(2014) 04 AHC CK 0213

In the Allahabad High Court

Case No : Writ Tax No. 120 of 2012

A.M.C. Coated Fabrics Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 14(iia), 15
Constitution of India, 1950 — Article 286, 286(2)
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(1), 21(2), 4, 4(a)

Citation : (2014) 307 ELT 93 : (2014) 74 VST 324

Hon'ble Judges : Suneet Kumar, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : S.D. Singh and Nishant Mishra, Advocate for the Appellant; C.B. Tripathi, C.S.C, Advocate for the Respondent

Judgement

Ashok Bhushan, J.—The petitioner, manufacturer of ''Cotton Coated Fabrics'' has challenged the order dated 25-11-2011, passed by the Additional Commissioner, Commercial Tax, Noida Zone, Noida u/s 21(2) of the U P. Trade Tax Act, 1948 (hereinafter called the "Act, 1948") by which permission has been granted for reassessment for the years 2005-06 and 2006-07 under the U.P. & the Central Sales Tax Act. Counter affidavit and rejoinder affidavits have been exchanged between the parties, and with the consent of the learned counsel for the parties, the writ petition is being finally decided.

2. Brief facts necessary to be noted for deciding the issues in the writ petition are : The petitioner''s company is engaged in manufacturing and sales of ''Cotton Coated Fabric''. ''Cotton Coated Fabric'' is a 100% cotton cloth manufactured on powerloom, on which PVC resin and other stabilizers are coated. The petitioner has been paying the additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter called the "Act, 1957"). Notifications u/s 4 of the Act, 1948 were issued from time to time granting exemption for payment of trade tax on various goods including cotton fabrics on all varieties. In this context, notifications dated 31-1-1985, 5-6-1985

and 1-2-1989 were also issued. The petitioner declared his goods to be exempted from trade tax which declarations were accepted by Assessing Authorities. After accepting the goods as exempted from trade tax after about 10 years, an issue was raised during the assessment year 1996-97 as to whether the "cotton coated fabric" manufactured and sold by the petitioner is covered by the exempted notification or not. The matter was taken up to the Tribunal. The Tribunal allowed the appeal and remitted the matter to the assessing officer to obtain information as to whether the assessee has been paying the excise and additional excise duty on the goods or not. The assessing officer after remand by the Tribunal made inquiries from the Central Excise Authorities and held that the petitioner has been paying the additional excise duty, hence on cotton coated fabrics, the assessee is not liable to pay trade tax. The order passed by the Tribunal as well as by the assessing officer pertaining to the year 1996-97 were not challenged by the Department and were allowed to become final. The assessment orders for the years 2005-06 and 2006-07 (U.P. & Central) were passed by the Assessing Officer on 24-3-2009 and 27-3-2009 respectively whereby the accounts books as well as the declared turnover of sale on cotton coated fabric was accepted as exempted from trade tax. On the very next day i.e. on 25-3-2009, notice u/s 21(1) of the Act, 1948 was issued by the Respondent No. 4 for the assessment years 2005-06 and 2006-07 directing the petitioner to appear before him and explain as to why not proceedings u/s 21(1) be initiated against him. An ex parte reassessment order was passed on 25-9-2009 relying on the judgment of this Court in Commissioner, The Commissioner, Trade Tax Vs. Laxmi Leather Cloth Industries, The petitioner challenged the said ex parte reassessment order, dated 25-9-2009 as well as the appellate order, dated 17-2-2011 before the Tribunal. The Tribunal allowed the appeal vide its judgment and order, dated 10-8-2011, which order was not challenged any further by the Department. A notice dated 14-10-2011, under the proviso to Section 21(2) of the Act, 1948 was issued by the Respondent No. 3 for the assessment years 2005-06 and 2006-07 on the ground that the "Cotton Coated fabric" manufactured by the petitioner is not exempted under the notification dated 5-6-1985. The petitioner appeared and objected to the aforesaid notice. Petitioner''s case was that the judgment of this Court in M/s. Laxmi Leather Cloth Industries (supra) is not attracted. The Additional Commissioner, however, vide its order dated 25-11-2011, authorized the Assessing Officer to proceed with the reassessment proceedings against the petitioner under the U.P. as well as under the Central Act for the assessment years 2005-06 and 2006-07. Consequential notice was issued to the petitioner on 28-11-2011. The petitioner thereafter filed the present writ petition on 16-1-2012. This Court passed an interim order on 24-1-2012 staying the operation of the order dated 25-11-2011 as well as the consequential notices dated 28-11-2011.

3. We have heard Shri S.D. Singh, learned Senior Advocate assisted by Shri Nishant Mishra for the petitioner and Shri C.B. Tripathi, learned Special Counsel

appearing for the State.

4. Shri S.D. Singh, learned Senior Advocate appearing for the petitioner challenging the reassessment proceedings submitted that there was no material to form any belief that the tax has escaped assessment and the proceedings are wholly beyond the purview of Section 21(2) of the Act, 1948. It is submitted that the Act, 1957 was enacted by the Parliament to levy additional duties of excise on sugar, tobacco and fabrics with an object that the State Legislature may not impose tax on the said items which are items of special importance in another State, trade or commerce. Respective State Legislature thereafter issued various notifications exempting payment of trade tax in different States. The State of U.P. also issued notifications granting exemption of payment of tax on all varieties of cotton fabrics vide notifications dated 31-1-1985, 5-6-1985 and 1-2-1989. The petitioner has been making the payment of additional excise duty till 1-3-2003, when additional excise duty has been exempted on "Cotton Coated Fabrics". It is submitted that there has been already a decision of the Assessing Officer pertaining to the assessment year 1996-97 that the "Cotton Coated fabric" manufactured by the petitioner was not liable to trade tax hence, there was no reason to initiate reassessment proceedings against the petitioner. It is submitted that the judgment of this Court in M/s. Laxmi Leather Cloth Industries (supra) was not applicable on the goods manufactured by the petitioner since the said case was with regard to the PVC sheets and was not a case of "Cotton Coated Fabric". It is submitted that the "Cotton Coated Fabric" manufactured by the petitioner is entirely different item from PVC fabric. In M/s. Laxmi Leather Cloth Industries (supra) this Court proceeded on the assumption that both the items are same which assumption was not correct, therefore, there is no occasion to proceed with reassessment proceedings against the petitioner relying on the judgment of this Court in M/s. Laxmi Leather Cloth Industries (supra). It is further submitted that the order dated 25-11-2011, indicates that the Assessing Officer has still to examine as to whether the goods manufactured by the petitioner is exempted from tax or not, the respondents themselves being not sure about the liability of payment of tax on the goods of the petitioner committed error in proceeding with the reassessment proceedings against the petitioner.

5. Shri C.B. Tripathi, learned Special Counsel appearing for the State refuting the submission of the learned counsel for the petitioner contended that this Court in M/s. Laxmi Leather Cloth Industries (supra) has held that the "Cotton Coated Fabric" and PVC fabrics are the same, hence the petitioner was liable to pay tax. He submits that there was sufficient ground to initiate proceedings for reassessment u/s 21(2) of the Act, 1948. He further submits that the mere fact that the additional excise duty is payable under the Act, 1957, is no fetter on the power of the State Legislature to impose trade tax. He submits that even on the change of opinion, proceedings u/s 21(2) of the Act, 1948 can be initiated.

6. Learned counsel for the parties have placed reliance on various judgments of

this Court as well as of the Apex Court which shall be referred to while considering their submissions in detail.

7. From the pleadings of the parties, following two main issues arise for consideration:

(1) Whether ''Cotton Coated Fabric'' i.e. ''Textile Fabrics'', impregnated, coated, covered or laminated by PVC is the same thing as PVC fabric for the purpose of taxability under the Act, 1948?

(2) Whether there was any material with the respondent authorities to form a belief that tax has escaped assessment so as to initiate proceedings u/s 21(2) of the Act, 1948 for the relevant period?

8. The petitioner, is a manufacturer of "Cotton Coated Fabric" which is specifically supplied by the petitioner and has been noted in the relevant assessment years 2005-06 and 2006-07. In the assessment years 2005-06 and 2006-07 the "Cotton Coated Fabric" was accepted as exempted from tax. The notification dated 5-6-1985 issued u/s 4, clause (a) of the Act, 1948. Entry 53 provides as follows:

"Amendments

In the Schedule to the aforesaid notification-

(1) for the existing entries in Column 2 against serial numbers 7, 10, 43 and 53, the following entries shall respectively be substituted, namely:--

7..................

10................

43.................

53. Textiles of the following varieties manufactured on powerloom, excluding durries, carpets, druggets, hosiery goods readymade garments, hessian or jute cloth and cotton, rayon or nylon tyre cord fabrics, tyre cord or tyre cord wrap sheets, PVC/HDPE fabrics and cotton beltings, but including the goods specified in the Annexure hereunder:

(a) cotton fabrics of all varieties:

(b) rayon or artificial silk fabrics, including staple fibre fabrics, of all varieties;

(c) woollen fabrics of all varieties;

(d) fabrics made of a mixture of any two or more of the above fibres, viz. cotton, rayon, artificial silk, staple fibre or wool;

(e) Canvas cloth, tarpoulins and water-proof cloth.

ANNEXURE-

(i) hand printed, dyed or embroidered fabrics, and dhoties, sarees, bed-sheets, counterpanes, table cloth, handkerchiefs, towels, scarfs, napkins and dusters made out of fabrics or any of the varieties mentioned in sub-clauses (a), (b) or (c) above,

(ii) cotton velvets and velveteen but excluding embroidered velvets;

(iii) hosiery cloth in lengths;

(iv) book-binding cotton fabrics and leather cloth and inferior or imitation leather cloth ordinarily used in book binding;

(v) bandages;

(vi) rubberised or synthetic water-proof fabrics, whether single-textured or double textured."

9. A perusal of the said notification indicates that cotton fabrics of all varieties manufactured on powerloom have been granted exemption from tax. However, certain items have been excluded. One of the excluded item is PVC/HDPE fabrics.

10. At this stage, it is relevant to refer to the provisions of Act, 1957 which was enacted by the Parliament to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States. The Statement of Object of the Act, 1957 is to the following effect:

"The object of the Bill is to impose additional duties of excise in replacement of the sales taxes levied by the Union and States on sugar, tobacco and mill-made textiles and to distribute the net proceeds of these taxes, except the proceeds attributable to Union territories, to the States. The distribution of the proceeds of the additional duties broadly follows the pattern recommended by the Second Finance Commission. Provision has been made that the States which levy a tax on the sale or purchase of these commodities after the 1st April, 1958 to not participate in the distribution of the net proceeds. Provision is also being made in the Bill for including these three goods in the category of goods declared to be of special importance in inter-State trade or commerce so that, following the imposition of uniform duties of excise on them, the rates of sales tax if levied by any State are subject from 1st April, 1958 to the restrictions in Section 15 of the "Central Sales Tax Act, 1956":--Gaz. of Ind., 13-12-1957, Part II-S.2, Extra p.963."

11. Section 3 of the Act, 1957 provides that there shall be levied and collected in respect of goods described in column (3) of the First Schedule. The First Schedule under the Act, 1957 provides "heading", "sub-heading" and "Chapter" mean respectively a heading, sub-heading, and Chapter in the Schedule to the Central Excise Tariff Act, 1985. Under the Heading 59.03 following was included.

12. Under the Central Excise Tariff Act, 1985, different items and articles have been classified under different Chapters. Under the Tariff Item 5903 following

was provided.

13. P.V.C. Fabrics were included in different Chapter i.e. Chapter 39. Tariff Item 3920 (Relevant Portion) is as follows:

14. The words ''cotton fabrics'' have not been defined either in the Act, 1948 or in The Central Excise Tariff Act, 1985. In Section 14 of the Central Sales Tax Act, 1956 declaration of "cotton fabrics" is covered under different heading of Goods of Special Importance in inter-state trade or commerce. The words "Cotton Fabrics" is covered under the heading 59.03. Section 14(iia) of the Act, 1956 is as follows:

"(iia) cotton fabrics covered under Heading Nos. 52.05, 52.06, 52.07, 52.08, 52.09, 52.10, 52.11, 52.12, 58.01, 58.02, 58.03, 58.04, 58.05, [58.06] 59.01, 59.03, 59.05, 59.06 and 60.01 of the Schedule to the Central Excise Tariff Act, 1985;"

15. As noted above, the notification issued u/s 4(a) of the Act, 1948 exempts "cotton fabrics" of all varieties. The word "variety" has been defined in Concise Oxford English Dictionary in following words:

"variety" n.(pl. varieties) 1. the quality or state of being different or diverse. 2. (a variety of) a number of things of the same general class that are distinct in character or quality, a thing which differs in some way from others of the same general class; a type. Biology a subspecies or cultivar. 3. a form of entertainment consisting of a series of different types of act, such as singing, dancing, and comedy.

-ORIGIN C 15: from Fr. Variete or L. varietas, from various (see VARIOUS)."

16. Thus, different varieties of "cotton fabrics" are exempted from the tax under the Act, 1948. Textile fabrics impregnated, coated, covered or laminated with PVC (polyvinyl chloride) are treated as textile fabric.

17. Coming to Chapter 3920 which provides for other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials are included in different Chapters. Sheets of "polyvinyl chloride" are covered under different Chapter and as noted above, are not included in the cotton fabrics as per the Central Sales Act, 1956.''

18. The petitioner''s case throughout before the Assessing Officer as well as in the writ petition has been that there is a vital difference between the "cotton coated fabrics" and "P.V.C. Fabrics". It is useful to quote para 36.2 of the writ petition which is quoted below:

"36.2 That broadly, the difference between ''Cotton Coated Fabrics'' and ''PVC Fabrics'' with regard to their manufacturing process, commercial usage and application as classification etc. are being shown in chart mentioned below:--

19. The basis of the entire proceedings initiated against the petitioner by the

respondents is the judgment of the learned Single Judge in M/s. Laxmi Leather Cloth Industries (supra). A perusal of Para 2 of the said judgment indicates that in the revisions before the High Court the question relating to taxability of PVC sheets was involved. It is useful to quote Para 2 of the said judgment:

"2. In all the four revisions common question relating to the taxability of PVC sheets is involved. According to the claim of the opposite party/dealer (hereinafter referred to as "dealer") PVC sheets is a textile and accordingly exempted under the notification pertaining to textile. It is claimed that in the PVC sheets, the base material is cotton fabric on which PVC rexine, etc., have been coated. The case of the Revenue is that PVC fabric is specifically excluded from textile under the Notification No. ST-II3714/X-6(1)/85-UP. Act 15/48-Order 85, dated June 5, 1985 and, therefore, it is not exempted. The Assessing Authority levied tax on PVC sheets as an unclassified item. The First Appellate Authority accepted the plea of the dealer and allowed the exemption. The Commissioner of Trade Tax filed appeals before the Tribunal. The Tribunal dismissed all the appeals and confirmed the order of the First Appellate Authority. Though, the Tribunal held that under the Notification No. ST-II-3714/X-6(1)/85-UP. Act 15/48-Order 85, dated June 5, 1985, PVC fabric is specifically excluded from textile and therefore, is not exempted, still allowed the exemption on the ground that in the subsequent years, the Assessing Authority had himself exempted cotton coated fabric, i.e., PVC fabric."

20. It is relevant to note that before the learned Single Judge, earlier decision of the same assessee in Commissioner, Sales Tax, U.P., Lucknow v. Laxmi Leather cloth Industries Pvt. Ltd., 2006 NTN (Vol. 29) 407 was relied on wherein it was held that the cotton coated fabric is exempted from Tax-.

21. The learned Single Judge in the case of Laxmi Leather Cloth Industries (supra) has held that PVC Fabric is the same as Cotton Coated Fabric/Leather Cloth manufactured. Learned Single Judge laid down following in Paragraphs 17 to 21 which are quoted below:

"17. It appears that since PVC fabric has been held as textile by the Apex Court and by the various High Courts, the Legislature with the intent to deny the exemption on PVC fabric has excluded the PVC fabric from textile. Otherwise there could be no other purpose excluding the PVC fabric from textile, if the intent would be to continue the exemption on PVC fabric from textile, if the intent would be to continue the exemption on PVC fabric as textile. It is settled principle of law that it is always open to the Legislature to exclude or include any item from any goods by fiction.

18. In the case of Gaurav Traders Vs. Commissioner of Trade Tax, the question was whether HDPE woven fabric being excluded from textile is exempted from tax as textile. This Court held that after the exclusion from textile, it is not exempted from tax.

19. Since the PVC fabric has been specifically excluded from textile, it cannot be

exempted as textile by any stretch of imagination by giving any interpretation.

20. Now coming to the alternative remedy of learned Counsel for the dealer, learned Counsel for the opposite party submitted that PVC fabric being cotton coated fabric is covered u/s 14 of the Central Act (hereinafter referred to as "the Central Act") and, therefore, liable to tax at four per cent, and not as an unclassified item. Perusal of the order of the Tribunal reveals that this aspect of the matter has not been considered by the Tribunal. Therefore, the Tribunal is directed to consider this aspect of the matter.

21. In the result, all the revisions are allowed. Order of the Tribunal is set aside. It is held that PVC fabric (cotton coated fabric)/leather cloth manufactured by the dealer is not exempted as textile under the Notification No. S.T.-II-3714/X-6(1)/85-UP. Act 15/48-Order 85, dated June 5, 1985. However, whether it is liable to tax as an unclassified item or as declared commodity being covered u/s 14 of the Central Act, the matter is remanded back to the Tribunal to adjudicate this question."

22. A Division Bench of this Court in M/s. Mahalaxmi Polyplast (P) Ltd., Muzaffarnagar v. State of U.P. & Anr, (1990) U.P.T.C. 956, had occasion to consider notification dated 5-6-1985 in context of laminated H.D.P.E. fabrics. The activity of the assessee was noted in Paragraph 5 which is to the following effect:

"5. Having set out the relevant statutory provisions, we proceed to examine the question arising in this case. The facts are not in dispute. In paragraph 3 of the counter affidavit of Sri Kuldip Singh, the Sales Tax Officer, Sector-1, Muzaffarnagar, the activity in which the petitioner is engaged has been elaborated. It is said that the petitioner is a registered dealer under the U.P. Sales Tax Act and runs a factory for manufacturing H.D.P.E. Fabrics (both laminated as well as unlamented). The unlamented H.D.P.E. Fabrics is also known as plain H.D.P.E. Fabrics. After manufacturing plain H.D.P.E. Fabrics they are sent to other factories situated at Noida, district Ghaziabad or to Delhi for a process which is called lamination. The process called lamination of H.D.P.E. Fabrics has been the subject of examination in various decisions. In the case of Plastrack (P) Ltd. v. Commissioner of Sales Tax, U.P. - 1981 UPTC 499 : (1932) 49 STC 75, his Lordship R.M. Sahai, J. (as he then was) relying on various texts and dictionaries observed:

"As pointed out earlier it is admitted that in the process of manufacturing lamination is involved which comprises of impregnation of plastic material pressed together."

23. The Division Bench after noticing the submissions of the learned counsel for the parties, laid down following in Paragraphs 10, 11, 12, 13 and 14 which are quoted below:

"10. It will thus be seen that there is ample authority to support the contention of the petitioner that plain H.D.P.E. Fabrics is a synthetic fabric. And it is further conceded to the respondents that plain H.D.P.E. Fabrics when subjected to the process of lamination become water-proof. That being so, the article in question squarely falls within clause (vi) of the Annexure to the above notification dated June 5, 1985. Clause (vi) specifically exempts synthetic waterproof fabrics from levy of sales tax. The learned standing counsel, however, submitted that mere lamination would not take the H.D.P.E. Fabrics being mentioned by the petitioner from out of the purview of the exception specifically made under Entry 53, i.e., being H.D.P.E. Fabrics it cannot claim exemption from sales tax in view of Entry 53 which excepts various items of textiles from the benefit of exemption granted under the notification dated June 5, 1985. The learned Standing Counsel vehemently contended that even after lamination the basic character or texture of the item continues to be H.D.P.E. Fabrics.

11. We regret the submission of the learned Standing Counsel cannot be accepted. It is true that the notification specifically excepts certain item of textiles from the benefit of exemption. These items have been mentioned in Entry 53 (quoted above). Among the items excepted H.D.P.E. Fabrics also finds place. But within this exception another area has been carved out consisting of items specified in the Annexure to the notification which were intended to continue to receive the benefit of exemption. Even if, therefore, in its broadest sense, laminated H.D.P.E. Fabrics would also be H.D.P.E. Fabrics but if it falls within one or the other of the items mentioned in the Annexure it would not be liable to tax, i.e. the exception carved out under Entry 53 would not affect the immunity of such items from taxation.

12. The same result is reached by another process of reasoning. If the item in question falls under one or the other clauses mentioned in the Annexure, it will become entitled to exemption from sales tax irrespective of whether the species might fall within the excepted genus specified under Item 53. If the article is specifically exempt from sales tax under notification under consideration it becomes entitled to exemption and to that extent the rigor of exception mentioned in Entry 53 stands whittled down.

13. In interpreting fiscal statutes there is a well accepted principle, viz., that where a provision is capable of two constructions, one that favours the subject out to be preferred to the other. The principle is well rooted in authority and needs no further elaboration beyond a reference to The Commissioner of Income Tax, West Bengal II, Calcutta Vs. Naga Hills Tea Co. Ltd., and Income Tax Officer, Tuticorin Vs. T.S. Devinath Nadar and Others,

14. The upshot is that laminated H.D.P.E. Fabrics fall under clause (vi) of the Annexure to the notification dated June 5, 1985, being synthetic waterproof fabrics and is, on that account, entitled to exemption from sales tax."

24. Thus, as clearly laid down above, that even if article is covered by an item which has been excluded, but its species is again covered in an item included in the exemption, the exemption shall not be denied to the species of the item

included.

25. In the present case, although the PVC/H.D.P.E fabrics are excluded, but cotton coated fabrics of all varieties having been included, if the item manufactured by the petitioner is termed as cotton coated fabric, it is exempted from payment of Tax under Act, 1948.

26. As noted above, in the case of M/s. Laxmi Leather Cloth Industries (supra) the question of taxability of PVC sheets was involved and although the learned Single Judge had observed that PVC fabrics (Cotton Coated Fabric) are not exempted from tax, but when the issue of (Cotton Coated Fabrics) was not involved in the said case, how the said ratio can be applied in the present case where the issue of (Cotton Coated Fabrics) is involved and where the petitioner''s case specifically is that his article manufactured by him is (Cotton Coated Fabrics) which is impregnated/coated and laminated by PVC. (Cotton Coated Fabrics) coated by PVC and PVC fabrics have to be given different meaning. The word "variety" which is added along with the (Cotton Fabrics) shall include (Cotton Coated Fabrics) coated by PVC or any other material.

27. The submission of the learned counsel for the petitioner that the petitioner has been paying additional excise duty under the Act, 1957, is a relevant fact. The Additional Excise Duty was imposed so that the State may not impose trade tax on items of special importance. It is also on the record that the petitioner has been paying the additional excise duty under the Act, 1957, on the (Cotton Coated Fabrics), hence the taxability was never disputed by the Assessing Officer and when in the year 1996-97 taxability was disputed, the issue was decided in favour of the assessee after recording a finding that the petitioner is paying Additional Excise Duty. The petitioner has quoted the order of the Tribunal and the Assessing Officer with regard to the year 1996-97 in Paragraphs 12 and 13 of the writ petition which fully supports his submission.

28. The Apex Court in State of Kerala Vs. Attesee (Agro Industrial Trading Corporation), had occasion to consider the provisions of Kerala General Sales Tax Act, 1963 regarding the exemption of cotton fabrics. In the said case the Act, 1957 also came up for consideration. It is useful to quote Paragraph 6 of the said judgment which is to the following effect:

"6. Article 286 of the Constitution of India imposed certain restrictions on the legislative powers of the States in the matter of levy of sales tax on sales taking place outside the State, sales in the course of import or export, sales in the course of inter-State trade or commerce and sales of declared goods. The Sales Tax Acts in force in several States were not in conformity with the provisions of the Constitution and attempts to bring those laws to be in conformity with these provisions gave rise to a lot of litigation. This led to an amendment of Article 286. Clause (2) of the article, as it stands, since 11th September, 1956, authorised Parliament to formulate principles for determining when sale or purchase of goods can be said to take place in the course of import or export or in the course of inter-State trade or commerce. Clause (3) was amended, in terms already set out, to restrict the powers of a State to impose sales or purchase tax on declared goods. The CST Act, 1956 which came into force on 5-1-1957 formulated the principles referred to in Article 286(2). As already mentioned, this Act was amended, inter alia, by Act 16 of 1957 w.e.f. 6-6-1957 and by Act 31 of 1958 w.e.f. 1-10-1958. Section 14 listed the goods which are considered to be of special importance in inter-State trade or commerce which included the six items set out earlier. Section 15 of the Act, as originally enacted, was brought into force only w.e.f. 1-10-1958. It stipulated that levy of sales tax on declared goods should not be at a rate exceeding 2% or be levied at more than one point in a State. Before this section came into force, it was amended by Act 16 of 1957 which retained the first restriction and, so far as the second is concerned, provided that the tax should be levied only on the last sale or purchase inside the State and even that should not be levied when that last sale or purchase is in the course of inter-State trade or commerce as defined. Act 31 of 1958 amended Section 15 to impose certain modified restrictions and conditions with the details of which we are not here concerned. These restrictions clearly entailed loss of revenue to the States and it was considered expedient and desirable to compensate the States for the proportionate loss of sales tax incurred by them. Thus, even before Section 15 was brought into force, the Central Government decided to pass an Act to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net process thereof among the States in pursuance of the principles of distribution recommended by the Second Finance Commission in its report dated 30-9-1957. This proposal to levy additional duties of excise on certain special goods was a part and parcel of an integrated scheme under which sales tax levied at different rates by the States on certain goods was ultimately substituted by the levy of additional duties of excise on such goods and the States were compensated by payment of a part of the net proceeds of the said additional levy on such goods. That this dearly was the genesis and object of the 1957 Act also appears from its objects and reasons set out earlier. Some of the items liable to excise duty were picked out from the Schedule to the 1944 Act. They were listed among the declared goods of Section 14 of the CST Act and also made liable to additional excise duty under the 1957 Act. A perusal of the lists under these three enactments show that out of the items listed in the Schedule to the 1944 Act, sugar, tobacco, cotton fabrics, rayon or artificial fabrics and woollen fabrics were categorised as declared goods and subjected to additional excise duty. When the numerical order of these items in the 1944 Act (originally 8, 9, 12, 12A, 12B) came to be changed in 1960 (as 1, 4, 19, 22, 21) a corresponding change was effected in the 1957 Act. ''Silk fabrics'' as defined in item 20 of the 1944 Act was included in 1961 in the CST Act and the 1957 Act. The fact that ''cotton fabrics'' though listed as item 12 in the Schedule to the 1944 Act was not brought into the list ins. 14 till 1-10-1958 or that silk fabrics was dropped from the list in Section 14 w.e.f. 11-6-1968 though it continues in the Schedule to the 1944 Act does not alter the position that these three Acts are inter-connected and that certain goods taken out from the Schedule to the 1944 Act were to be subjected to the special treatment outlined in the CST Act and the 1957 Act."

29. Although the submission of Shri C.B. Tripathi, learned Special Counsel appearing for the State that the fact that the additional excise duty is payable under the Act, 1957 does not denude the State Legislature from imposing tax on an item is correct, but the exemption notification issued under the Act, 1948 has to be interpreted keeping in view the aims and object of the Act, 1957 under which the State was also beneficiary of proportionate amount of additional excise duty.

30. In view of the aforesaid, our considered opinion is that the "Cotton Coated Fabrics" and "PVC Fabrics" are not the same goods and exemption of tax on cotton coated fabrics cannot be denied on the ground that it is a PVC fabric.

31. We, further, hold that the judgment of the learned Single Judge in M/s. Laxmi Leather Cloth Industries (supra) is not applicable in the facts of the present case.

32. Now coming to the second issue as to whether the Additional Commissioner has rightly granted permission u/s 21(2) of the Act, 1948 and as to when the reassessment proceedings can be initialed u/s 21(2) of the Act, 1948 has been the subject matter of consideration before the Apex Court and this Court in large number of cases. It is useful to refer to the judgment of the Apex Court in The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow, . The Apex Court while considering Section 21 of the Act laid down following in Paragraph 9 of the said judgment which is quoted below:

"9. The controversy between the parties has centered on the point as to whether the assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for the assessment year 1957-58. Question in the circumstances arises as to what is the import of the words "reason to believe", as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this Court, for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence."

33. Similar proposition has been laid down by this Court in M/s. Parmarth Steel And Alloys Pvt. Ltd. v. State of U.P. & Ors, in Writ Tax No. 871/2010 decided on 8-5-2013 and the Division Bench judgment of this Court in Writ Tax No. 13/2014, M/s. Shikha Steel Co. v. State of U.P. & Ors, decided on 9-1-2014.

34. There cannot be any dispute to the proposition as laid down in the above two cases. In the proposal submitted by the Assessing Officer, no other fact except the judgment of the learned Single Judge in M/s. Laxmi Leather Cloth Industries (supra) was relied on. The Additional Commissioner, himself has observed in its order dated 25-11-2011 that the question as to whether the tax has escaped assessment is to be examined by the Assessing Officer for determining as to whether the "Cotton Coated Fabrics" manufactured by the petitioner is a PVC fabric or not. Thus, no belief has been formed by the Additional Commissioner that the tax has escaped assessment and the proceedings of reassessment has been initiated merely on doubt which is not permissible.

35. We having already held that the "Cotton Coated Fabrics" are different from PVC fabrics and the judgment of the learned Single Judge in M/s. Laxmi Leather Cloth Industries (supra) being not attracted in the present case, we are of the view that the reassessment proceedings against the petitioner cannot be allowed to continue.

36. In the result the writ petition is allowed. The order dated 25-11-2011, passed by the Additional Commissioner, Commercial Tax, Noida Zone, Noida and the consequential notice dated 28-11-2011 are hereby quashed. Parties shall bear their own costs.

