

(1988) 04 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 11213 to 11221 of 1987 and S.T.R.P. No's. 83, 84 and 85 of 1978 and 137 and 140 of 1979

Bharat Textile and Proofing Industries and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 5 (1), 5 (2)
Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1988) 71 STC 10

Hon'ble Judges : P.P. Bopanna, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : B.P. Gandhi, S.C. Raghavan, K. Srinivasan and S.G. Raghavan, for the Appellant; R.H. Chandan Goudar, Government Advocate, for the Respondent

Judgement

1. The above writ petitions and revision petitions are disposed of by a common order since a common point arises for consideration in all these petitions.
2. In the writ petitions, we are concerned with the question whether tarpaulin cloth comes within the meaning of the word "cotton textiles". In the sales tax revision petitions, we are concerned with the question whether P.V.C. rexine cloth comes within the meaning of the word "cotton textiles".
3. The facts are not in serious controversy and briefly stated are :

The petitioners in W.P. Nos. 11213 to 11221 of 1987 are registered dealers under the Karnataka Sales Tax Act as also under the Central Sales Tax Act (hereinafter referred to as "the C.S.T. Act"). Some of them are manufacturers and some of them are traders in tarpaulins. It is not in dispute that tarpaulin is manufactured out of cotton fabric. Likewise, the petitioners in the revision petitions are dealers in P.V.C. rexine cloth. Cotton fabrics are declared goods u/s 14 of the C.S.T. Act. For the purpose of section 14 of the Act, the definition of the word "cotton fabrics" has to be ascertained from the provisions of tariff item No. 19 of the

Central Excises and Salt Act, 1944 (in short "the Excise Act"). Cotton textiles are exempted from the levy of sales tax as per entry 8A of Fifth Schedule of the K.S.T. Act read with section 8 of the said Act. Entry 8A of the Fifth Schedule reads as follows :

"Act 9 of 1964 (from 1-4-1964 to 31-12-1970).

8A. All varieties of textiles, namely, cotton, woollen, silk or artificial silk including rayon or nylon, whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths.

Act 3 of 1983 (from 1-1-1970 to 31-3-1979).

All varieties of textiles, namely, cotton, woollen, silk or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths but excluding tyre cord fabrics specified in serial number 7A of the Fourth Schedule.

Act 3 of 1983 (from 1-4-1979 to 28-3-1981).

All varieties of textiles, namely, cotton, woollen, silk or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths.

Act 3 of 1983 (from 29-3-1981)

All varieties of textiles, namely, cotton, woollen or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths."

Whether tarpaulin is cotton textile or not is the subject-matter of conflicting rulings of the various High Courts and that is the reason these petitions are referred to a Division Bench though there is an earlier Division Bench decision of this Court holding that P.V.C. rexine cloth is not exigible to sales tax under the K.S.T. Act. The Bombay High Court, the Gujarat High Court, as also the Supreme Court in a different context have taken the view that the word "cotton textiles" would cover tarpaulin and other water-proofing cloth. But, the Madras High Court, the Madhya Pradesh High Court as also the Punjab and Haryana High Court have taken a contrary view by adopting what is known as the user test. The Madhya Pradesh High Court has taken the view in [1967] 19 STC 230 (S. R. Calcuttawala, Siyagunj, Indore v. Commissioner of Sales Tax, Madhya Pradesh), that, P.V.C. rexine cloth, which is manufactured with cloth as base and given coating or coatings of polyvinyl chloride in processing factories by special spreading machines, is leather-cloth and is not exempt from payment of sales tax under item 6 of Schedule I of the Madhya Pradesh General Sales Tax Act, 1958. Likewise, the Madras High Court in [1974] 34 STC 4 (M. Jeewajee & Co. v. State of Tamil Nadu) and also in its earlier decision in [1974] 33 STC 399 (State of Tamil Nadu v. East India Rubber Works, Madras) has taken the view that tarpaulin is not "textiles" which is exempt from sales tax under the relevant

provisions of the Tamil Nadu General Sales Tax Act. It is common ground that the meaning to be given to the word "tarpaulin or P.V.C. rexine cloth" would depend on the interpretation of the relevant tariff item in the Excise Act. It is common ground that as per entry 8A in the Fifth Schedule to the K.S.T. Act, the meaning to be given to the word "cotton textiles" is the same as the meaning to be given to the word "cotton fabrics" in tariff item No. 19 to the Excise Act. But, under the K.S.T. Act, entry 75 in the Second Schedule pertains to tarpaulins and water-proof cloth and that is exigible to tax and therefore the petitioners have contended that entry 75 in the Second Schedule would not enure to the benefit of the Revenue as tarpaulin or P.V.C. rexine cloth under entry 8A to the Fifth Schedule are cotton textiles and are declared goods which are exempt from sales tax as they are liable to pay Central excise duty. This tariff item No. 19 of the Excise Act was amended in the year 1969 and then in the year 1980.

4. We will first consider the decisions of this Court on this point rendered in Writ Petitions Nos. 4656 and 4657 of 1979. A learned Judge of this Court following his earlier decision in W.P. No. 5297 of 1975 (*Varma Industrials Limited v. Commercial Tax Officer* [1981] 47 STC 43) has held that the turnover regarding P.V.C. rexine cloth was not exigible to sales tax. But, that decision was rendered on a concession made by the Government Advocate on behalf of the State. But, the earlier decision of this Court in S.T.R.P. Nos. 39 and 40 of 1973 disposed of on 18th October, 1973 (*Anant N. Gholba v. State of Mysore*) requires to be noticed. That was a case which related to assessment periods commencing from 13th November, 1966 to 21st October, 1968. That is to say the assessments in question were prior to the amendment of tariff item No. 19 in the Excise Act. The dealer claimed exemption from sales tax on the turnover in the sales of P.V.C. rexine cloth on the ground that the said rexine cloth comes within the definition of the expression "cotton fabrics" as defined in section 14 of the C.S.T. Act read with tariff item No. 19 of the First Schedule to the Excise Act. Govinda Bhat, J., as he then was, speaking for the Court, observed that :

"A reading of the definition "cotton fabrics" as amended by the Finance Act of 1969 makes it clear that P.V.C. rexine cloth which is manufactured with cloth as base by giving coating or coatings of polyvinyl chloride would come within the meaning of the said expression. It is obvious that the intention of the Parliament in amending the definition of the expression "cotton fabrics" was to bring such articles or goods within the meaning of the expression so as to render the same liable to Central excise duty.

The said amendment of the definition was effected after the expiry of the relevant assessment years. It was urged by Sri K. Srinivasan, the learned counsel for the dealer that the amendment was made only as a matter of elucidation or clarification in order to remove all doubts. But it was contended by Shri Chandrakantharaj Urs, the learned Senior High Court Government Advocate, that the amendment made in 1969 shows that during the earlier period, it was not the intention of the Parliament to levy duty on goods like P.V.C. rexine fabric.

It was submitted by Sri K. Srinivasan that even before the amendment made in 1969, Central excise duty was levied on P.V.C. rexine cloth on the footing that it came within the meaning of the expression "cotton fabrics" under item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944."

It is on the basis of this submission, the Division Bench remitted the appeals for disposal by the authorities below after recording a finding whether throughout the Indian Union, P.V.C. rexine cloth was subject to excise duty treating the same as "cotton fabrics". The Division Bench observed that :

"It is no doubt, true that mere levy of excise duty as such may not be decisive, but, that will be a relevant factor in determining the question whether during the relevant period before the amendment of item No. 19, P.V.C. rexine cloth came within the definition of "cotton fabrics" as defined in section 14 of the Central Sales Tax Act read with item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944."

It should be noticed that, at that time, the second amendment to tariff item No. 19 to the Excise Act had not been brought about and therefore the courts had to go into the user test and that is the reason the Division Bench of this Court remitted the matter to the appellate authority for determining whether the P.V.C. rexine cloth was treated as textiles during the relevant assessment period. But, now we are not confronted with the problem of actual treatment of this material by the authorities as textiles or with the problem of determining the meaning of the word "cotton fabrics". In our view, meaning of the word "cotton textiles" should be determined by the amended definition of the word "cotton fabrics" in the Excise Act as amended by Act 6 of 1980 with retrospective effect. The present amended definition of cotton fabrics reads as follows :

"I. Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives, or of other artificial plastic materials -

(a) cotton fabrics, not subjected to any process

(b) cotton fabrics, subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes."

The definition of the word "cotton fabrics" as it existed prior to the amendment reads as under :

"19. Cotton fabrics -

"Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed-sheets, bed-spreads, counterpanes, table-cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials but does not include any such

fabric if it contains -

....."

This tariff item No. 19 was amended first by the Finance Act of 1969 and after such amendment the word "cotton fabrics" was defined thus :

""Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed-sheets, bed-spreads, counterpanes, table-cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated Or coated with preparations of cellulose derivatives or of other artificial plastic materials, but does not include any such fabric if it contains -

(a) 40 per cent. or more by weight of wool;

(b) 40 per cent. or more by weight of silk; or

(c) 60 per cent. or more by weight of rayon or artificial silk."

If these amended definitions are compared to the earlier definition of the word "cotton fabrics" as it existed in the Excise Act at the time of the relevant assessment period, there could be no doubt that the legislature had given a very wide and comprehensive meaning to the word "cotton fabrics" and the purpose for which such a wide and comprehensive meaning was given would be presently stated while discussing the effect of the retrospective amendment to tariff item No. 19. The reason for exempting cotton textiles from sales tax under the K.S.T. Act in the Fifth Schedule and defining cotton fabrics in section 14 of the C.S.T. Act with reference to the definition of the word "cotton fabrics" under tariff item No. 19 of the Excise Act should also be noticed while considering the effect of the retrospective effect of the amendment given to item No. 19. If it is held that the amended meaning of the word "cotton fabrics" as amended by the Finance Act of 1969 and the Amendment Act of 1980 should be applied to the facts of this case, then there would be no difficulty for this Court to come to the conclusion that both tarpaulin and P.V.C. rexine cloth are exempted under entry 8A of the Fifth Schedule to the K.S.T. Act. Now what is the effect of that amendment will have to be considered ? Since this point did not come up for consideration in any of the decisions rendered by this Court so far, we will have to go into that question afresh. The Sales Tax Tribunal which had gone into the question, applied ruling of the Privy Council reported in AIR 1931 149 (Privy Council) and observed as follows :

"The Act has borrowed the definition of cotton fabrics from the Central Excise Act as it stood on 1st October, 1958. There is no intendment in section 14(iia) that future amendments affecting the definition of cotton fabrics in the Central Excise Act would also be automatically adopted for the purpose of the Act. Therefore, the question arises as to whether it would be proper to bring in a definition of cotton fabrics in the Excise Act as amended in 1969 for the purpose of the Act. In this connection, the observation of the Privy Council in AIR 1931 149 (Privy

Council) , is appropriate for reference :

"It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectively without the addition."

The above dictum shows that the extended definition of cotton fabrics in the Excise Act, as amended by the Finance Act of 1969 need not automatically be adopted for the purposes of the Act as it is possible for the latter to function effectively even without such adoption. The goods of special importance in inter-State trade or commerce as defined in section 14(iia) of the Act would continue to be goods of such importance even without bringing in the extended definition made in the Excise Act. On 20th July, 1978 the appellants were asked to adduce evidence if available to show that rexine was treated as cotton fabric prior to 1969 for the purposes of levy of excise duty. As no such evidence was adduced, we have no scope to construe the amendment of 1969 as merely declaratory of what was already included in the definition of cotton fabrics. In this view, the amended definition of cotton fabrics cannot sink into the definition of cotton fabrics appearing in section 14(iia) of the Act for the mere reason that the definition was enlarged for the purposes of the Excise Act. The purpose of the Excise Act is to levy excise duty. Considerations to subject an article to excise duty are different and has nothing to do with the purposes of sections 14 and 15 of the Act which is to treat certain commodities as important and to give some protection to those commodities. The two Acts are not supplemental to each other. The decision of the Kerala High Court in the case of *at see (Agro-Industrial Trading Corporation) v. State of Kerala* reported in [1978] 41 STC 1 is not applicable to the facts of the instant case. In that case, the Kerala High Court came to the conclusion that subsequent amendment to cotton fabrics in the Central Excise Act should be taken note of in construing item 7 of the Third Schedule to the Kerala Sales Tax Act because the concept of cotton fabrics in the Kerala Sales Tax Act is integrally linked with the provisions of the Central Excise Act. No such link is existing in the instant case between the Central Excise Act and the Act."

Though at first sight this reasoning appears to be correct, we are of the view that had the Tribunal kept in view the purpose of defining cotton fabrics under the C.S.T. Act as the same as the definition of the word "cotton fabrics" under the Excise Act, the Tribunal would not have committed the error by taking the view that the amended definition could not be given retrospective effect in so far as it relates to tarpaulin and rexine cloth. The only tenable objection that could have been raised for applying the amended definition to the word "cotton textiles" in entry 8A of the Fifth Schedule to the K.S.T. Act is that the legislature would be abrogating its legislative powers to levy sales tax on textiles or cotton fabrics by giving the amended definition of cotton fabrics in the Excise Act retrospective

effect.

5. A similar argument was raised by the learned counsel who represented the Gujarat State in the Pokardas" case [1982] 51 STC 88 and the Division Bench of the Gujarat High Court had considered this point in great detail and observed as follows :

"In our opinion, therefore, this cannot be said to be abdication of the legislative functions for obvious reasons which are as under : In the first place, the State Legislature concerned before passing the Gujarat Act applied its mind and decided that cotton fabrics should have the same meaning as assigned to it in the Central Excise Act since having regard to the purpose and object underlying the impost of excise duty as well as sales tax on such important commodities like cotton fabrics. In the second place, the legislature prescribed a policy and provided a definition which should be in consonance with the definition of "cotton fabrics" as understood in the Excise Act since any inconsistency or repugnancy may have far reaching consequences on the inter-State trade and commerce. In other words, as Fazl Ali, J., said in *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, that the legislature embodied a policy, defined a standard and directed the authority chosen to act up to certain prescribed limits and not to go beyond them.

We are of the opinion that the Gujarat Act contains a policy as we shall presently point out and the policy was clear and precise so as to furnish guidance to the executive to implement them. The contention about abdication of the legislative functions by the State Legislature in trying to incorporate the future amendments in the Excise Act should, therefore, be rejected.

* * *

The legislative history in this connection has been traced in detail in *Hind Engineering Co., Rajkot v. Commissioner of Sales Tax, Gujarat* [1973] 31 STC 115 (Guj). We need not set out in extenso the entire legislative history but it would be profitable to shortly refer to the same. Under the *Bombay Sales Tax Act, 1953*, "cotton fabrics" as such were not exempted. It was only handloom cloth which was exempted from the liability of tax. In 1956, the Central Government in the interest of inter-State trade or commerce, declared certain goods of special importance in the course of inter-State trade and commerce. The said goods were known as declared goods under the *Central Sales Tax Act, 1956*, which received the President's assent on 21st December, 1956. It should be recalled that cotton fabrics were not included in the list of the declared goods. Twofold restriction was placed by section 15 of the *Central Sales Tax Act*. The first restriction was as regards the rate of tax which enjoined that the State shall not charge sales tax or purchase tax on declared goods exceeding 2 per cent. and the second restriction was that such tax shall not be levied at more than one stage. The result of this twofold restriction was that the State Governments were exposed to likely loss of revenue. In order to compensate State Governments for

this apprehended loss of revenue, the Additional Duties of Excise Act, 1957, was enacted and put on the statute book with effect from 24th December, 1957. The reason underlying the enactment of this Additional Duties of Excise Act has been stated by the Division Bench of this Court in Hind Engineering Company's case [1973] 31 STC 115 in the following terms :

"..... The proposal to levy additional duties of excise on the said goods was a part and parcel of the 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 of duties of excise on such goods collected during each financial year"

Section 3 of the Additional Duties of Excise Act provided for the levy and collection of duties of excise on certain specified goods in addition to the duties chargeable on such goods under the Excise Act. "Cotton fabrics" were amongst the goods specified by the said section. Section 4 provided for the distribution of a part of the net proceeds of the additional duties thus collected amongst the States. u/s 7 of the said Act, as originally enacted, "cotton fabrics" amongst other goods were declared to be goods of special importance in inter-State trade or commerce and it was specifically provided that every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sales or purchases of declared goods, be subject as from the first day of April, 1958, to the restrictions and conditions specified in section 15 of the Central Sales Tax Act, 1956. The necessary steps to complete the scheme were taken when the Bombay Sales Tax (Special Exemptions) Act, 1957, was put on the statute book. The preamble of this Act, inter alia, stated that it was enacted with a view to exempt the sales or purchases of certain goods which became assessable to an additional duty of excise. Cotton fabrics as such were not included in the category of exempted goods under this amending Bombay Act of 1957. The Indian Parliament thereafter amended the Central Sales Tax Act by the Central Sales Tax (Second Amendment) Act (No. 31 of 1958) which came into force from 1st October, 1958. Cotton fabrics as defined in item 12 of the First Schedule to the Excise Act were added to the category of goods declared by section 14 of the Central Sales Tax Act to be of special importance in inter-State trade or commerce and Original section 15 of the Central Sales Tax Act was substituted by a new section 15 by this amending Act. Besides prescribing the twofold restriction which was there in the original section 15, a further provision was made for making a refund to a person who has paid sales tax or purchase tax under the State law in respect of the declared goods which were sold in the course of inter-State trade or commerce. Thus, the tax already paid in respect of such goods was made refundable by new section 15 which was inserted by the aforesaid Central Sales Tax (Amendment) Act. When the Bombay Sales Tax Act, 1959, was put on the statute book with effect from 25th September, 1959, it provided u/s 5(1) that notwithstanding anything contained in the Act but subject to the conditions or exceptions, if any, set out against each of the goods specified

in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in that Schedule. Entry 15 of Schedule A specified "cotton fabrics" which were not liable to payment of tax on the sale or purchase as provided in section 5(1). The definition in entry 15 was "cotton fabrics" as defined in item 12 of the First Schedule to the Central Excises and Salt Act, 1944. Now this item 12 was renumbered as item 19 by the Central Excises (Conversion to Metric Units) Act, 1960. The State Government, therefore, by a notification issued u/s 5(2) of the Bombay Sales Tax Act, 1959, which was adopted and enforced in the area under the jurisdiction of the State of Gujarat, amended this entry 15 by providing that "cotton fabrics" would be as defined in item 19 of the First Schedule to the Excise Act and would be exempt from the liability of sales tax or purchase tax, as the case may be, pursuant to the renumbering of item 12 as item 19 by the Central Excises (Conversion to Metric Units) Act, 1960. The Gujarat Sales Tax Act, 1969, which has been placed on the statute book with effect from 6th May, 1970, has repealed the Bombay Sales Tax Act, 1959, and u/s 5(1) the goods specified in Schedule I have been exempted from the liability of payment of sales tax or purchase tax subject to the conditions prescribed therein and accordingly entry 37 with which we are concerned has exempted cotton fabrics as defined in item 19 of the First Schedule to the Excise Act from the liability of sales tax or purchase tax, as the case may be. There is no condition governing this exemption prescribed under the said Schedule. Meanwhile, it should also be recalled that by the Finance Act, 1969, which received the President's assent on 13th May, 1969, item 19 of the Excise Act which provided for duty on cotton fabrics was again amended and the material part of that item so far as relevant for our purposes reads as under :

"19. Cotton fabrics -

"Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed-sheets, bed-spreads, counterpanes, table-cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials but does not include any such fabric if it contains -

.....".

6. It is not in dispute that the schemes of the sales tax laws in all the States in India are more or less similar. At any rate, no attempt has been made by the State Government before us to show that the legislative history of section 14 of the C.S.T. Act is not correctly set down by the Gujarat High Court. The Central Legislature before passing the Central Sales Tax Act, applied its mind and decided that "cotton fabrics" should have the same meaning as assigned to it in the Central Excise Act having regard to the purpose and object underlying the impost of excise duty as well as sales tax on such an important commodity like cotton fabrics. In the second place, the legislature prescribed a policy and provided a definition which should be in consonance with the definition of "cotton

fabrics" as understood in the Excise Act since any inconsistency or repugnancy may have far reaching consequences on inter-State trade or commerce.

7. Earlier, under the K.S.T. Act, cotton fabrics as such were not exempted. It was only handloom cloth which was exempt from the liability to pay sales tax. In 1956, the Central Government, in the interest of inter-State trade or commerce, declared certain goods of special importance in the course of inter-State trade and commerce. The said goods were known as declared goods under the C.S.T. Act, 1956, which received the President's assent on 21st of December, 1956. Cotton fabrics was not included in the list of declared goods at that time. There were twofold restrictions u/s 15 of the C.S.T. Act. The first restriction was as regards the rate of tax which enjoined that the States shall not charge sales tax or purchase tax on declared goods exceeding four per cent. and the second restriction was that such tax shall not be levied at more than one stage. The result of this twofold restrictions was that the State Governments were exposed to likely loss of revenue. In order to compensate State Governments for this apprehended loss of revenue, the Additional Duties of Excise Act, 1957, was enacted and put on the statute book with effect from 24th December, 1957. The reason underlying the enactment of this Additional Duties of Excise Act is given by the Division Bench of the Gujarat High Court in Hind Engineering Company's case [1973] 31 STC 115 and the same is found in para 6 above.

The Gujarat High Court after referring to the history of the relevant amendments to the Gujarat Sales Tax Act and also to the C.S.T. Act observed in Pokardas [1982] 51 STC 88 that :

"The entry pertaining to cotton fabrics in the Schedule exempting goods from sales tax is supplemental legislative provision to the Central Sales Tax Act as well as the Excise Act and the Additional Duties of Excise Act. As a matter of fact, there is an integrated scheme evolved in connection with the goods of special importance in inter-State trade or commerce. The wholesome scheme of national integrity in the matter of commerce and trade is sought to be protected and preserved by providing against State intervention which is not always motivated by purely economic and fiscal consideration. Any attempt to divorce these well-connected provisions would have disastrous consequences, the immediate and ultimate implications of which, it is difficult to comprehend. Any attempt therefore to read the exemption provision contained in the Gujarat Act de hors the intimately connected provisions of the Excise Act and the Additional Duties of Excise Act may possibly result in rendering the exemption provisions wholly ineffective and unworkable. We are, therefore, of the opinion that since the referential legislation contained in entry 37 is supplemental to the Excise Act as well as the Additional Duties of Excise Act, the amendments made in the original incorporated provision must necessarily project and must be read as a part of the referential legislation contained in entry 37. The exception specified by the Supreme Court in The State of Madhya Pradesh Vs. M.V. Narasimhan, namely, where the subsequent Act and the previous Act are supplemental to each other,

would squarely apply to the present case, and therefore, the incorporated provisions have to be read with all the amendments made in the borrowed provisions from time to time. In that view of the matter, therefore, we must read the enlarged definition as effected by the amending Act of 1980 in the referential legislation contained in entry 37 as if the law was all along the same according to the enlarged definition with effect from 1st March, 1955, and therefore, at all the relevant times of the assessment."

This in substance brings out the real purpose of giving retrospective effect to the amendment of tariff item No. 19 in the Excise Act.

8. The scope of the referential legislation was considered by the Supreme Court in *The State of Madhya Pradesh Vs. M.V. Narasimhan*, The point that arose for consideration was whether the meaning of the word "public servant" as defined under the Prevention of Corruption Act should be tagged on to the amended definition of the same word in the Indian Penal Code. The Supreme Court in reversal of the judgment of the Madhya Pradesh High Court on that point held that the amended definition of the Indian Penal Code would be applicable to the words "public servant" as defined under the Prevention of Corruption Act. The principle laid down by the Supreme Court in that case would be equally applicable to the cases on hand before us. Those principles are :

"Where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases : (a) where the subsequent Act and the previous Act are supplemental to each other; (b) where the two Acts are in *pari materia*; (c) where the amendment in the previous Act if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

The Gujarat High Court after applying these principles came to the conclusion that having regard to the scheme of the Gujarat Sales Tax Act and the scheme of the Central Sales Tax Act and also the Excise Act and the Additional Excise Duty Act, the amended definition of the word "cotton fabrics" should be made applicable for interpreting the words as found in the relevant Schedule to the Gujarat Sales Tax Act.

9. In the light of this enunciation of law by the Gujarat High Court with which we are in respectful agreement, we are inclined to take the view that the user test adopted by the Madras High Court in [1974] 33 STC 399 (*State of Tamil Nadu v. East India Rubber Works*) which was followed by the Punjab and Haryana High Court in [1977] 40 STC 333 [*Porritts and Spencer (Asia) Ltd. v. State of Haryana*] and the decision of the Madras High Court in [1974] 34 STC 4 (*Jeewajee & Co. v. State of Tamil Nadu*) following its earlier decision in [1974] 33

STC 399 (State of Tamil Nadu v. East India Rubber Works) and also the decision of the Madhya Pradesh High Court in [1967] 19 STC 230 (Calcuttawala v. Commissioner of Sales Tax) are not applicable to the cases on hand since in all those cases the effect of the amended definition of tariff item No. 19 of the Excise Act was not gone into by those High Courts, but they addressed themselves to the facts in question based on the user theory.

10. Incidentally, we may also make a reference to the decision of the Bombay High Court in [1984] 55 STC 186 (Satyavijay Commercial Company v. Commissioner of Sales Tax, Maharashtra State) on this point. In the Bombay High Court also the amendment to tariff item No. 19 of the Excise Act was not brought to the notice of the Division Bench, which had differed earlier on the interpretation of the word "cotton fabrics" and that is the reason, by applying the user theory, the two learned Judges constituting the Division Bench of the Bombay High Court differed in their views and the same was referred to a third Judge for resolving the controversy. Chief Justice Madon, as he then was, speaking for the Court, observed that :

"Unfortunately, the discussion on the above point in both the differing judgments, so far as the present writ petition is concerned, was academic by reason of the amendment made in item No. 19 of the First Schedule to the Excise Act by the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980. By section 5 of the said Amendment Act the amendment to the said item No. 19 has been made with retrospective effect from 1st March, 1955. By the said amendment the definition of "cotton fabrics" has been substituted by the following one :

"I. Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives, or of other artificial plastic materials -

(a) cotton fabrics, not subjected to any process

(b) cotton fabrics, subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other processing or any two or more of these processes."

As the amended definition has been retrospectively inserted in the Excise Act with effect from 1st March, 1955, it is on the basis of this amended definition that the present writ petition would fall to be decided. Unfortunately the attention of the learned Judges was not drawn to this amending Act. Before considering the effect that this amended definition has on the petitioners' case, it would also be convenient to refer to certain provisions of the Act to which also unfortunately the attention of the learned Judges was not drawn, namely, clauses (17) and (26) of section 2 of the Act."

After having observed thus, the Bombay High Court proceeded to examine the meaning of the word "tarpaulin" for considering whether the said goods are

exempted from the levy of sales tax under the relevant provisions of the Bombay Sales Tax Act. The learned Chief Justice observed that :

"So far as tarpaulin is concerned, it is unnecessary to consider whether the tarpaulin sold by the petitioners is commercially a different commodity from the goods purchased by the petitioners, for in *Pokardas & Brothers v. State of Gujarat* [1982] 51 STC 88 in a very detailed and considered judgment the Gujarat High Court has taken the view that in view of the retrospectively amended definition of "cotton fabrics" in item No. 19 of the First Schedule to the Excise Act, tarpaulin sold by the assesseees in that case was cotton fabric. The goods sold by the assesseees in the Gujarat case were identical with the goods manufactured and sold by the petitioners in this case. In view of the judgment, therefore, tarpaulin, assuming even it was a commercially different commodity, would fall under entry No. 15 in Schedule A, and would also be exempt from tax."

The Bombay High Court having not given its own reasons for adopting the decision of the Gujarat High Court, we cannot say that the Bombay High Court lays down the law on this point. But, we have referred to this case to satisfy ourselves that the amendment to tariff item No. 19 of the Excise Act makes all the difference to the cases on hand and since this amendment was not considered, as there was no occasion to consider in the earlier decisions of this Court, we are not inclined to accept the submission of Sri K. Srinivasan, learned counsel for the petitioners in the S.T.R.Ps. that the point in issue is concluded by the earlier decision of the Division Bench of this Court. The very same reasoning given by the Gujarat High Court for exempting tarpaulin from sales tax under the Gujarat Act would apply to the P.V.C. rexine cloth also because that cloth comes within the meaning of the word "cotton fabrics" under the amended definition of tariff item No. 19 of the Excise Act.

11. For these reasons the finding of the authorities below that the unamended definition holds the field and not the amended definition is not correct either on principle or authority and therefore these writ petitions and the S.T.R.Ps. have to be allowed and it is ordered accordingly.

12. Though it was contended by the learned Government Pleader that the petitioners in the W.Ps. have come up against the order of clarification made by the Commissioner for Commercial Taxes, it should be noticed that the clarification rendered by the Commissioner would be binding on all the subordinate authorities u/s 3A of the K.S.T. Act. Therefore, it is unnecessary to drive the petitioners to another round of litigation before the authorities under the Central Sales Tax Act or K.S.T. Act. Therefore, the impugned clarification annexure A in all the writ petitions is quashed and it is declared that tarpaulin is cotton fabrics which enjoys the exemption under entry 8A of the Fifth Schedule to the K.S.T. Act. For the very same reasons the impugned orders in the S.T.R.Ps. are quashed and the levy in so far it related to the assessment period on P.V.C. rexine cloth stand quashed.

13. Petitions allowed.