can carry on a trade or business, such a charge is the normal incident of a trading or business transaction." A

We are also not prepared to place the tag of "price for parting with the privilege" on the said payment. We refuse to be drawn into the controversy whether such a concept - affirmed by this Court consistently over a period of forty years - has been negatived in this Court's decision in *Synthetics & Chemicals Ltd.* Incidentally, we may say that the majority opinion delivered by Sabyasachi Mukharji, J., on behalf of the six learned Judges, does not expressly say so. The said question was not put in issue and was not pronounced upon expressly. Rejection of such a well-established proposition cannot be inferred. If it is proposed to be rejected, it must be put in issue in a straight manner and be pronounced upon. This has not been done in the majority judgment. Actually, the said case was concerned only with the States' power to levy taxes and other regulatory fees on industrial alcohol. It was held that the States are denuded of the legislative power to do so under Entry 24 of List-II by virtue of the declaration made by Parliament under and in terms of Entry 52 of List-I. Only the separate concurring opinion delivered by G.L. Oza, J. says that the said concept is unacceptable under our constitutional scheme. We need express no opinion on the said opinion. It is enough to say for the present purpose that Section 5 of the Opium Act does not purport to levy duty of excise but that it only purports to empower the State Government to make Rules to permit possession, export etc. of opium subject to such conditions as it may think appropriate to impose including the payment of an amount (called 'duty' by the Section). In this view of the matter, the principle enunciated in *Sunderaramier* has no application herein. That principle could perhaps have been relevant if Section 5 had purported to levy duty of excise or other tax on opium. Perhaps, it could then have been argued that Entry 59 of List-I or for that matter Entry 19 of List-III does not take in the power to levy taxes and duties on opium. We need express no opinion on the said aspect. For the same reason, the argument of Sri Salve that opium among other narcotic drugs has been excluded from the purview of Entry 84 of List-I need not be dealt with. B C D E F G

We are, therefore, of the opinion that the duty provided by Rule 3(A) read with Rule 8 of the Madhya Pradesh Poppy Husks Rules is perfectly within the four corners of Section 5 and cannot be faulted on the ground aforesaid. H

- A It is then submitted by learned counsel that the payment of so-called duty (which according to us must properly be called 'an amount') is excessive and is almost as much as or more than the price of poppy husks. In our opinion, this contention is equally unsustainable. Firstly, no material has been placed before us to show the price of poppy husks during the
- B several years under consideration. Secondly, even if the contention is factually true, it matters very little for the very idea underlying Sections 4 and 5 is to make possession and dealings in opium prohibitive and, commercially speaking, a non-paying proposition. The idea is to discourage the people from possessing or otherwise dealing in matters specified in Sections 4 and 5. Even otherwise, duties of excise at more than 100% is not
- C unknown in law. (See in this connection the observations of this Court in *Har Shankar* at page 279 E to G.)

- There is another good reason for upholding the validity of Section 5, viz., the provision in Article 372. Opium Act is a law preceding the
- D Government of India Act, 1935. The division of powers between the Centre and the provinces was first introduced by the 1935 Act. Section 292 of the said Act provided that "notwithstanding the repeal by this Act of the Government of India Act but subject to the other provisions of this Act, *all the law in force in British India immediately before the commencement of Part-III of this Act shall continue in force in British India until altered or*
- E *repealed or amended by a competent legislature or other competent authority*". Article 372(1) provides similarly that "notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, *all the laws in force in the territory of India immediately before the commencement of this Constitu-*
- F *tion shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.*" Explanation-I to the Article defines the expression 'law in force'. It reads thus: "(Explanation-I) – The expression 'law in force' in this article shall include a law passed or made by a legislature or other competent authority in the territory of
- G India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas." The effect of these provisions was considered by the Constitution Bench of this Court in *South India Corporation Private Limited v. Secretary, Board of Revenue*, A.I.R. (1964) S.C. 207. It was held that the said provisions save and continue a law notwithstanding
- H the fact that according to the provisions of the Constitution, the law could

not have been made by the legislature which had enacted it, though they do not save such enactment from inconsistency with other provisions of the Constitution, viz., provisions other than those relating to legislative competence. The following statement of law brings out the ratio: A

"The object of this article is to maintain the continuity of the pre-existing laws after the Constitution came into force till they were repealed, altered or amended by a competent authority. Without the aid of such an article there would be utter confusion in the field of law. The assumption underlying the article is that the State laws may or may not be within the legislative competence of the appropriate authority under the Constitution. The article would become ineffective and purposeless if it was held that pre-Constitution laws should be such as could be made by the appropriate authority under the Constitution. The words "subject to the other provisions of the Constitution" should, therefore, be given a reasonable interpretation, an interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters. The article posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of (in?) Art. 395; and the expression "other" in the article can only apply to provisions other than those dealing with legislative competence. B C D E

The learned Advocate-General relied upon the following decisions for the said legal position; *Gannon Dunkerly and Co. v. Sales Tax Officer, Maatancherry*, ILR (1957) Kerala 462 = (S) AIR (1957) Kerala 146; *Sagar Mall v. State*, ILR (1952) 1 All. 862 = AIR 1951 All. 816; *Kanpur Oil Mills v. Judge (Appeals) Sales Tax Kanpur*, (S) AIR (1955) All 99; *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara*, [1962] 1 SCR 1 = AIR (1961) SC 964; *Jagdish Prasad v. Saharanpur Municipality*, AIR (1961) All. 583; *Sheoshankar v. State Govt. of M.P.*, AIR (1951) Nag. 58; *State v. Yash Pal*, (S) AIR (1957) Punj. 91 and *Binoy Bhushan v. States of Bihar*, AIR (1954) Pat. 346. It is not necessary to consider in detail the said decisions, as they either resume the said legal position or sustain it, but do not go further. They held that a law made by a competent authority before the Constitution continues to be in force after the Constitution till it is altered or modified or repealed by the F G H

- A *appropriate authority, even though it is beyond the legislative competence of the said authority under the Constitution. We give our full assent to the view and hold that a pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force, provided the law does not contravene the "other provisions" of the Constitution.*
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(Emphasis added)

- Now, objection of Sri Salve to Section 5 is this: it is a taxing provision. It levies excise duty on opium. But excise duty on opium can be levied only
- C by a law made by a State Legislature with reference to Entry 51 of List-II of the Seventh Schedule to the Constitution. The Parliament has no such power, though it can make a law relating to cultivation, manufacture and sale for export of opium by virtue of Entry 59 List-I - or for that matter with respect to opium generally with reference to Entry 19 of List-III. The
- D said section is thus alleged to be beyond the Parliament's legislative competence. Assuming that the said argument is correct, - which argument we have rejected hereinbefore - still such a law is saved by virtue of Article 372 of the Constitution as interpreted by this Court in *South India Corporation*. It is not suggested by the learned counsel that Section 5 is inconsistent with any other provision of the Constitution.

- E Once it is held that the Opium Act is a pre-Constitution Statute and is saved by Article 372, the Rules made by the Madhya Pradesh Government in 1959 under Section 5 of the said Act are equally within the protection. The principle of the decision of the Constitution Bench in
- F *Sardar Inder Singh v. The State of Rajasthan*, [1957] S.C.R. 605 at 619-20 clearly supports this proposition. It was held in the said decision :

- "It is next contended that the notification dated June 20, 1953, is bad, because after the Constitution came into force, the Rajpramukh derived his authority to legislate from Art. 385, and that under that Article his authority ceased when the Legislature of the State was constituted, which was in the present case, on March 29, 1952. This argument proceeds on a misconception as to the true character of a notification issued under s.3 of the Ordinance. It was not an independent piece of legislation such as could be enacted only by the then competent legislative authority
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of the State, but merely an exercise of a power conferred by a statute which had been previously enacted by the appropriate legislative authority. The exercise of such a power is referable not to the legislative competence of the Rajpramukh but to Ordinance No. IX of 1949, and provided s.3 is valid, the validity of the notification is co-extensive with that of the Ordinance. If the Ordinance did not come to an end by reason of the fact that the authority of the Rajpramukh to legislate came to an end—and that is not and cannot be disputed—neither did the power to issue a notification which is conferred therein. The true position is that it is in his character as the authority on whom power was conferred under s.3 of the Ordinance that the Rajpramukh issued the impugned notification, and not as the legislative authority of the State. This objection should accordingly be overruled."

If Section 5 is supposed to empower levy of duty by State Government by making Rules, as contended by Sri Salve, this power is saved by Article 372. Once the power is saved, it can be exercised even after the commencement of the Constitution. Otherwise, there would be no meaning behind the saving clause in Article 372. The reliance upon the decision of this Court in *Kalyani Stores v. State*, [1966] 1 S.C.R. 865 by Sri Salve is of no help to the appellant inasmuch as the Notification of 1961 considered therein was held to be violative of Article 301 and not saved by Article 305 - which too is a provision saving the existing law from the operation of Articles 301 and 303. The said decision did not really turn upon the language of Article 372, as would be evident from the discussion at page 874. The principle of the said decision cannot be extended to a provision like Section 5 of the Opium Act. The scheme of part- XIII of the Constitution is different and the object of Article 305 is a limited one.

We are also of the opinion that it is unnecessary to go into the question whether Mandsaur district was a part of a princely State and whether the Opium Act was extended to the said area after the commencement of the Constitution because no factual foundation has been laid for this argument in the High Court, though Article 372 was expressly relied upon by the State. In any event, Explanation-I to Article 372 appears to be a complete answer to this argument. For all the above reasons, we hold that Section 5 is a perfectly valid piece of legislation and cannot be faulted on the grounds suggested.

A The last submission of Sri Salve is that Section 5 is void on the ground of excessive delegation of the legislative power: It is argued that Section 5 empowers the State Government to levy duty without prescribing either the minima or the maxima. The rate of duty is left entirely to the State Government. No guidance whatsoever is provided by the Act in the said matter. It is open to the State Government to prescribe such rate of duty as it thinks appropriate. This is a clear case of excessive delegation. The Parliament has not retained any control over the acts of its delegate, viz., the State Government; it is a case of total abnegation, it is submitted. It is brought to our notice that the Allahabad High Court has held so in *M/s. Rameshwar Prasad Kishan Gopal & Ors. Etc. Etc. v. The State of Uttar Pradesh Etc.*, (1973_ Tax law Reporter 2503 : 73 All Law Journal 739. It is pointed out that appeals were preferred by the State in this Court against the said decision but by the time the said appeals came up for hearing, the Uttar Pradesh Legislature had intervened and effected local amendments this Court disposed of the appeals (Civil Appeal Nos. 1657-58 of 1975 and batch on July 13, 1993) without going into the said question. This court also took note of the fact that the respondents in the said appeals had filed another writ petition in this Court (W.P No. 314 of 1991) challenging the said State Amendments.

E It is not possible to agree with the learned counsel. It would be seen at once that this argument is based upon the same premise as the previous argument. The argument proceeds on the assumption that Section 5 is a taxing provision; that its main purpose is to levy excise duty. We have pointed out hereinbefore that Section 5 is not a taxing provision, that the "duty" referred to therein is not "duty" in the sense in which it is used in Entry 51 of List-II of the Seventh Schedule to the Constitution and that the said expression really means an amount. As explained hereinbefore, Section 5 is a continuation of Section 4 and it merely empowers the State Government to lift the prohibition on the possession, transport, import/export and sale of opium in such cases as it deems appropriate and subject to such conditions, as it may deem fit to impose including payment of an amount. It has been held that it is a regulatory provision. For this reason, the decisions of this Court [e.g., *Devi Das Gopal Krishan v. State of Punjab*, [1967] 3 S.C.R. 537, which lay down the proposition that where the taxing power to fix rates of tax is delegated by the Legislature to another body, the Legislature must either fix minima or maxima or retain some control over the Acts of the delegate are not really relevant and need not be dealt

with. So far as guidance in the matter of making of Rules providing for the matters contemplated by Section 5 is concerned, the Provisions of the Act do furnish sufficient guidance in the matter of making rules under Section 5. The scheme of the Act including Section 4, which bars any and every person from possessing, transporting, importing/exporting and selling opium except as provided by the said Act or the Rules made thereunder (or by any other Act or Rules made under such other Act) furnish adequate guidance to the State Government. It must also be noticed that the rule-making power is conferred upon a responsible body like the State Government. The very noxious nature of opium and the desirability to closely control and regulate possession transport, movement and all dealings therein are matters which the State Government has also to keep in mind while making the Rules. We may in this connection refer to the decision of the Constitution Bench of this Court in *Harishankar Bagla & Anr. v. State of Madhya Pradesh*, [1955] 1 S.C.R. 380. Section 3(1) of the Essential Supplies (Temporary Powers) Act, 1946 conferred rule making power upon the Central Government. Sub-section (1) read as follows :

"3.(1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies or any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein....."

Sub-section (2) elucidated the grounds mentioned in sub-section (1). It was argued before this Court that the Cotton Textiles (Control of Movement) Order, 1948 made under Section 3 is invalid inasmuch as the said section delegated legislative power beyond the permissible limits. The argument was rejected in the following words :

".....It was settled by the majority judgment in the Delhi Laws Act case (1951 S.C.R. 747) that essential powers of legislature cannot be delegated. In other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the

- A legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government in exercising its powers under section 3."
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- The same principle was reiterated in *State of Tamil Nadu v. Hind Store*, [1981] 2 S.C.R. 742. It was contended before this Court that a rule made by the Government of Tamil Nadu under Section 15 of the Mines and Minerals (Regulation and Development) Act providing that no lease for quarrying black granite should be granted to private persons and creating a monopoly in favour of a Corporation wholly owned by the State Government was beyond the rule-making power. This argument was rejected holding that the provisions of the Act furnished sufficient guidance. It was held : "The public interest which induced Parliament to make the declaration contained in S.2 of the Mines & Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear sign posts to lead and guide the subordinate legislating authority in the matter of the making of rules." We are, therefore, of the opinion that Section 5 cannot be faulted either on the ground that it delegates essential legislative functions to the State Government or on the ground that it confers rule-making power upon the State Government without furnishing any guidance and without laying down any policy in that behalf. In this view of the matter, it is not possible to agree with the decision of the Allahabad High Court in *M/s Rameshwar Prasad Kishan Gopal*.
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- G For the above reason, the appeals fail and are dismissed with costs. Advocate's fee quantified at Rs. 10,000.