
(1993) 04 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No's. 11988, 12058, 12059, 12070, 12616, 12617 of 1987, 23, 1593 to 1595, 1750 to 1752, 2586 to 2588, 3361, 3664 to 3666, 4035, 4075 to 4090, 4294, 4431, 4432, 5105, 5281, 5320, 5359, 5380, 6045, 6070, 6211, 9011, 9381, 9822, 9828, 9829, 98

Brown Leather Company

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 23-04-1993

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 5(3)

Tamil Nadu General Sales Tax Act, 1959 — Section 14, 15, 3, 4

Citation : (1993) 04 MAD CK 0056

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Advocate : C. Natarajan, S. Sivanandam, P. Shanmugham, K.J. Chandran, C. Venkatraman, K.S. Chandran, P. Abboy, C.R. Suthindran, R. Vijayakumar, B. Bharath Booshan, S. Nagarajan, Devanathan, R. Nandakumar, C.P. Sivamohan, C.R. Raman, S.D. Santhanakrishnan, K. Govindarajan, A. Sira Sudeen, V. Raghavachari, Azeez Basha, T.J. Anandavel, R. Venkatraman, K. Soundarajan, A. Thiagarajan, S.R. Kumaraswami, K. Jayachandran and R. Gangadharan, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Raju, J.—This batch of writ petitions involves for consideration the constitutional validity and legality of section 3 of the Tamil Nadu General Sales Tax (Third Amendment) Act (Tamil Nadu Act 31 of 1987) substituting item No. 7 and the relevant entries thereto in the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as "the State Act". Though in the majority of the cases, with certain rare exception, a declaratory relief is sought for that the impugned provisions are illegal and ultra vires article 286(3) of the Constitution of India, read with sections 14 and 15 of the Central Sales Tax, 1956, hereinafter referred to as "the Central Act", irrespective of the nature of the relief sought and even in respect of cases involving a challenge to individual

orders, so far as the gravamen as well as the sum and substance of the grounds of challenge are concerned, they are identical and almost similar. As a matter of fact, the learned counsel appearing for the various petitioners refrained from referring to any factual details relating to an individual assessee or the nature of transactions that are sought to be subjected to tax in individual cases by invoking the impugned provisions of the State Act, though in some of the affidavits we find claims having been made about the character and identity of the goods, hides and skins at raw and dressed stage.

2. To appreciate the points raised as well as to understand the changes brought about by the impugned provisions of the Act, a bird's eye view of the salient features of the scheme underlying the provisions prior to, on account of and after the impugned Act, may be usefully referred to. Even under the provisions of the Tamil Nadu General Sales Tax Act, 1939 and the Rules made thereunder the commodity "hides and skins" had been classified as "raw hides and skins" and "dressed hides and skins" and were subjected to levy alternatively in that levying tax primarily at the raw stage and resorting to levy of tax at the dressed stage only in cases where the hides and skins concerned were not subjected to tax as raw hides and skins. Volume of case law has grown on this, in the shape of both the decisions of the Supreme Court of India and this Court. That was in respect of the period up to March 31, 1959. On and from April 1, 1959, the provisions of the 1959 Act came to occupy the field and that item 7 of the Second Schedule to the State Act dealt with the levy of sales tax in respect of intra-State transactions. In the meantime came the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and the provisions of the said Act, except section 15, came into force on January 5, 1957. Section 15, however, came into force from October 1, 1958 in the form it was amended by the Central Act 31 of 1958.

3. Apart from laying down the principles for determining as to when a transaction of sale or purchase constitutes one made in the course of import or export or in the course of inter-State trade and commerce and identifying "situs" of sales for the State concerned to levy Central sales tax on such sales, the Parliament introduced section 14 making a declaration of certain classified goods to be of special importance in inter-State trade or commerce. Section 15 of the Central Act placed certain restrictions and conditions in regard to levy of sales tax by the State laws in respect of sale or purchase of declared goods. This move of the Parliament was in furtherance of the mandate contained in article 286(3) of the Constitution of India, which reads as hereunder :

Article 286(3) :

"Any law of a State shall, in so far as it imposes, or authorises the imposition of, -

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special important in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

Prior to its amendment in the year 1982, the provisions of article 286(3) read as hereunder :

"Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

4. Section 14 of the Central Act, in so far as it is relevant for the purpose of these cases, is as hereunder :

"14. Certain goods to be of special importance in inter-State trade or commerce.
- It is hereby declared that the following goods are of special importance in inter-State trade or commerce :

.....

(iii) hides and skins, whether in a raw or dressed state."

Section 15, which is relevant for considering the challenge before us, reads as follows :

"Section 15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. - Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

....."

(Provision extracted is the one which was in force in 1987).

5. In the context of the provisions contained in sections 14 and 15 of the Central Act, when the 1959 State Act came into force, the State Legislature introduced the Second Schedule to the State Act, providing for the rate as well as points of levy in respect of declared goods. Item No. 7 of the Second Schedule in so far as

it related to the levy of sales tax on hides and skins, as it was originally enacted and in force up to March 22, 1987, read as hereunder :

----- "Sl. Description
of the Point of levy Rate of Effective No. goods tax per from cent (1) (2) (3) (4)
(5) ----- Original
and present entry : 7 (a) Raw hides and skins At the point 2 1-4-1959 of last
purchase in 3 18-6-1967 the State (b) Dressed hides and At the point 1
1-4-1959 skins (which were of first sale not subjected to in the State 1 1/2
18-6-1967 tax under this Act as raw hides and 2 21-2-1978 skins) Note : 1.
Rate of tax increased on item 7(a) from 2 per cent to 3 per cent by Act 5 of
1967 with effect from June 18, 1967. 2. Rate of tax increased on item 7(b) from
1 per cent to 1 1/2 per cent with effect from June 18, 1967 by Act 5 of 1967
and from 1 1/2 per cent to 2 per cent with effect from February 21, 1978, by Act
22 of 1978." -----

After and by virtue of the impugned Amendment Act 31 of 1987, which was preceded by G.O.P. No. 291 dated March 20, 1987, item 7 of the Second Schedule and the relevant entries thereto read as hereunder :

"7(a) Raw hides and skins At the point of last purchase 2 in the State (b) Dressed hides and At the point of first sale in 2" skins the State.

For the sake of completeness of the factual narration, it may also be stated that item No. 7 of the Second Schedule was once again substituted by new entries by G.O.P. No. 390 C.T. & R.E. dated September 4, 1991, with effect from September 5, 1991, which was replaced by Tamil Nadu Act 34 of 1991. After such amendment and substitution the item read as hereunder :

"7(a) Raw hides and skins At the point of last 4 purchase in the State (b) Dressed hides and skins At the point of first 4" (Which were not subjected sale in the State. to tax under this Act as raw hides and skins)

6. Mr. C. Natarajan, learned counsel who made the leading arguments, with the other learned counsel following and adopting his submissions with some elaborations and additions, contended that :

(a) When the Parliament in furtherance of the constitutional mandate, while declaring certain goods as of special importance in inter-State trade and commerce adopted a specific and particular form or method of description of hides and skins so as to constitute it as one goods, it is not open to the State Legislature to adopt a different description by bifurcating the item of goods into more than one for purposes of levy under the State Act and thereby rob the object or the benefit arising out of the declaration by the Parliament;

(b) The powers of the State Legislature to levy sales tax even on the intra-State sales is subject to the two-fold restrictions imposed in section 15 of the Central Act, viz., that the rate shall not exceed the one stipulated therein and such tax shall not be levied at more than one stage, and consequently, the impugned

provisions violate the said mandate contained in the Constitution of India and the Central Act and, therefore, are liable to be struck down as ultra vires, unconstitutional and violative of sections 14 and 15 of the Central Act. While further elaborating the above referred to contentions the learned counsel submitted that the description of the item as found in section 14(iii) of the Central Act has a special qualitative content, that the description of the various items of goods in section 14 of the Central Act adopts its own terminology and carries special connotation and content and that the State Legislature cannot distort the same by adopting a different methodology or terminology to the detriment of the very aim and object of the Central Act as well as the interests of the dealers in hides and skins. So far as the other ground of challenge is concerned, the learned counsel submitted that for the purposes of considering, applying and enforcing the restrictions u/s 15 of the Central Act, it is immaterial whether the goods declared by the Parliament as one goods u/s 14(iii) and under one item are dealt with in the same form or after further processing or change of form and that at any rate for the purpose of section 14(iii) hides and skins have to be treated as one and the same goods irrespective of the state or stage or condition in which they are dealt with by the assessee concerned.

7. Mr. K. J. Chandran, learned counsel appearing for some of the writ petitioners, while adopting the submissions of Mr. Natarajan, reiterated the same by referring to some of the earlier decisions of this Court. Mr. Azeez Basha, learned counsel also adopted the same course and contended that the decision of the Supreme Court in Guruviah Naidu's case [1976] 38 STC 565 really does not support the stand taken for the respondents. Mr. R. Gangadharan, learned counsel, also adopted the submissions of the other learned counsel and contended that the entry 7 of the Second Schedule to the State Act, as substituted by the impugned Act 31 of 1987 runs counter to the provisions of article 286(3) of the Constitution of India and sections 14 and 15 of the Central Act and that by the impugned provisions of the Act, the object to the Parliament in fixing a ceiling limit on the rate of tax to be levied by the States itself stood defeated. It was also contended that the impact of the impugned provisions puts the dealers in hides and skins to serious difficulties on account to the escalation in the cost of hides and skins, which serve as raw materials for other industries. Mr. Sivanandam, on of the learned counsel appearing while adopting the submissions of the other learned counsel, submitted that once the State levied tax on hides and skins at the raw stage, it ceased to have any further power or authority to levy tax again on the dressed hides and skins also which were earlier subjected to tax at the raw stage.

8. Mr. Chitra Venkataraman, learned Additional Government Pleader, countered the various claims of the learned counsel for the petitioners by inviting our attention to the counter-affidavits filed in some of the writ petitions and contended that the impugned provisions do not suffer any of the infirmities alleged by the petitioners and are constitutionally valid and quite in accordance with law. The learned Additional Government Pleader contended that the State is entitled to add to, alter or amend and substitute the entries in the Schedule to

the State Act, to increase the rate of tax or reduce them or alter the point or stage of levy from time to time and the fact that at a particular point of time the rates or points and stage of levy was in a particular manner does not deprive the rights of the State Legislature to provide appropriately or suitably in accordance with the exigencies and need of the situation, as decided by the State. While placing reliance on some of the decisions of this Court and the Supreme Court of India, it was contended that raw hides and skins and dressed hides and skins are distinct and dissimilar commodities and in commercial parlance they are always viewed, treated and dealt with as different commercial commodities and the impugned provisions do not offend any constitutional mandate or provisions of the Central Act and that the plea of double taxation or hardship has no basis or meaning in law. It is also submitted for the State that there is nothing in the object or the description of the goods in section 14(iii) or section 15 of the Central Act, which has the consequence of denying or depriving the power of the State Legislature to treat the raw hides and skins and dressed hides and skins as two different or distinct commodities and subject them to levy separately, though not alternatively. The claim for the respondent is that the language used in section 14(iii) and section 15 squarely fortify the stand of the Revenue and the mere fact that during certain periods the levy was in the alternative is no pointer to the fact that State cannot do it otherwise.

9. Before we actually deal with the various contentions raised by the learned counsel appearing on either side, we may usefully refer to the several decisions of courts placed before us for our consideration in support of the rival and respective submissions made on behalf of the parties appearing before us. The facts stated supra would disclose that the controversy or the dispute raised is only with reference to the amendments and changes brought about by the orders of the Government in G.O.P. No. 291, C.T. & R.E. dated March 20, 1987 and the Tamil Nadu General Sales Tax (Third Amendment) Act, 1987, which held the field and was in force only during the period between March 23, 1987 and September 4, 1991. The challenges before us in these writ petitions are confined to the levy during the said period and that too in respect of subjecting to levy of sales tax dressed hides and skins, which were subjected to tax earlier at the raw stage as raw hides and skins.

10. The decision in *Firm A. T. B. Mehtab Majid & Co. v. State of Madras* [1963] 14 STC 355 is that of a Constitution Bench of the Supreme Court dealing with the constitutional validity of the provisions of rule 16(2) of the then Madras General Sales Tax (Turnover and Assessment) Rules, 1939, as substituted with effect from April 1, 1955, which related to the Levy of tax on the tanned hides or skins. The Supreme Court sustained the grievance of the assessee before the court in view of the amount of tax levied being different on account of the existence of a substantial disparity in the price of raw hides or skins and those hides or skins after they had been dressed or tanned notwithstanding the fact that the rate of tax is the same under the charging section. The discrimination that has been noticed was that if the dealer has purchased the raw hides or skins in the trade,

he does not pay on the sale price of tanned hides or skins, but merely pays on the purchase price only and if the dealer purchased raw hides and skins from outside the State and tans them within the State, he becomes liable to pay sales tax on the increased value representing the sale of the tanned hides or skins.

11. In *Hajee Abdul Shukoor and Co. v. State of Madras* [1964] 15 STC 719 another Constitution Bench of the Supreme Court considered the issue in the context of a challenge to the then Madras General Sales Tax (Special Provisions) Act, 1963, which was enacted to fill in the vacuum created on account of the earlier decision in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, referred to supra. While holding that the provisions of Tamil Nadu Act 11 of 1963 are discriminatory on account of the fact that the rate of tax on the sale of tanned hides and skins was considered to be higher than that on the sale of untanned hides and skins, the court held as follows :

"The fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing.

In this connection we may refer to the Madras General Sales Tax Act, 1959. Section 4 of this Act provides that the sales tax on the sale or purchase of declared goods will be payable at the rate and only at the point specified against each article in the Second Schedule.

The Second Schedule refers to raw hides and skins separately from dressed hides and skins against serial No. 7. The rate of tax is different and so is the point at which the tax is to be levied. This will indicate that in 1959 the Legislature in Madras considered raw hides and skins a different commodity from dressed hides and skins. There is no good reason why the Legislature be not attributed the same intention when it enacted the 1939 Act especially when there are other reasons also to point to the same conclusion.

We therefore hold that raw hides and skins and dressed hides and skins constitute different commodities or merchandise and they could therefore be treated as different goods for the purposes of the Act.

.....

The series of sale referred to in this provision, to our mind, meant the series of sales of each kind of hides and skins, namely, the series of sales of raw hides and skins and the series of sales of dressed hides and skins and do not mean a single series of sales which includes successive sales in the first instance of raw hides and skins and after tanning successive sales of tanned hides and skins.

The real question is whether these provisions treat raw hides and skins and dressed or tanned hides and skins as one class of goods for the purpose of taxation or as two different classes of goods. If they treat them as one class of goods, the contention for the petitioner loses force as taxing of hides and skins

at the time of their sale in a raw condition meets the requirements of law as hides and skins could be taxed only at a single point. If the dressed or tanned hides and skins are not taxed at the time of their sale that does not offend against the statutory provisions. No question of discrimination arises as a sale of raw hides and skins of whatever origin, i.e., whether produced in the State or imported into the State would be equally liable to the levy of tax.

If the statute treats both these kinds of hides and skins as different commodities the provision of sub-rule (1) of rule 16 providing for the levy of tax on raw hides and skins at a certain point even in the absence of any provision for the taxation of dressed hides and skins cannot be said to be discriminatory and invalid. The articles to be taxed were not the same and the Legislature could provide differently about their taxation."

12. In *Anwaraula AM. Ghouse and Company v. State of Tamil Nadu* [1971] 28 STC 610 a Division Bench of this Court had to consider the issue as to whether raw and dressed hides and skins constituted different commodities and expressed the view that even from the stand point of declared goods, hides and skins, whether in a raw or dressed stage can suffer tax only at one stage. It was also held that the two commodities are distinct and different. Even viewed as declared goods, it cannot be said that there is any discrimination as inhabited by article 304(a) of the Constitution on account of the restriction on the local Legislature forged by section 14 of the Central Act. The court also held as hereunder :

"As a result of the import of this restriction on the State Legislature, where it provides for levy of tax at the point of the last purchase of raw hides and skins, it is not competent to impose a further tax on the first sale of dressed hides and skins made out of raw hides and skins which had suffered tax earlier. But for this restriction, the single point levy on declared goods could not be effectuated. We are of opinion, therefore, that, while the State would perhaps very much wish to levy tax on the dressed hides and skins as well, it was unable to do so because of the restriction forged upon it by the terms of section 15(a) of the Central Act. If this resulted in a discrimination, as has been contended for the petitioners, it is not one which is made by the State Legislature, and it is not one which the State Legislature can help. It is the indirect result of the impact of section 15 read with section 14 of the Central Act on the State's power to tax sale or purchase of declared goods."

13. In *Guruviah Naidu and Sons v. State of Tamil Nadu* [1976] 38 STC 565, the Supreme Court was once again concerned with the plea of discrimination vis-a-vis a challenge to the validity of item 7 of the Second Schedule to the State Act. In repelling the plea of the assesseees and affirming the decision of this Court in [1971] 28 STC 610 (*Anwaraula AM. Ghouse and Company v. State of Tamil Nadu*) referred to supra, the court held as hereunder :

"The question as to when the levy of tax would constitute discrimination would

depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale of which it is levied. The scheme of items 7(a) and 7(b) of the Second Schedule to the State Act is that in the case of raw hides and skins which are purchased locally in the State, the levy of tax would be at the rate of 3 per cent at the point of last purchase in the State. When those locally purchased raw hides and skins are tanned and are sold locally as dressed hides and skins, no levy would be made on such sales as those hides and skins have already been subjected to local tax at the rate of 3 per cent when they were purchased in raw form. As against that, in the case of hides and skins which have been imported from other States in raw form and are thereafter tanned and then sold inside the State as dressed hides and skins, the levy of tax is at the rate of 1 1/2 per cent at the point of first sale in the State of the dressed hides and skins. This levy cannot be considered to be discriminatory as it takes into account the higher price of dressed hides and skins compared to the price of raw hides and skins. It also further takes note of the fact that no tax under the State Act has been paid in respect of those hides and skins. The Legislature, it seems, calculated the price of hides and skins in dressed condition to be doubled the price of such hides and skins in raw state. To obviate and prevent any discrimination or differential treatment in the matter of levy of tax, the Legislature therefore prescribed a rate of tax for sale of dressed hides and skins which was half of that levied under item 7(a) in respect of raw hides and skins.

Lastly it has been argued that dressed hides and skins are a commodity distinct and separate from raw hides and skins and that item 7(b) of the Second Schedule makes a discrimination between the sales of locally processed dressed hides and skins and those imported from other States. In this respect, we find that it is not the case of the appellants that they import dressed hides and skins from other States and sell them as such in Tamil Nadu. On the contrary, the case of the appellants is that what they import from other States are only raw hides and skins which are thereafter tanned and sold as dressed hides and skins. In the circumstances, it is not clear as to what grievance the appellants can have on the score that there is discrimination between imported dressed hides and skins and the dressed hides and skins produced and manufactured within the State.

Apart from that it seems to us that even though dressed hides and skins have been treated as separate commodity, there is a clear nexus between hides and skins in raw form and those in dressed form. So far as the Central Act is concerned, both the raw as well as the dressed hides and skins are specified together in clause (iii) of section 14. It has to be borne in mind that it is raw hides and skins which after being subjected to processing or tanning take the shape of dressed hides and skins. Dressed hides and skins cannot, therefore, be considered in isolation and we find no infirmity in a legislative provision which while levying tax on the sale of dressed hides and skins takes into account the levy of tax in respect of the purchase of raw hides and skins.

14. In *Gordon Woodroffe & Co. (Madras) P. Ltd. v. State of Tamil Nadu* [1977] 40

STC 130 a Division Bench of this Court while construing item 7 of the Second Schedule in the State Act with reference to the provisions in the Central Act, has held as follows :

"We are of the opinion that this claim of the petitioner was not tenable and was rightly rejected by the Tribunal. It is clear that the notification issued by the Governor of Tamil Nadu contemplates the identity of the goods with reference to which tax has been levied under the State Act and tax is payable under the Central Sales Tax Act. It is not in dispute that commercially raw hides and skins are different from tanned hides and skins. Even though both of them have been grouped together as item (iii) of section 14 of the Central Sales Tax Act, they have been put in two separate entries as 7(a) and 7(b) in the Second Schedule of the Tamil Nadu General Sales Tax Act, 1959, and the rate of tax as well as the point at which the tax is leviable have been shown separately. Therefore, simply because the petitioner purchased raw hides and skins locally and with reference to such purchase it paid tax under item 7(a) of the Second Schedule of the State Act and subsequently tanned them, it does not follow that the tanned hides and skins which the petitioner sold in the course of inter-State trade were the same commodities with reference to which tax had already been paid. The notification issued by the Governor makes it clear that the goods with reference to which the levy of tax under the State Act and under the Central Act are contemplated must be identical. Once it is conceded that the raw hides and skins are commercially different from tanned hides and skins, it automatically follows that the tanned hides and skins which alone are the subject-matter of inter-State sales are not liable to any tax under item 7(b) of the Second Schedule under the State Act, since the raw hides and skins which were tanned had suffered tax under item 7(a) of the Second Schedule to the State Act and, therefore, will not come within the scope of the notification."

15. In *Muzamil Leathers v. State of Tamil Nadu* [1981] 48 STC 166 a Division Bench of this Court again held that the hides and skins, whether in raw or in dressed stage, are two commodities, distinct and different from each other and that there was no discrimination resulting from the scheme of item 7 of the Second Schedule, read with sections 14 and 15 of the Central Act. In *K. A. K. Anwar and Company v. State of Tamil Nadu* [1984] 56 STC 58, another Division Bench of this Court has held that merely because both raw hides and skins and tanned hides and skins have been grouped as one item in section 14(iii) of the Central Act, it is not possible to say that for the purpose of the Central Act, they should be taken to be commercially the same commodity. The Division Bench observed as hereunder :

"Apart from the reason given in the said decision, there is another reason as to why the grouping of raw hides and skins and tanned hides and skins as one item in section 14(iii) cannot be taken to show the intention of the Legislature to treat both the commodities as commercially one commodity. Section 15 of the Central Sales Tax Act imposes certain restrictions and conditions in regard to tax on sale

or purchase of declared goods within a State. Clause (b) of section 15 says that where a tax has been levied under the local law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under the Central Act in respect of the sale of goods the tax levied under the local law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State. In this case, the local law, that is, the Tamil Nadu General Sales Tax Act makes a clear-cut distinction between raw hides and skins and dressed hides and skins, and raw hides and skins are treated commercially as a different commodity from tanned hides and skins. Item 7(a) of the Second Schedule provides that raw hides and skins are taxable at the point of last purchase in the State at three per cent. Under item 7(b) of the Second Schedule, dressed hides and skins which were not subject to tax under this Act as raw hides and skins are taxable at the point of first sale in the State at two per cent. Thus, under the local law, the point at which and the rate at which the tax is to be levied are entirely different for raw hides and skins and for dressed hides and skins. A close reading of section 15(b) would indicate that the relief under the provision can be claimed only when there is complete identity between the goods which were sold locally and the goods sold inter-State. Therefore, merely because both raw hides and skins and tanned hides and skins had been grouped as one item in section 14(iii) of the Central Act, it is not possible to say that for the purpose of the Central Sales Tax Act, they should be taken to be commercially the same commodity."

16. In *Mahi Traders v. State of Tamil Nadu* [1980] 45 STC 327, a Division Bench of this Court had an occasion to consider the question as to whether leather splits and coloured skins will come within the scope of the expression "hides and skins", whether in a raw or dressed state u/s 14(iii) of the Central Act, and therefore would be liable to only single point levy in terms of section 15 of the Central Act. The Division Bench held that for the purpose of applying section 14(iii) of the Central Act, it is not necessary to find out whether the resultant product is commercially different or not and the only thing necessary to find out is whether it comes within the expression "hides and skins", whether in a raw or dressed state or not. The expression used in section 14(iii) of the Central Act was held to have wide connotation. It may be noticed even at this stage that this decision had no occasion to directly consider an issue of the nature before us as to whether raw or dressed hides and skins constitute two different commodities commercially. This decision was taken on appeal to the Supreme Court and the same was confirmed in the decision in *State of Tamil Nadu v. Mahi Traders* [1989] 73 STC 228. The court in the said decision accepted the claim of the assessee therein that what was purchased as well as what was sold was tanned hides and skins only.

17. In *Azeezur Rahman and Company v. State of Tamil Nadu* [1991] 82 STC 355, a Division Bench of this Court, to which one of us (Raju, J.) was a party,

considered the question of the identity of goods, with particular reference to section 5(3) of the Central Act. In paragraph 16 of the said decision, on which strong reliance has been placed for the petitioners, it has been opined as hereunder :

"For the purpose of determining the entitlement of an assessee to the benefit of section 5(3) of the Central Sales Tax Act as far as the declared goods are concerned, the context and setting as well as the description of the commodity also becomes vitally relevant. Having regard to the wording of section 14(iii) of the Central Act, raw hides and skins and dressed hides and skins are to be treated as one and the same. The fact that raw hides and skins are subjected to certain process of preservation does not render them any the less hides and skins. In our view, the description of the entry as contained in section 14(iii) of the Central Act has reference and relates to "hides and skins" and the specification of the goods as "hides and skins" constitutes the genus and the further description following the same, i.e., "whether the raw or dressed state" not only is inclusive in nature, but is meant to be comprehensive enough to include all its species or products emerging from hides and skins until the process of dressing or finishing is done. The entry as it is found in section 14(iii), in a sense, indicates the legislative intent and in our view constitutes legislative recognition of the fact of the position that simply because manufacturing process of preservative nature is undergone by raw hides a different goods do not necessarily emerge. Such a construction will also be an inevitable consequence of the purpose and object of section 14(iii) and section 15 of the Central Act and consequently for purposes of determining a claim vis-a-vis section 5(3) of the Central Act, the fact that they are commercially treated as distinct commodities or that entry 7 of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, deals with them as two different and distinct commodities becomes wholly irrelevant. Thus, raw hides and skins and dressed hides and skins are merely the nomenclature used to identify and indicate the different condition or stages of processing of the one and the same commodity, namely, "hides and skins". If even during or at either of these stages also the commodity continues to be "hides and skins" only, the criteria of "those goods" as found in section 5(3) of the Central Act must be held to have been satisfied. We are, therefore, of the view that the order of the Tribunal cannot be sustained and consequently the same is set aside in so far as the claim pertaining to exemption claimed u/s 5(3) of the Central Act is concerned."

18. In *Bawar Prime Tannery v. Joint Commissioner* [1992] 87 STC 407, while following the decision in *Azeezur Rahman & Co. v. State of Tamil Nadu* [1991] 82 STC 355 and *State of Tamil Nadu Vs. Mahi Traders and Others*, a Division Bench of this Court observed that simply because manufacturing process of preservative nature is undergone by raw hides different goods cannot be said to necessarily emerge and the question as to whether and to what extent the essential prerequisites stipulated in section 5(3) of the Central Act had been fulfilled by the turnover and the transactions in question requires proper

verification with reference to the relevant records and further details by the statutory authorities under the Act.

19. In *Gordon Woodroffe & Company (Madras) Private Limited v. State of Tamil Nadu* [1979] 44 STC 485 a Division Bench of this Court applied the ratio of the decision in [1977] 40 STC 130 [*Gordon Woodroffe & Co. (Madras) Pvt. Ltd. v. State of Tamil Nadu*], referred to supra. In *Bava Prima Tannery v. State of Tamil Nadu* [1981] 47 STC 7 a Division Bench of this Court, opined that the decision in *L. M. S. Sadak Thamby & Co. v. Appellate Assistant Commissioner of Commercial Taxes* [1969] 24 STC 468 must be deemed to have been overruled by the decision of the Supreme Court in *Guruviah Naidu and Sons v. State of Tamil Nadu* [1976] 38 STC 565. The Division Bench also held that the decision of the Supreme Court in [1976] 38 STC 565 (*Guruviah Naidu and Sons v. State of Tamil Nadu*) constituted a complete code on the scope of entries 7(a) and 7(b) of the Second Schedule to the Act. The decision in *State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others*, dealt with a claim for deduction in respect of the goods on which purchase tax was paid by a dealer. The claim was in respect of sale of cotton seeds obtained after ginning unginced cotton over which the purchase tax has been earlier paid. The Supreme Court held that though the cotton in an unginced state contained cotton seeds, the cotton and the seeds were separated by the manufacturing process of ginning and the seeds so separated could not be said to be cotton itself or part of the cotton and consequently the assessee was not entitled to deduct the sale price of cotton seeds from the purchase turnover.

20. The decision in *Adam v. State of Madras* [1973] 31 STC 349 is that of a Division Bench of this Court dealing with the levy of reptile skins and their liability under the State Act in respect of inter-State sales. The Division Bench held that the purchases of reptile skins would fall under item 7(a) of the Second Schedule to the State Act and not under item 52 of the First Schedule even prior to the deletion of the said item by the Tamil Nadu Act 7 of 1965. The said view was expressed on the basis that any levy in respect of hides and skins could be subjected to only a single point of levy at a rate not exceeding the rate fixed u/s 15(a) of the Central Act and that reptile skins which answer the description of hides and skins as contained in section 14(iii) of the Central Act cannot be subjected to tax in contravention of section 15 of the Central Act.

21. The decision in *Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others*, considered the liability of a dealer in groundnut or groundnut kernel under the provisions of the Andhra Pradesh General Sales Tax Act, 1957. The assessees therein were millers and they purchased groundnut which they used either entirely for extracting oil in their mills or partly used for such extraction of oil and partly sold the groundnut to others. The levy with which the court was concerned in the case is of the purchase tax and the question which arose was which were the events that gave rise to tax liability, viz., first purchase or the last purchase. In

that context, the Supreme Court expressed the view that having regard to the point of taxation involved for consideration in the said case and the stipulation contained in sections 14 and 15 of the Central Act, the purchase of groundnut can be taxed only at one stage and once a particular quantity of groundnut has been subjected to payment of tax, the State's power to tax in respect of those goods gets exhausted and any further dealing in those goods cannot be brought to tax.

22. In *Khardah Company Ltd. v. Commercial Tax Officer* [1976] 37 STC 382 a learned single Judge of the Calcutta High Court held that the word "stage" occurring in section 15 of the Central Act meant the point of taxation and does not refer to the different steps in the production of the declared goods. The observations of the learned Judge are worth noticing in the context of the issue before us.

"The "stage" in section 15 refers to the stages of successive sales and purchases. In my view, the word "stage" in section 15 means that tax on internal sale of declared goods should be single point and not multi-point, and the said expression is not at all referable to stages which raw materials may undergo resulting in the manufacture of different commercial commodities. The prohibition in section 15 is against imposition of sales tax on internal sale of the same commodity which is declared as goods of special importance. In this case, the averments made in the petition and the affidavit-in-reply on behalf of the petitioner themselves show that the goods manufactured in the petitioner's mill out of jute fibre are different commodities having special traits and attributes not possessed by raw jute. Such attributes and traits are imparted to raw jute so as to produce a new commodity or material."

23. In *State of Madras v. Narayanaswami Naidu* [1965] 16 STC 29 a Division Bench of this Court while considering the claim in respect of a single point levy with reference to cotton, adverted to section 15 of the Central Act and opined that in respect of declared goods, the State law shall make provision for levy of sales tax only at one stage and explained the position that the stage indicated must refer to a succession of sales to which a commodity will be subjected to in the normal course of trade or commerce. In *State of Andhra Pradesh v. Mohd. Basheer & Company* [1989] 72 STC 185 a Division Bench of the Andhra Pradesh High Court considered the question of identity of goods in the context of section 5(3) of the Central Act and expressed the view that merely because a particular goods is treated as different commodity for the purpose of the State Act, it does not necessarily follow that for the purpose of the Central Act also, they should be treated as different goods and that in determining whether the goods purchased and goods exported are the same goods or not for the purpose of section 5(3) of the Central Act, the context and setting of the relevant description of the commodity in section 14 alone is relevant and thus viewed, hides and skins, whether they are in raw state or in the dressed state, must be understood as the same goods in the light of the entry in section 14(iii) of the Central Act. In *Farida*

Prime Tannery v. State of Karnataka [1992] 84 STC 133 a Division Bench of the Karnataka High Court held that the words "whether in a raw or dressed state", following the words "hides and skins" are only descriptive of the condition in which they may be found and so far as the Central Act is concerned, hides and skins whether in raw or dressed state, are the same goods even though the raw hides and skins undergo process of preservation and utilisation, resulting in dressed hides and skins.

24. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the several pronouncements of this Court, as well as the Supreme Court of India. In our view, the submissions on behalf of the petitioners proceed upon several fallacies of reasoning and baseless and unwarranted assumptions, merely taking advantage of the language used in some of the decisions, giving a go-bye to the sequence, circumstances and the context in which such observations came to be made by the courts. Often the Supreme Court of India has emphasized the manner in which the ratio of a decision has to be ascertained and the extent to which observations in a given case can be relied upon in other cases. The dicta of the Constitution Bench of the Supreme Court in one such case is found expressed in Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, in the following terms :

"Moreover, it must be remembered that when we are considering the observations of a high judicial authority like this Court, the greatest possible care must be taken to relate the observations of a Judge to the precise issues before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards, the case in hand."

A decision ordinarily is a decision on the case before the court while the principle underlying the decision would be binding as a precedent in a case coming for decision subsequently. While applying a decision to a later case the true principle laid down should be carefully examined since a decision often takes its colour from the questions involved in the case in which it is rendered.

As rightly contended for the respondent/State, it would be farfetched to plead that the undressed hides and skins and dressed hides and skins are one and the same commodity. The earlier decisions of the courts referred to supra as well as the actual position prevailing in the trade circles and commercial parlance would go to show that the dressed hides and skins are not only distinct and separate in their identity as well as merchantability, but has escalated value and price, in that the dressed hides and skins are invariably of double the value than the undressed hides and skins. Therefore, commercially and commodity-wise the undressed and dressed hides and skins constitute different commodities or

merchandise and consequently could be treated normally as different goods. The observations of the Supreme Court and this Court in the decisions reported in *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, *V. Guruviah Naidu and Sons and Others Vs. State of Tamil Nadu and Others*, and *Anwaraula AM. Ghouse & Co.*'s case [1971] 28 STC 610 are more than sufficient to sustain the claim of the respondent/State in this regard and there is absolutely no need or scope for any re-thinking on this aspect. In our view, such course is also not permissible in law, before us.

25. The question, therefore, that requires to be considered is as to whether in the context and setting of section 14(iii) and section 15 of the Central Act, the State Legislature is entitled to treat them as different objects of levy of sales tax and whether such levy is violative of article 286(3) of the Constitution and sections 14 and 15 of the Central Act. The submission of the learned counsel appearing for the petitioners is that when the Parliament has legislated upon pursuant to the mandate under article 286(3) and described and declared hides and skins in section 14(iii) as "hides and skins, whether in a raw or dressed state", it is not given to the State Legislature in the teeth of the restrictions contained in section 15(a) of the Central Act to either bifurcate or describe the same in a different manner so as to treat them and deal with undressed and dressed hides and skins as two distinct and separate commodities for purposes of levy of sales tax under the State law. This issue may be dealt with at the inception from the angle of section 14(iii) of the Central Act. On a careful consideration of the scope and scheme underlying section 14 of the Central Act as well as the pattern of description of the various goods adopted therein, we are of the view that there is nothing in the said provision itself, which per se supports the claim of the petitioners. No doubt, in respect of some of the goods declared to be of special importance, certain items have been also enumerated as falling under the main class or item of goods. But, the mere absence of such enumeration or specification separately of raw hides or dressed hides as different goods or the fact that the description in section 14(iii) is placed in a single category, by itself does not vouchsafe either logically or legally a claim that there is no scope for treating the raw and dressed hides and skins as different commodities even though there is no contravention of any of the restrictions in section 15(a) of the Central Act. The fact that certain articles are mentioned under the same heading in a statute or in the Constitution, does not mean that they all constitute one commodity and the inclusion of several articles under the same heading may be for reasons other than that the articles constitute one and the same thing. Therefore, inasmuch as dressed hides and skins are commercially different from raw hides and skins by the mere fact that they are grouped together in one and the same item u/s 14(iii) cannot make or render them to be the same commodity for all purposes and under all circumstances.

26. The said conclusion of ours is also fortified by the fact that wherever the Parliament resolved to give such protection in respect of such resultant goods or different commodities, which manifest themselves during the course of

manufacture or treatment of the basic goods, the same was specifically provided for as in the case covered by section 15(d) of the Central Act. The fact that there was no specific stipulation treating hides and skins, whether in a raw or dressed state as a single commodity inevitably demonstrates that there is at any rate no restriction whatsoever upon the State Legislature if it so chooses treating them to be two distinct and different goods, particularly when commercially they were, as a matter of fact, and always considered to be and sold as two distinct articles of merchandise with different and separate identity and character as well as price or value.

27. The further aspect to be considered is as to what are the nature of restrictions visualised u/s 15 and particularly section 15(a) of the Central Act and to what extent those restrictions could be said to stand in the way of the State Legislature or preclude the State Legislature from treating or describing the commodity described u/s 14(iii) in a different manner or bifurcate and treat raw or dressed hides and skins as two commercially different or separate and distinct commodities for the purpose of levying sales tax under the State Act and according the benefit of single point levy. The learned counsel for the petitioners submitted that the declaration as well as the restrictions in section 15(a) of the Central Act are absolute and not conditional on the goods being commercially identical or same. Per contra, the learned Additional Government Pleader would contend that there is no such prohibition or restriction as contended for the petitioners and that so long as the goods are really two different commodities, commercially and identity-wise, the State Legislature had every right and is not precluded from treating them as two or distinct goods for purposes of levy of sales tax under the State Act. No doubt, the provisions of article 286(3) of the Constitution, mandates that in so far as the imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance is concerned the sales tax law of a State shall be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify. But the law made by the Parliament in the form of sections 14 and 15 contain the declaration and only certain specific restrictions. Section 15(a) is only to the effect that every sales tax law of a State in so far as it relates to the imposition of tax on the sale or purchase of declared goods would be subject to two limitations, namely, (i) that the tax payable under such law in respect of sale or purchase of goods inside the State shall not exceed four per cent (as on the date of the impugned State law) of the sale or purchase price of such declared goods, and (ii) such tax shall not be levied at more than one stage. Consequently, the provisions of section 15(a) merely ensures that in the case of declared goods, such goods shall in all circumstances bear only a single burden at a specified stage and at the stipulated rate and for that purpose inhibits States from enacting a law imposing on the sale or purchase price of the declared goods inside the State at a rate higher than the one prescribed in section 15(a) and levying such tax at more than one stage. The Supreme Court had an occasion to consider the question as to what will be the effect of a State

law prescribing a rate of tax higher than the one specified in section 15(a) and opined that it was not the intention of clause (3) of article 286 of the Constitution of India to destroy all charging sections in the Sales Tax Acts of the States which run counter to the stipulation in section 15(a) of the Central Act, but to modify them and that the State laws shall be construed to be not only subject to the restrictions and conditions contained in the law made by Parliament, but would stand pro tanto modified.

28. The restriction regarding the rate of tax stipulated in section 15(a) does not pose any problem in its construction. The real problem is in understanding the scope of the injunction expressed in section 15(a) of the Central Act that the tax under the State law shall not be levied at more than one stage. The prohibition u/s 15 is only on the levy of tax under a State law after such goods have suffered tax once earlier and not on the levy of Central sales tax after the goods had suffered tax under the local or State sales tax law. This fact is amply made clear from the stipulation contained in section 15(b), which only provides for the reimbursement of the tax paid under the State law on being shown or substantiated that such declared goods which suffered the tax under the State law were sold in the course of inter-State trade or commerce and tax has also been paid under the Central Act in respect of sale of such goods in the course of inter-State trade and commerce. Inasmuch as we have come to the conclusion that raw and dressed hides and skins are factually and commercially two different and distinct commodities and there is nothing in section 14(iii) itself which envisages or obliges the State Legislature to treat them as single or a common commodity for purpose, of levy of sales tax on sales or purchases inside the State under the State law, it requires to be considered only whether the provision of section 15(a) contains such a restriction.

29. Apart from the restrictions on the rate of tax as such, the only other restriction is that such tax under the State law shall not be levied at more than "one stage". The fallacy, in our view, underlying the submissions for the petitioners is the assumption made that the expression "stage" has relevance to the stage of the goods. There is no warrant or justification whatsoever for such an assumption. The decisions referred to supra would themselves show that the "stage" specified is referable to the point of levy and meant to identify the taxable point in a series of sales of the very goods and not different goods. The stage, in our view, merely refers to the stage of successive sales or purchases of the same commodity and not to stages which the raw materials or a particular goods may undergo, resulting in the emergence of a different or a distinct commodity from out of the originally purchased declared goods. The decision of the Supreme Court in [1967] 20 STC 430 (*Devi Dass Gopal Krishnan v. State of Punjab*) would belie any claim to the contra of the nature made for the petitioners. Where the goods purchased and the goods sold are not identical ones, but commercially differed bearing distinct identity also, it cannot be legitimately contended whenever at a sale point the resultant commodity after manufacturing or other process which constituted commercially a different

commodity or goods are taxed, that the goods are taxed at two stages in violation of the stipulation in section 15(a) of the Central Act. If after a purchase of certain declared goods on payment of tax, a new or distinct commercial commodity is manufactured or bought into existence by applying some process, it cannot be contended pressing into service the mandate in section 15(a) that such different commercial product cannot be subjected to tax merely because the substance or raw material of which it has been made has been subject to tax when it was in different form or dealt with as different commodity.

30. The reliance placed by the learned counsel for the petitioners on some of the decisions of this Court would have no relevance at all for the cases before us for the simple reason that the issues under consideration in those cases were not of the same type and manner in which they have been now raised before us. In some of the said cases the issue did not concern the difference between the dressed or raw hides or skins, but merely turned with reference to the same class of goods as in *Mahi Traders* cases [1980] 45 STC 327. The decision concerning reptile skins proceeded altogether on different basis as to whether they can be treated as hides and skins falling under entry 7 of the Second Schedule to the State Act or section 14(iii) of the Central Act or item No. 52 of the First Schedule to the State Act. The decision in *Azeezur Rahman & Co.*'s case [1991] 82 STC 355 authored by me on behalf of the Division Bench of this Court, presided over by Dr. Justice A. S. Anand, the then learned Chief Justice, has no relevance to the case on hand. That decision was rendered on the peculiar facts of the case and in the context of the claims made u/s 5(3) of the Central Act and the scope as well as the content of section 5(3) of the Central Act. The observations in paragraph 16 of the said judgment have to be considered and viewed in the context of the views expressed in paragraphs 12 to 15 of the same decision. The conclusions rendered in paragraph 16 of the decision of the Division Bench, are not based upon the etymological consideration of the words hides and skins whether in a raw or dressed state or with reference to the legislative competency of the State Legislature to treat raw or dressed hides and skins as two different commodities for levy of sales tax under the State Act or from the angle of restrictions or extent of restrictions imposed u/s 15(a) on the powers of the State Legislature in the matter of levy of sales tax on inside sales of such declared goods. To quote and bluntly rely upon some of the observations of the Division Bench therein, de hors the context and considerations involved therein would amount to doing violence not only to the language but also to the ratio of the decision itself. Therefore we are not persuaded to agree with the claims made for the petitioners. Consequently the provisions of the impugned Act as well as the Government order under challenge do not suffer from the vice of contravention of article 286(3) of the Constitution of India or sections 14 and 15 of the Central Act, 1956.

31. A hue and cry has also been made on the impact of the levy upon the trade concerned and the fact that the State itself had reverted back to its old method of subjecting the raw and dressed hides and skins in the alternate points in 1991

onwards. We are afraid that such considerations could be allowed to influence our consideration of the constitutional and legal issues raised before us. It is for the Legislature, normally, to choose objects of taxation, rates of taxation and mode or method of taxation for raising revenue from time to time and the fact that at a particular point of time, an equitable method of levy from, the point of an assessee was being adopted is no bar for the State to adopt even on harsh method, so long as the same satisfy the constitutional limits and conform to the other requirements of law. Having regard to our conclusion that the impugned provisions do not violate article 286(3) of the Constitution of India or sections 14 and 15 of the Central Sales Tax Act, there is no scope for us to interfere in these matters, at the instance of the petitioners. These writ petitions, therefore, fail and shall stand dismissed. But in the circumstances of the case, there shall be no order as to costs.

32. Writ petitions dismissed.