

30 per cent in the total value\* of the draglines is being given to a foreign firm under the pretext of support to HEC which would fabricate only about 10 per cent of the equipment.

Madam, I may also point out that Marion Shoval had also offered to have about 10 per cent indigenous content in their draglines.

Madam, there is also a very serious consequence of the deal with the British firm as their schedule of delivery has been greatly delayed, resulting in further price escalation and loss in coal production. I understand that the commissioning of the very first of the four draglines may be delayed by over one year. The situation is further aggravated by the fact that both the HEC and the British firm are blaming each other for the delay and none is willing to accept responsibility for it.

Madam, this is a very serious matter of waste of public funds and I would like the hon. Minister of Energy to place all the facts on the draglines deal in the House.

I also urge him to fix responsibility for the huge loss to the exchequer and ensure that such cases are not repeated in future. Thank you, Madam.

#### **PAPERS LAID ON TABLE—Contd**

##### **Notification of Ministry of Finance (Department of Revenue)**

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI PATABHI RAMA RAO): Madam Vice-Chairman, I beg to lay on the Table, under section 159 of the Customs Act, 1962, a copy each in English and Hindi of the Ministry of Finance (Department of Revenue), Notification No. 232/82 (Customs) dated the 20th October, 1982 together with an Explanatory Memorandum thereon. [Placed in Library. See No. LT-5537/82],

#### **I STATUTORY RESOLUTION SEEK- ING DISAPPROVAL OF THE CEN- TRAL EXCISE LAWS (AMENDMENT AND VALIDATION) ORDINANCE, 1982 (NO. 1 OF 1982)**

##### **II. THE CENTRAL EXCISE LAWS (AMENDMENT AND VALIDATION) BILL, 1982.**

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: Mr. Jaswant Singh, would you like to speak— because I see your name as a speaker? Would you like just to move the Resolution or would you like to speak together?

SHRI JASWANT SINGH (Rajasthan): I would like to speak together. I would like to move the Statutory Resolution of disapproval and then, instead of fracturing my intervention into two parts now and subsequently for three minutes. If the Chair would be so considerate as to permit me to make one Intervention, because I have, by virtue of moving the Statutory Resolution of disapproval, got a right to reply as well at the end of it. So, I would like to say whatever I have to say now and then, subsequently exercise my right to reply. I would seek the Chair's guidance to let me know what sort of time-frame I have got. I don't want to make my intervention too long, yet, I don't want to miss on what I have to say either.

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: If you like you can speak, now also. Then, your party's time is just three minutes. So, I don't think you can make your point in three minutes. So, you just move now, or you put them together.

SHRI JASWANT SINGH: I will put them together.

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: You just move it now.

SHRI JASWANT SINGH: I have not followed you. I am sorry, Madam, I am so obtuse and dull.

J ME VICE-CHAIRMAN [DR. (SHRIMATI) NAIMA HEPTULLA]: When you move your Resolution, you move it and you have a right to speak. And then you have given your name to speak here also. It gives just three minutes to your party.

SHRI JASWANT SINGH: Which I shall forgo?

THE VICE-CHAIRMAN [DR. (SHRIMATI) NAIMA HEPTULLA]: You do not forgo. You get three minutes. And in whatever time now you have, you can put things together. Instead of rising up twice to speak on the same thing, you can speak together.

SHRI JASWANT SINGH: Then I also have a right to reply.

THE VICE-CHAIRMAN [DR. (SHRIMATI) NAIMA HEPTULLA]: Yes, but the right to reply will be later on.

SHRI JASWANT SINGH: I am only trying to clarify the procedural things. O.K. I will speak now.

THE VICE-CHAIRMAN [DR. (SHRIMATI) NAIMA HEPTULLA]: So you move it.

SHRI JASWANT SINGH: Madam. I move;

"That this House disapproves the Central Excise Laws (Amendment and Validation) Ordinance, 1982 (No. 1 of 1982) promulgated by the President on the 24th September, 1982.\*"

Madam, Vice-Chairman, the reasons for my disapproval of this Ordinance and the background of the Ordinance are well known to the House, as indeed to the Minister. On the 6th of August, the High Court ruled. The consequential effect of that ruling is detrimental to revenue, likely to result in substantial revenue loss. Therefore, the Government issued an Ordinance on the 24th of

September amending the Central Excise Laws. My first objection is to this method of circumventing the privileges of Parliament. The Ordinance was promulgated barely ten days before Parliament was to meet. Parliament was convened and it met on the 4th October. You felt the necessity to bring an Ordinance to stay what the High Court had ruled. I am not going into the question whether the High Court has ruled right or wrong. In fact, I cannot go into it, or about the consequential effects of the High Court's ruling. The question which has often been raised in this House is about the manner of doing these things. Just ten days before this House is to meet, you promulgate an Ordinance so as to set right a difficult situation in which the Government finds itself. It only reflects that you do not treat this body as indeed very important. You can very well turn around—as you will—and say that if the Government had waited, it would have resulted in a loss of so many crores to the State. I would rebut that; and if you do answer to that, the debate will be more lively. From the 6th of August to the 24th September, it is more than a month. You may say that you were drafting the Ordinance. If you come out with that argument, that you needed this much time, what is the significance of issuing it just ten days before the Parliament met so that the State does not go into revenue loss? It does not hold water. The question of what the High Court has ruled and the consequential effect of this on revenue, is a different matter altogether. We are considering all these together; the Central Excise Laws (Amendment and Validation) Bill, 1982 is also being considered simultaneously. Therefore, I think this is an appropriate occasion for me to talk about the rationalization of indirect taxation.

In 1976, in the infamous days of Emergency, a committee was appointed, known as the Jha Committee, for reform of indirect taxation. What bedevils the question of indirect taxation is the cumulative effect of major individual taxes which have been brought about as imposts on the nation by the Centre and

by the States from time to time, without consultation, without really determining the interacting effect, all in an *ad hoc* fashion. This interaction has compounded their harmful effect. Now, there is the cumulative and harmful effect of handing this over in to the hands of little Hitlers, individuals entrusted with responsibility of implementing these taxes, whether direct or indirect or customs. The cumulative effect of the imposition of *ad hoc* indirect taxation by the States and the Centre and handling all this over to little Hitlers to implement it is really the kind of chaos that the country faces it.

This is also an appropriate occasion to talk very briefly about the why of indirect taxation. I am unable to understand it, and I do hope that the Minister, the Treasury Benches and the Government will enlighten me on the Subject. What is the philosophy underlying your indirect taxation? Is it merely a tool for a mobilisation of resources or is it with a view to promoting economic and social progress? Is it also simultaneously to encourage or discourage, whichever way you want to channel your taxation, a certain kind of socio-economic activity? Now what do you need in taxation, direct, direct or indirect? To my mind there are certain criteria which are unexceptionable. Essentially tax—indirect tax is what we are talking about—must be just. It must be non-expropriatory. It should not be exploitive. It should be promptly implemented and it should be efficient in its application, and it must be economically progressive. The most important thing, whether in indirect or in direct taxes, is the stability of taxation. If you go in for frequent, *ad hoc* changes of taxation with a view to raising revenue and if your sole concern becomes revenue or resource-gathering, then, it would affect the structural balance of the total system.

I would also like to mention to the Minister that the single greatest factor linking taxes with corruption is delay. The moment delay is brought in as a factor, it becomes equal to money, whether it is in excise or in customs. Delay in the clear-

ance of valuable goods because of the mental attitude of little Hitlers means money. Therefore, entrepreneurs and citizens will take short-cuts and they will resort to bribery. This is one of the reasons for corruption.

Sir, I would like to make a few, very brief, recommendations on excise. Firstly, there is need for rationalisation of the duty structure of final products.

I do not know who is taking notes of what I am saying.

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: The Minister.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI PATTABHI RAMA RAO): I have got enough memory.

SHRI JASWANT SINGH: I am very-very impressed, Mr. Minister, if you can simultaneously read...

SHRI PATTABHI RAMA RAO: I sha!! reply to your every point.

SHRI JASWANT SINGH: This is not a cross-examination. Our intervention in the debate becomes meaningless if you are pre-occupied with doing your homework.

4 P.M.

SHRI PATTABHI RAMA RAO: [ am not preoccupied. I am going through the papers.

SHRI JASWANT SINGH: How will you then pay attention?

SHRI PATTABHI RAMA RAO: The same arguments were made in the Lok Sabha. I am just comparing what difference they are making.

SHRI SADASHIV BAGAITKAR (Maharashtra) : He is doing some sort of homework.

SHRI JASWANT SINGH: If you are going through what happened in the Lok Sabha...

SHRI PATTABHI RAMA RAO: Why should we lose time in arguing like this? Go ahead. I shall certainly reply.

SHRI JASWANT SINGH: Such is our hope.

The first point I am making is about rationalisation of duty structure on final product. This is a recommendation and a suggestion. I think there is need to consider the rates of duty on raw materials also. The question of whether raw materials have close substitutes should be considered.

There is a phrase which commonly comes here, which is 'cascading effect'. I would like the Government's view on the question of considering the relevance and effectiveness or otherwise of VAT at the manufacturing stage. Then customs. Why do we have import duties? Why do we have customs duties? This is also, once again, on grounds of revenue as also on grounds of conservation of foreign exchange. Yet another consideration is protection to the domestic industry. Now on this particular tax, there are some myths and fallacies, and I would be happy to hear the Treasury Bench's views on them occupied as it is with geniuses. I think it is a fallacy to equate high tax with high revenue. High taxation on any single item does not necessarily lead to high revenue 'because high taxation is a deterrent, it is essentially discouraging. I would like to exchange some ideas with the Treasury Benches on that subject

Now coming to the question of conservation of foreign exchange, which is another rationale behind customs duties and import duties, here again I am inclined to the view that conservation of foreign exchange is such a highly complex and complicated question that it is an over-simplification to say that we conserve foreign exchange merely by levying import duties. I think essentially this is short-sighted. I would be happy to be enlightened on this particular aspect. Regarding the question of protecting the indigenous industry, does

it not sometimes amount to protecting the inefficient? The automobile industry in India is the best example. And one could keep on adding examples to this. So I would be happy to hear the Government's views on this particular aspect that protection sometimes results in the protection of the inefficient. And can we afford inefficiency?

Madam Chairperson, I started by saying that indirect taxation, indeed all taxation, must essentially, in the final reckoning, be progressive. The test of progressiveness is the effect of our taxation on elementary things which the poor of the country need. We talked about the poor yesterday also— 400 million Indians needing food, clothing and shelter. What is the effect of our indirect taxation on them? These are not my figures, and it will take me only a part of a minute to quote from the report of the Committee on Indirect Taxation which in a study has concluded:

"A study of the indirect tax system as a whole as a percentage of consumption expenditure has also brought out that even those whose per capita expenditure was less than Rs. 15 a month. . ."

It means 50 paise a day—the ability to spend just fifteen rupees a month. You know, sitting as we do comfortably in these air-conditioned surroundings, it is sometimes difficult to imagine or to consider that the expenditure capability is just fifteen rupees a month, 50 paise a day, not even a handful of "moongphali". What is the effect of indirect taxation as it exists today on that level of per capita expenditure? The study has brought out that:

"Even those whose per capita expenditure was less than Rs. 15 a month"—at 1973-74 prices—"paid nearly 3 per cent of their total expenditure by way of indirect taxation of which Central excise accounts for half."

Madam, the test of any civilized society, the test of any form of taxation that we introduce, must above all be, as I had started by saying, a kind of rationality, a

kind of humanity, a kind of progressive-ness. I do not find all these. I would be happy to be enlightened by the Treasury benches on this. Thank you very much.

SHRI PATTABHI RAMA RAO: Sir, I beg to move:

"That the Bill to provide for the amendment of laws relating to Central excise and to validate duties of excise collected under such laws, as passed by the Lok Sabha, be taken into consideration."

The Bill seeks to overcome a sensitive and knotty situation engendered by a judgement which was pronounced by the Delhi High Court in the matter of the application of different types of additional duties of Central excise. Kindly note that this is a judgement in a matter of application of different types of additional duties of Central excise.

The Government has been collecting, apart from the basic excise duty levied under the Central Excises and Salt Act, 1944, different types of duties of excise under different enactments. These duties include the additional excise duties in lieu of sales tax, additional duties of excise on specified fibres, yarns, fabrics, etc.; the special excise duty under the Finance Acts as a revenue measure, and cesses on various items.

The maximum rates to which goods can be subjected to duties of excise are specified in the various enactments. The Central Government has been empowered to exempt excisable goods wholly or partially from the levy of any such duty of excise, for which purpose notifications are issued, following a particular pattern that has been extant for years, by which the basic duty of excise leviable under the Central Excises and Salt Act, 1944 or the Additional duties/special duties leviable under other enactments are exempted on goods.

The Delhi High Court judgement had held that in the absence, in the notification itself, of a specific reference to the nature

of duty of excise, the exemption granted under the notification would apply to all, (and this is important, *all*) the duties of excise leviable on such goods under different enactments that is, by whatever name they may be called.

The High Court has thus, by its judgement cut at the very root of a hoary practice that has stood the test of time for nearly four decades, in the matter of levy and collection of additional excise duties.

The judgement of the Delhi High Court, apart from affecting the prospective levy and collection of additional duties poses serious threats to revenue as it will also affect assessments made over a considerable period of time. On a rough calculation we estimate that during the financial year 1982-83 alone a sum of Rs. 400 crores approximately may be at stake if the ratio of Delhi High Court judgement is applied to all the notifications currently in force. The Judgement will also affect, as I have said the special/additional duties collected over the years in the past, that is right from 1944. . .

DR. MALCOLM S. ADISESHIAH  
(Nominated): All India?

SHRI PATTABHI RAMA RAO: No...

DR. MALCOLM S. ADISESHIAH: For Delhi?

SHRI PATTABHI RAMA RAO: All I will tell you about it. A vital point I want to urge before the hon. Members is that in all cases where duties have already been collected and refunds may have to be given following the judgment, the ultimate consumer will be the sufferer as he would have already borne the burden of the duties. Any refund of duty to the manufacturers in such circumstances will only mean an unmerited and uncalled for bounty to them, without the possibility of any benefit or relief accruing to the ultimate consumers who are, as we call them, 'the common man'. Hon. Members, I am sure, will agree with me that no Govern-

ment can afford to stand by placidly and watch this money drifting into the pockets of undeserving manufacturers whom alone, by and large, the ratio of the judgment will benefit.

In this air of uncertainty it, therefore, became expedient that the position regarding exemptions granted through various notifications be remedied and clarified and past assessments of excise duties on the basis of the long-standing scheme for the levy of duties were validated.

It was for this purpose that the Central Excise Laws (Amendment and Validation) Ordinance, 1982, was promulgated by the President on the 24th September, 1982.

It is no doubt true that the judgment was pronounced on the 6th August and the Ordinance was promulgated about ten days before Parliament was due to assemble. We were separately pursuing legal remedies by way of moving the Supreme Court, but the situation had become somewhat explosive because of the spate of Stays granted by the Delhi High Court to various manufacturers from different parts of India in terms of its judgment. Any delay would have aggravated the revenue situation further. It was in these circumstances that the Ordinance became necessary.

The present Bill seeks to replace the Ordinance. The validating provisions of the Bill seek to place on a legal footing all levies, assessments and recoveries made in the past. I want to make it clear that the Bill does not seek to impose any fresh levies or any levies retrospectively.

Sir, I move that the Bill be taken into consideration.

*The questions were proposed.*

SHRI R. R. MORARKA (Rajasthan): On a point of order. Madam, the hon. Minister said that by this Bill, the Central Excise Laws (Amendment and Validation)

Bill, 1982, they are going to amend different enactments. May I know at least what are the different enactments which they are going to amend? I do not find any list anywhere. And this House is called upon to pass the Bill amending the Central laws. Will he please tell us what laws they are amending?

SHRI SHRIDHAR WASUDEO DHABE (Maharashtra): I support the point of order. Unless we know the laws which they are going to amend, how can we comment on this?

SHRI PATTABHI RAMA RAO: Madam, this is only to validate the Ordinance issued. (Interruptions)

SHRI R. R. MORARKA: That is not the point. You have said that the BiH seeks to amend some Central laws. I do not know which they are. I must see the list which you are going to amend.

SHRI PATTABHI RAMA RAO: It is not like that. It is only to validate the Ordinance already issued.

SHRI R. R. MORARKA: The hon. Minister is not following. In his own speech he has said that they are going to amend different enactments.

SHRI NIRMAL CHATTERJEE (West Bengal): May I draw the attention of the hon. Minister to the fact that the title of the Bill is the Central Excise Laws (Amendment and Validation) Bill, 1982? So the relevant question is, what are you going to amend? In fact, that was puzzling all of us as to what will be the effect of this amendment. So, kindly clarify.

SHRI HAREKRUSHNA MALLICK (Orissa): Here, Excises in plural.

SHRI SHRIDHAR WASUDEO DHABE: Apart from Central Excise and Salt Act, 1944, we should like to know what definite Acts you are going to amend by this legislation? Otherwise...

SHRI PATTABHI RAMA RAO: Let me explain. 'Central Laws' refers to Finance Acts of 1978, 1979, 1980, 1981 and 1982, Additional Duties of Special Importance Act, 1957, Additional Duties (Textile Articles) Act, 1978. . .

SHRI R. R. MORARKA: How do we know what provisions you are going to amend? Where are the provisions? Now, for the first time you are referring to the Finance Bill of 1977. So, why don't you say in the Bill that we are amending the Finance Act of 1977 or 1978 or 1979 or whatever it is?

SHRI NIRMAL CHATTERJEE: The Schedule should be incorporated.

SHRI SHRIDHAR WASUDEO DHABE: Let the discussion be postponed.

SHRI PATTABHI RAMA RAO: No, no. Madam Vice-Chairman, may I explain? Central Law has in fact been... *(Interruptions)* Excuse me. If you see the Bill, 'Central Law' has, in fact, been defined in Clause 2(1)(b) of the Bill.

SHRI NIRMAL CHATTERJEE: You have pointed out in the Bill itself.

SHRI R. R. MORARKA: Kindly read the definition. What is the definition?

SHRI NIRMAL CHATTERJEE: Under Clause 2(1)(b) it is said that "Central Law" means a Central Act other than the Central Excises Act and includes a declared provision within the meaning of section 2 of the Provisional Collection of Taxes Act, 1981. Is that all? Is there a Schedule?

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: It is not 1981; it is 1931.

SHRI R. R. MORARKA: Here the question is that we are called upon to pass this Bill in a format which purports to amend certain Central Laws. Without knowing what those laws are, what the nature of the amendment is, which clause of which Act is being amended, how can

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we exercise our right to make comments on that?

SHRI PATTABHI RAMA RAO: It is very clear. The Bill itself shows. . .

SHRI R. R. MORARKA: Please, Mr. Minister, do not say it is clear. Say, you are sorry.

SHRI PATTABHI RAMA RAO: Why should I say sorry? I know the Bill is very clear. If you are not able to follow, I cannot help it.

SHRI R. R. MORARKA: He is not clear.

SHRI PATTABHI RAMA RAO: It is absolutely clear. If you read the Clause, it is very clear.

SHRI SHRIDHAR WASUDEO DHABE: Madam Vice-Chairman, you please read page 2. It is said here, "Every Central law provided:- for the levy and collection of any duty of excise which makes the provisions of the Central Excises Act and the rules made thereunder are to be amended by this legislation. Now, every Central Law means what? We must have the Schedule of the Act. Otherwise, you are taking a very wide power which is not contemplated by any law.

SHRI PATTABHI RAMA RAO: We are not taking any wide powers. We are only validating.... *(Interruptions)*

SHRI HAREKRUSHNA MALLICK: It is only beating around the bush.

SHRI PATTABHI RAMA RAO: We are only validating the Ordinance issued.

SHRI HAREKRUSHNA MALLICK: The entire discussion will become infructuous.

SHRI PATTABHI RAMA RAO: That is not the point. We are only validating the Ordinance issued.

SHRI NIRMAL CHATTERJEE: You are not only validating the Ordinance but you are validating it. You read the title of the Bill. The title of the Bill says, Amendment and Validation. *(Interruption)*

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: Let him finish his submission.

SHRI NIRMAL CHATTERJEE: May I read the heading? "As passed by Lok Sabha on 18th of October, 1982." Th it is on the right hand corner at the top. Then it says, "Bill No. 132(C) of 1982. And then it reads, "The Central Excises Laws...."—once again it is in the brackets—"(Amendment and Validation) Bill." Now, you mentioned 'amendment'. You are not only validating. That is how the point of order is valid. *(Interruptions)*

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: You want to say something?

SHRI MADAN BHATIA (Nominated): Madam Vice-Chairman, I respectfully submit that the points that are sought to be made by way of points of order, in fact, fall within the ambit of the debate which is going to take place. *(Interruptions)*.

SHRI R. R. MORARKA: No, no.

SHRI MADAN BHATIA: And I respectfully submit that whatever points are to be made by any Member, he should make that point in the course of his speech on this particular Bill. *(Interruptions)*

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAJMA HEPTULLA]: Shall we proceed with the business of the House? •

SHRI PATTABHI RAMA RAO: Let me submit to the House, Madam, sub-clause (2) of clause 2 of the Bill points out that this Bill relates to "Central law", and "central law" has been defined by clause 2(1)(b) of the Bill and excludes Central Excises and Salt Act.

SHRI R. R. MORARKA: Which are those Central laws?

SHRI PATTABHI RAMA RAO: ... relating to duties of excise to override the judgement of the Delhi High Court. The Bill seeks to amend all the Central laws. ... *(Interruptions)*.

SHRI R. R. MORARKA: Which are the Central laws? *(Interruptions)*

SHRI JASWANT SINGH: I have a submission to make...

- SHRI NIRMAL CHATTERJEE: Finance Minister should consult the Minister and after consultation should come back before the House because there seems to be a good deal of confusion about the whole thing and he is unable to clarify the situation.

SHRI PATTABHI RAMA RAO: I cannot understand if you go beyond the scope of the Bill. As I have explained, we are only trying to validate the Ordinance issued earlier.

SHRI NIRMAL CHATTERJEE: Let him introduce another amendment to the heading itself.

SHRI MADAN BHATIA: Madam, I should be allowed to express the views that are being raised now during the course of the debate on the Bill and these points should be covered. I respectfully submit that whatever points are being raised are only meant to create a confusion and scuttle the debate which is going to take place in the House today. I respectfully submit that this is nothing but a tactic just to bamboozle this particular debate.

SHRI PATTABHI RAMA RAO: Let me explain. There is no point of order... *(Interruptions)*... involved in it. That is number one. Number two is, the Member objects only to the drafting pattern adopted in the Bill. The points that are being raised here will certainly be replied to by me at the end of the debate.



DR. M. M. S. SIDDHU (Uttar Pradesh): The only thing that has been said was that Members are objecting to drafting pattern. My contention is, whether schedule should have been included for the laws which are to be amended, and which are the sections of the particular law which is included in the schedule; all this should have been given. We are not asking for anything more than that. What we are asking is something which is being said orally here to be the part and parcel of the Bill which is being produced before us and, therefore, the hon. Minister may think over this point of view that it is not a question of replying to the debate. It is to fulfil the lacuna which is there in drafting this Bill.

SHRI PATTABHI RAMA RAO: There is absolutely no lacuna. As I said, this is only.

*(Interruption)*

This Ordinance has been necessitated due to the judgement of the Delhi High Court.

SHRI HAREKRUSHNA MALLICK: That is an entirely different issue.

SHRI PATTABHI RAMA RAO: It is only to see that we do not lose any revenue. We have been losing crores of rupees every day due to the judgement of the High Court.

DR. M. M. S. SIDDHU: You are not losing. Madam, the other point I would like to make is that the Ordinance itself can be defective. If the Ordinance is defective, what does it matter. Here is the time to improve upon the wording, the drafting, when you are bringing in the Bill.

SHRI MADAN BHATIA: Madam, I respectfully submit that any objection to the consideration of the Bill...

SHRI LAL K. ADVANI (Madhya Pradesh): I have been trying to catch your eye, Madam. This is the third time he is speaking.

PROF. SOURENDRA BHATTACHARJEE (West Bengal): Madam, I raised my hand earlier also. I think, the view taken by this hon. Member, Shri Madan Bhatia, is completely misconceived, because, the technical point which has been raised is of substance and not in order to defeat the purpose of the Bill, rather to facilitate it.

SHRI R. R. MORARKA: Certainly.

PROF. SOURENDRA BHATTACHARJEE: When the debate takes place, it will be seen that the Members of this side also support this Bill otherwise. But the lacunae which may land the Government in greater trouble and bring into disrepute this legislative body is the concern of the Members on this side. There is no question of bamboozling or anything of that sort and it is highly objectionable that such motives should be imputed in regard to a valid point, which may or may not be upheld by the Chair. It is for the Chair to opine, not for a Member to give his judgement in his anxiety to prove his loyalty to the Government.

SHRI MADAN BHATIA: Madam...

THE VICE-CHAIRMAN [DR. (SHRI-MATI) NAIMA HEPTULLA]: You have already spoken, Mr. Bhatia.

SHRI DINESH GOSWAMI (Assam): Madam, I would like to make a submission.

SHRI SHRIDHAR WASUDEO DHABE: Madam, I would like to clarify one point in regard to what I have said. The hon. Minister has mentioned in his speech—I quote:

"Hon. Members may be aware that the Government has been collecting different types of excise under various enactments, apart from the basic excise duties levied under the Central Excise and Salt Act, 1944. These duties, for instance, include the additional excise

[Shri Shridhar Wasudeo Dhabe]

duties in lieu of Sales tax, leviable on sugar, tobacco and fabrics, which are entirely passed on to the States and Union Territories, under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, Additional Duties of Excise on specific varieties, yarns, fabrics etc.....

There is no mention of these Acts here. In his speech, like this, he has mentioned so many Acts, not merely one Act, which he has mentioned in the beginning, the Central Excises and Salt Act, 1944. Therefore, all these Acts have to be mentioned, which have been mentioned by him in his speech. It will be necessary for the purposes of taxation that the Acts which are sought to be amended should be mentioned in a separate Schedule attached to this Bill.

THE VICE-CHAIRMAN [DR. (SHRIMATI) NAJMA HEPTULLA]: It does say, Central Excise Laws (Validation and Amendment) Bill.

SHRI R. R. MORARKA: Exactly. What laws?

SHRI LAL K. ADVANI: Madam, Vice-Chairman, first of all, the discussions here fit not on the merits of the Bill, but in respect of the procedures that are to be followed, which are to be adopted, in order to enable Parliament to discuss the matter properly. Therefore, the point of order was raised by Mr. Morarka that it is not one single enactment which is sought to be amended, but a number of laws which will be affected by this. It is an omnibus enactment and whenever there is an omnibus enactment like this, it is imperative that a schedule be appended that by virtue of this, such and such Acts and such and such provisions of these Acts would be affected. Even in the case of Constitutional amendments, the Article sought to be amended is always appended to the Bill. Of course, we can refer to the Constitution. Therefore, in order to enable Parliament to function effectively, and to have a mean-

ingful discussion, such a Schedule is imperative. That is why it was pointed out that you bring us a schedule of all the enactments likely to be affected and we will consider it. I was amazed at the nominated Member attributing motives to us. There have been provisions, enactments, Bills, earlier than this, which were far worse. This is an ordinary Bill and even in this case we have not objected for the sake of objecting or in order to scuttle the debate. If there is any objection and if a point of order has been raised, let the Minister clarify that this is not required, because of this thing. Let him do that. Day before yesterday Shri Shiva Chandra Jha said that a Financial Memorandum should be there. We supported him and the Law Minister stood up to say that in this particular case there was no financial entailment and, therefore, no financial memorandum was necessary. We accepted that. Here there is no clarification. All that is sought to be said is whatever is there is correct, law means law and all that. This is no export nation. Therefore, I would plead with you that in this particular case let the Minister go back, consult the Law Minister, consult the Leader of the House or whomsoever he wants to consult and come back to the House, we will pass the Bill, we will sit longer to pass that.

THE VICE-CHAIRMAN LDR. (SHRIMATI) NAJMA HEPTULLA]: When Mr. Jaswant Singh put his Statutory Resolution seeking disapproval of the Central Excise Laws (Amendment and Validation) Ordinance, 1982, he must have stated the whole Bill and the main point which is being raised now. Did you not realise it at that time?

SHRI SADASHIV BAGAITKAR (Maharashtra): That is not relevant.

श्री जयवंत सिंह: महोदय, आपने सवाल मुझ से पूछा है, मैं पहले इसका जवाब दे दूँ। आप जो भी फरमाते हैं उसको हम बड़े आदर से और ध्यान देंगे सुनते हैं।

उपस्थित डा० (श्रीमती) नाजमा हेपतुल्ला : मैं यह पूछ रही हूँ कि जो आपने रिजोल्यूशन रखा है उसमें आप क्या चीज डिस्पूब कर रहे हैं ?

श्री जवाहर सिंह : आप जरा उसी को पढ़िये ।

In the reading of what I am disapproving is the answer to your query.

THE VICE-CHAIRMAN [DR. (SHRI-M<sup>T</sup> NAJMA HEPTULLA): You are only disapproving the Ordinance, not this.

श्री जवाहर सिंह : ये दोनों अलग अलग चीजें हैं । आर्डिनेंस आने आप में एक अलग चीज है । मेरा रिजोल्यूशन आर्डिनेंस की डिस्पूब का है । वह एक अलग चीज है । पार्लियामेंट की कमेयन्स को देखते हुए बहुत अवम्वहता है कि जब एक मैम्बर वेन्ट पाइन्ट आफ आर्डर उठाते हैं तो डा पर दूसरे मैम्बर यह कहते हैं कि यह कोई डकोसला है । यह कोई डकोसला नहीं है ... (व्यवधान) । मैंने अभी खत्म नहीं किया है । आप मुझे इजाजत दें तो मैं अपनी बात पूरी कर दूँ । मेरी अर्ज यह है कि आर्डिनेंस और बिल में फर्क है । आर्डिनेंस की डिस्पूब का रिजोल्यूशन अलग चीज है । अभी बिल अन्दर कंसोडरेशन आया ही नहीं है । बिल के अन्दर कंसोडरेशन आने के पहले एक मैम्बर ने कोई पाइन्ट आफ आर्डर उठाया है । पाइन्ट आफ आर्डर कोई छोटा-मोटा पाइन्ट आफ आर्डर नहीं है यह पाइन्ट आफ आर्डर वक्त को ज या करने वाला पाइन्ट आफ आर्डर नहीं है । यह पाइन्ट आफ आर्डर उनके संबंध में है जब यह बिल कंसोडरेशन के लिये आये तब मैम्बरान अपनी बात डंग से कह सके । इसी ही बात है । बाकी बातों को दोहराने में कोई मतलब नहीं है । कुछ हमारे आदरणीय मैम्बरान पूरी बात समझ

नहीं पाये हैं । वे कुछ दिन और हमारे साथ बैठेंगे तो समझ जायेंगे । जैसा आइवाणी जी ने कहा है, इसमें मिनिस्टर साहब को कोई दिक्कत नहीं होना चाहिए अगर बिल में कोई कमी है तो वे घर जायें, उसकी होम स्टेडी करें, आपस में सलाह-मशविरा करें और इसको दुस्त कर दें । हम रात को भी बैठने के लिये तैयार हैं । हम सरकार के साथ सहयोग करने के को तैयार हैं ।

श्री हुसमदेव नारायण भादव (विहार) : श्रीमन्, मेरा बयस्था का प्रश्न है । मैं यह कहना चाहता हूँ कि संसद् कोई भी कानून बनाती है तो वह निर्गुण कानून नहीं बना सकती है । संसद् जो कानून बनाती है वह सगुण होता है । यह जो विधेयक है बिल्कुल निर्गुण है । इसमें क्या करना है, क्या नहीं करना है, फिन कानून को बदलना है, फिन को कहाँ पर संशोधित करना है, कुछ भी नहीं बताया गया है । संसद् को प्रक्रिया संबंधी अधिकार संविधान में सीमित है और उनके अपने अधिकार भी सीमित हैं । प्रक्रिया संबंधी गणने इसमें है । इस विधेयक में तकनीकी दृष्टि से भी खामियाँ हैं । तकनीकी दृष्टि से जो खामियाँ हैं उनको अगर दुस्त नहीं करते हैं और जो प्रक्रिया इसमें अपनाई गई है वह इसको दुस्त नहीं करती है । तो बिना प्रक्रिया, बिना तकनीकी खामी को पूर्ति किये हुए संसद् को अधिकार नहीं है, इन सदन को अधिकार नहीं है कि वह ऐसे विधेयक को पास करे क्योंकि यह बिल्कुल निर्गुण है ।

दूसरी बात यह है कि जन्मगत सिंह जी ने जो अपना प्रस्ताव दिया है, वह अध्यादेश के निरनुमोदन का प्रस्ताव है । पहले अध्यादेश को आप पास करें, सदन पहले अध्यादेश के ऊपर मुहर लगायेगा और तब इस विधेयक के विचार के

[श्री हुसमदेव नारायण साहू]

प्रस्ताव पर वति आयोगी । तो उन्होंने पहले ही आवेक्षण किया है और आवेक्षण का मुद्दा भी यही है कि यह जो आर्डिनेन्स हुआ यह गवर्न हुआ । आर्डिनेन्स हो गलत था और जो तरह से आर्डिनेन्स किया गया उसने यह गलती थी और इस तरह की कामी थी यही मुद्दा है । इसमें सुधार नहीं किया गया और फिर बिना सुधार किये इसको लाया गया है । तो इसमें ये गलतियाँ हैं और इस मदन को अधिकार नहीं है कि वह इस तरह के विधेयक को पान करे । इस लिये इसको रोकिये और अगर बिना रोके हुए इसको आप कहती हैं कि पास हो तो फिर मदन अपने अधिकारों का अतिक्रमण करेगा और जब इस तरह का अतिक्रमण मदन करेगा तो तो इस कानून का कोई महत्त्व नहीं रहेगा ।

SHRI SANTOSH KUMAR SAHU (Orissa): Madam, Vice-Chairman, a lot of points have been raised on the point of order about what Acts we are going to amend. Madam, this is a peculiar situation in which the Delhi High Court has given a judgement regarding absence of specific reference to the nature of duty in excise notification providing for exemption. So under the Excises Act, if certain exemptions is notified, the exemption there means that all exemptions should be covered. So I think this requires an appropriate definition to cover the spirit of the exemption. That is, under the Central Excises and Salt Act, 1944, they want to amend certain definitions so that this type of confusion will not be created. So it is mainly to amend the Central Excises Act's

definition portion only so that this Ordinance can cover what the High Court has decided. That is the only purpose of the Bill, I think. This is my submission and the House may consider it.

SHRI DINESH GOSWAMI: Sir, the hon. Minister has said that this is only to validate the Ordinance. But I think this is not only validation of the Ordinance; it is also a prospective legislation which will cover future cases.

[MR. DEPUTY-CHAIRMAN in the Chair]

Now, I do not know whether all the Acts should be enclosed in the Schedule. I have my own doubts about it because, the law says that the amending procedure will apply in case of Central Excises Act and also in all other laws through which the other taxes are levied or collected. But the point which is worrying the Members is that when you want to make such a law applicable to all the Central Acts, is it not desirable that the Members should know how this Act is going to affect the different Central laws! For example, you have mentioned this Act will affect all the Central laws. Now the Members are finding it difficult to pass this law without knowing what are those Central laws. Therefore, technically, I do not think a Schedule may be necessary. But a comprehensive statement from the Minister may be necessary so that the Members may know what are the Central laws which are likely to be affected by this Schedule. I would like to mention that after all we are almost at the point of taking up the Half-an-Hour Discussion. Therefore, the Minister may examine this point. I do not think he shall have to come forward with a change of the whole thing. He may come forward tomorrow with a statement about what are the Central laws which are likely to be affected by the statute so that the Members when they pass this Bill may know that these are the Central laws likely to be affected. Subsequently somebody may say that you have passed a law affecting so many Central laws without knowing what those Central laws are. So this is the point. I do not think technically a Scheduled to

this Bill will be necessary. After all, this is almost a general law by which for any tax or excise levy assessed or collected under the Central Excises Act, or whatever law that may be in force, this amendment will be effective. I do not, therefore, think that a Schedule will be necessary. I think the Members will be...

MR. DEPUTY CHAIRMAN: Which one are you referring to?

SHRI DINESH GOSWAMI: I am referring to all the clauses. You may look at clause (4)(a) which says:

"All duties of excise levied, assessed or collected with respect to any goods under the Central Excises Act or the said rule or any Central law shall be deemed to be, and shall be deemed always to have been validly levied, assessed or collected as if the foregoing provisions of this section had been in force at all material times."

That means, if the Government collected or levied certain excises either under the Central Excises Act or under any other law for the time being in force, it will be deemed to be...

MR. DEPUTY CHAIRMAN: See the definition. The definition of "Central law" is there in clause 2(1)(b).

SHRI DINESH GOSWAMI: "Central law" means a Central Act other than the Central Excises Act and "includes" a declared provision...

SHRI R. R. MORARKA: It is an inclusive definition.

MR. DEPUTY CHAIRMAN: It means a Central Act other than the Central Excises Act and includes a declared provision within the meaning of section 2 of the Provisional Collection of Taxes Act, 1931.

SHRI PATTABHI RAMA RAO: Let me submit, Sir.

SHRI DINESH GOSWAMI: Clause 2(2) says, "Every Central law providing for the levy and collection of any duty of excise which makes the provisions of the Central Excises Act and the rules made thereunder..." That comes under the purview of the Act. The operative portion of this Act may touch any Central law. But I don't think that technically a Schedule is necessary but, obviously, before passing a Bill if Members want to know what are the Central laws that are likely to be affected by the Statute, I think it is a genuine request. I don't think we want to stand on technicalities, but if the Members want to be enlightened as to what are the Central laws to be affected, I think that should be made known.

MR. DEPUTY CHAIRMAN: Let us understand. I would request Mr. Morarka just to refer to it briefly.

SHRI R. R. MORARKA: Sir, I am grateful to you for giving me this opportunity to repeat my point of order. Sir, the present Bill which is passed by the Lok Sabha and which has been brought here before this House and which we are called upon to consider is called 'The Central Excise Law (Amendment and Validation) Bill, 1982'. Sir, by virtue of this Bill we are going to amend several Central laws. Now, the hon. Minister, while moving the motion for consideration had also said 'that different provisions under which different excise duties, etc., etc., are levied, are being amended by virtue of this law. My simple point is that we in this House must know what we are amending, which laws we are amending. Neither a Schedule is given. As my hon. friend Mr. Dinesh Goswami, has said, technically a Schedule is not necessary. I agree, it may not be necessary, but we must at least know what we are amending. Not only that. May I bring to your kind attention one thing? In any amending law the sections of the parent Act which are being amended are given saying that section so and so of the parent Act is to be amended and then that section is produced in the Bill as it is introduced in the Lok Sabha. I have gone through the Bill, introduced in the...

[Shri R. R. Morarka]

Lok Sabha. It contains the Statement of Objects and Reasons but it does not contain any information about the list of Central laws which are going to be amended by this. Are we going to pass this Bill, are we going to give our consent to this law, without knowing what we are doing? That is my basic point.

SHRI MADAN BHATIA: Sir, this point of order which is being raised is to this effect that We must know what are the Central laws which are sought to be amended. In the first place, Sir, my submission is that clause 2 says, "Every Central law providing for the levy and collection of any duty of excise etc., etc.," The objections, if any, which are being sought to be raised by way of a point of order are liable to be raised only when this particular clause comes up for consideration when this Bill comes up for consideration before this honourable House, clause by clause. Unless the Bill is considered and discussed as a whole, it is not possible to deal with any objection which is sought to be raised to the Bill by way of this thing that there has to be a Schedule appended to this Bill giving the list of the Bills or the Central Laws which are sought to be amended, because it will be open for us to place our views before this honourable House to the effect that as a matter of fact neither under any law nor under the provisions of this particular Bill is it necessary, or is it even possible, to give the list of the Central Laws which are referred to in clause 2. So this point of order which is being raised. I again humbly submit, is meant to pre-empt the debate on the Bill and the Bill as a whole.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): Sir, I would tell Mr. Morarka that in the Statement of Objects and Reasons as placed before the Lok Sabha, paragraph 1 says—

Lok Sabha, paragraph 1 says—and the Acts are given in this order:

"Central excise duty is levied under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Central

Excises Act), and is commonly referred to as the basic excise duty. In addition to this duty, other duties of excise have also been imposed on certain commodities, such as, additional excise duty in lieu of sales tax levied on sugar, tobacco and fabrics under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, additional excise duty levied on specified fibres, yarns, fabrics, etc., for the purpose of subsidising the production of controlled cloth under the provisions of the Additional Duties of Excise (Textiles and Textile Articles) Act 1978, special excise duties under the Finance Acts..."

So all these Acts have been specified in the memorandum. If Mr. Morarka has in view any other Acts besides these, of course the point arises that the Finance Minister should consult the Law Minister before he comes here.

SHRI R. R. MORARKA: For the information of Mr. Matto, there is another Act called the Medicines and Toilet Excise Duty Act, 1955. There are so many other Acts. It does not say that.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): Sir, the point of order is extremely technical, in the first instance because what we are passing is a Bill which has already been passed by the Lok Sabha and it is a small Validation Bill. And if one looks at the objects which the Statement of Objects and Reasons sets out, one will see that it arises because of the judgement of the Delhi High Court which has held—and I am reading from the Statement of Objects and Reasons—"that in the absence of a specific reference to the nature of duty of excise in a notification providing for exemption from duty of excise on any goods, the exemption granted under the notification would apply to all the duties of excise leviable on such goods under different enactments..." The effect of this judgement is that you have a notification under Rule 81 and it would be an omnibus notification giving exemption to each and every Act. Now, as has

been explained further, this is not the intention. What is sought to be done is that, well, if the Government wants to give an exemption, it will certainly exercise its powers by issue of a proper notification under the relevant Act.

Now, as far as I am concerned, I am comparatively a new Member. I cannot really compare my experience with the experience of Mr. Morarka. But every year in the Finance Acts we have this provision of excise by which a levy of tax is collected and there is also a provision of exemption, for example, the Finance Act, 1980, the Finance Act, 1981, and the Finance Act, 1982. All these would be covered.

In section. 2. sub-section (2), if I go back to that section it says:

"(2) Every central law providing for the levy and collection of any duty of excise which makes the provisions of the Central Excises Act and the rules made thereunder applicable by reference to the levy and collection of the duty of excise under such Central law shall have, and shall be deemed always to have had, effect with respect to the matters dealt with in sub-section (3) in the manner provided in that sub-section and this Act shall be construed as one with such Central law."

Sub-section 3 says:

"...any Central law providing for the levy and collection of any duty of excise".

—and Central law has been defined as:

"a Central Act other than the Central Excise Act"—

"makes the provisions of the Central Excises Act and the rules made thereunder applicable by reference to the levy and collection of the duty of excise under such Central law, then,—

(a) it shall be necessary for the purpose of granting, by any notification or order, any exemption from

any duty of excise, or fixing, by any notification or order, any rate of, duty leviable under such Central law to expressly refer to the provisions of the said Central law in the preamble to such notification or order, or to state by express words in such notification or order that the exemption provided for, or the rate of duty fixed, by such notification or order is, an exemption from, or the rate of duty under, such Central law;"

Now, as far as I can see, this is a very clear provision which says that unless the notification specifically refers to an exemption under a particular Central law, may be by the Finance Act or may be by the Additional Duties Act or any other Act, unless that is specifically given, the exemption will not apply only because it is given under the Central Act as distinguished from the Central law.

This is a simple legislative mechanism to get over the judgement of the High Court. I do not think that it is necessary to look at it because we are really not amending any of the other laws. If that is the understanding of any of the Members here, that understanding is without any foundations because we are not amending any other thing. We see that in the matter of exemption, unless there is a reference to a particular Central law which is not the Central Excise Act, unless that is there, that exemption would not come. I think this, as I have said, is merely to get over the judgement in the case of the Modi Rubber Company. Therefore, the point of order that all those laws should have been listed here really does not arise because it is an automatic provision which says, "Refer to the provision; you will get

[Shri Murlidh Chandrakant  
Bhandare]

exemption." If that is not referred, there is no exemption.

One thing more. I think there is some substance. I am not raising a technical objection. But it is a matter of substance because it deals with this sort of contrivance to get over this judgement. There is a great deal of substance. When there is the clause by clause debate, I think the Members will have an opportunity of having five or six Acts before them.

SHRI PATTABHI RAMA RAO: As mentioned by me earlier the bill only proposes to make a rule of interpretation by which the Acts are impliedly amended. This is the effect of amending the Central Act, and to that extent the short title is made a, Amendment and Validation.

Sir, as I have mentioned in the beginning, this is not only to replace the Ordinance already issued. . . . (Interruptions) Please let me have my say. I have heard you very patiently. Would you not allow me to have my say?

Actually, you know, Sir, for the last one year there is no ordinance issued by this Government. But this Ordinance has been necessitated because we are losing crores of rupees every day. And where does it go? If it goes to the common man or the consumer. I can understand. This money goes only to manufacturers and rich persons. Is it the intention of this hon. House to see that, by delaying this Bill, the money goes to those persons? So, this ordinance has to be brought only to save revenue being lost. As a matter of fact, for your information. I may mention within this period....

MR. DEPUTY CHAIRMAN: That is not a relevant point.

I have heard the hon. Members. The point raised by Shri Morarka, I think is

misconceived. This Bill does not amend any Act specifically. I agree with the view expressed by Shri Bhandare. It only says that unless a notification is issued under different sections, specifically mention other than the Central Excise Act, they mention other Acts also under they are giving exemption. They can not give exemption without mentioning certain Acts and their sections. If the exemption is under some other law except this, the Excise Act. Therefore, that is the intention of the Bill. Therefore, the point does not arise. I rule it out\*.

Now we take up the half-an-hour discussion. After this we shall take up the Bill.

SHRI NIRMAL CHATTERJEE: Let this take place tomorrow.

MR. DEPUTY CHAIRMAN: No, no, We have to take it up today. We have to take up the other Bill also. (Interruptions) We can complete. There is no difficulty. (Interruptions).

SHRI LAL K ADVANI: It is 5 o'clock now;

MR. DEPUTY CHAIRMAN: Is your reply complete?

\*SHRI PATTABHI RAMA RAO: Yes.

SHRI LAL K. ADVANI: He has only moved the motion. There has been no debate. The statutory resolution disapproving the ordinance was moved by Mr. Jaswant Singh and thereafter the Minister has moved his motion. That is all. There has been no debate. (Interruptions).

MR. DEPUTY CHAIRMAN: We have to complete the business started for today. Yes, Dr. Bhai Mahavir.