
(1977) 03 BOM CK 0004
In the Bombay High Court
Case No : S.T.R. No's. 25 to 27 of 1976

Empire Dyeing and Manufacturing Co. Ltd.	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 28-03-1977

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61(1)
Central Sales Tax Act, 1956 — Section 10A, 8(3), 9(2)

Citation : (1977) 6 CTR 706

Hon'ble Judges : Madon, J;Kania, J

Bench : Division Bench

Judgement

Madon, J.—These are three References under S. 9(2) of the Central Sales Tax Act, 1956 (hereinafter for the sake of brevity referred to as "the Central Act"), read with S. 61 (1) of the Bombay Sales Tax Act, 1959 (hereinafter for the sake of brevity referred to as "the Bombay Act"), which give rise to common questions of law.

2. The applicants were at all materials times registered as dealers both under the Central Act and the Bombay Act. The carried on the business of bleaching and printing fabrics manufactured by them for sale as also bleaching and printing fabrics manufactured by others for sale. For this purpose the Applicants used to purchase grey fabrics, dyes, caustic soda and others processing materials. So far as the purchase of these materials from outside-State dealers were concerned, the Applicants used to purchase such materials on declarations given by them to their vendors, sating that the goods so purchased were intended for use by them in the manufacture or processing of goods for sale. Under the provisions of the Central Act in force when such declarations were given the rate of tax applicable was 2 per cent. During the course of assessment proceedings for the periods January 1, 1964 to December 31, 1964 (hereinafter for the sake brevity referred to as "the first period"), January 1, 1965 to December 31, 1965 (hereinafter for the sake of brevity referred to as "the second period") and January 1, 1966 to December 31, 1966 (hereinafter for the sake of brevity referred to as "the third

period") the Sales Tax Officer found that a part of the caustic soda purchased on such declaration by the Applicants from their outside-State vendors was used by them for processing goods belonging to others and not their own goods. According to him, this constituted a breach of the declarations given by the Applicants, and he issued a notice to the Applicants to show cause why penalty should not be levied against them. The contraventions alleged to have been committed by the Applicants were to the extent of Rs. 7,567 in the first period, Rs. 2,91,706 in the second period and Rs. 9,99,640 in the third period. In reply to the said show cause notice the Applicants by their advocate's letters dated June 23, 1969 and August 6, 1969 and October 21, 1969 as also in the course of personal hearings given to them denied that they had committed a breach of any statutory provision. The Applicants contended that under the relevant provisions of the Central Act they were entitled to use the said goods in the manufacture or processing of goods for sale, whether the goods so processed or manufactured belonged to them or to others. The Applicants further stated that all goods manufactured and processed by them, whether they belonged to them or to others, had been sold. Rejecting the contentions of the Applicants the Sales Tax Officer imposed upon them penalties under S. 10A of the Central Act in the sum of Rs. 800 in respect of the first period, Rs. 34,000 in respect of the second period and Rs. 96,000 in respect of the third period. These penalties which were imposed were on the basis that the maximum penalty leviable under the said S. 10A was one and half times the amount of tax which would have been payable on the transactions of sale of such processing materials had they been sold to unregistered dealers. Against these orders imposing penalties the Applicants filed appeals to the Assistant Commissioner of Sales Tax who rejected all the said appeals. Following a decision of the Tribunal, however, the Assistant Commissioner of Sales Tax held that the maximum penalty which could be levied would be one and half times the amount of the tax payable if the offence had not been committed. The Assistant Commissioner of Sales Tax thus reduced the amount of penalty to Rs. 225 in respect of the first period, Rs. 8,750 in respect of the second period and Rs. 39,610 in respect of the third period. The Applicants thereafter went in second appeal to the Tribunal which, while dismissing the said appeals, further reduced the amount of penalty to Rs. 150 in respect of the first period, Rs. 5,800 in respect of the second period and Rs. 25,000 in respect of the third period. As the questions involved in all the three appeals before the Tribunal were the same, the Tribunal disposed of them by a common judgment.

3. Being aggrieved by the said judgment and orders of the Tribunal the Applicants applied to the Tribunal to state a case and refer the following five questions of law to the High Court for determination :-

"(1) Whether on the facts and in the circumstances of the case and on a true and correct reading of S. 10A read with S. 10(d) of the Central Sales Tax Act. 1956, the Tribunal was justified in upholding the levy of penalty of Rs. 150 ?

(2) Whether on a true and correct reading of S. 8(3)(b) read with S. 10(d) of the

Central Sales Tax Act, 1956, the Tribunal was justified in upholding the levy of penalty of Rs. 150 ?

(3) Whether on the facts and in the circumstances of the case, utilizing materials purchased on Form C to the Central Sales Tax (Registration and Turnover) Rules, 1957 for processing of cotton fabrics belonging to others who ultimately sold such cotton fabrics would amount to failure to make use of the goods for any purposes mentioned in S. 8(3) (b) of the Central Sales Tax Act, 1956 ?

(4) Whether on a true and correct construction of S. 8(3) (b) the Central Sales Tax Act, 1956, the Tribunal was justified in adding words "by him" after words "for use in the manufacture or processing of goods for sale" and thus upholding the levy of penalty of Rs. 150 levied under S. 10(d) read with S. 8(3) (b) of the said Act ?

(5) Whether on the facts and in the circumstances of the case, there was "reasonable excuse" within the meaning of S. 10(d) of the Central Sales Tax Act, 1956 thereby not attraction levy of penalty ?"

The Tribunal, however, while it agreed to state a case and refer the questions of law, has referred only question No. 3 out of the above questions. It held that the entire controversy which required the decision of this Court was covered by the said question No. 3 and that it was therefore, not necessary to refer the other questions of law "as the points raised in those questions could be very well argued while bringing out the controversy referred to in question No. 3".

4. Now, under S. 8(3) (b) of the Central Act if a person purchasing goods in guilty of an offence inter alia under clause (d) of S. 10 the authority instead of prosecuting him is entitled to impose a penalty upon him. Under clause (d) of S. 10 a person commits an offence who, after purchasing any goods for any of the purposes specified in clause (b) of sub-s. (3) of S. 8, fails, without reasonable excuse, to make use of the goods for any such purpose. Question No. 3 referred to us by the Tribunal resolves itself into two parts, (1) whether there was a contravention of clause (b) of sub-S. (3) of S. 8, and (2) if so, whether a penalty by reason of the provisions of S. 10 read with clause (d) of S. 10 of the Central Act would be attracted. Since a mere contravention of the provisions of clause (b) of sub-S. (3) of S. 8 does not constitute an offence but would be an offence if such contravention was without reasonable excuse, even though the first part of question No. 3 were answered in favour of the Department the second part would have to be answered either in the negative or with a qualification this would attract a penalty only if such contravention was without reasonable excuse. Question No. 3, therefore, does not bring out the whole of the controversy between the parties and the Tribunal was in error in the view it took that question No. 5 was included in question No. 3, accordingly with the consent of both sides we have reframed the question referred to us as follows :-

"(1) Whether on the facts and in the circumstances of the case, utilizing material purchased on Form C to the Central Sales Tax (Registration and Turnover) Rules.

1957, for processing cotton fabrics belonging to others and not the purchasers would amount to a failure to make use of the goods for the purpose mentioned in the said From C, even though the goods so processed were sold by their owners ?

(2) If the answer question No. 1 is in the affirmative, whether on the facts and in the circumstances of this case the Applicants had any reasonable excuse for their failure to make use of the goods for the purpose specified in the declarations in the said From C given by them to their vendors ?"

5. In order to appreciate the real controversy between the parties it is necessary briefly to see the scheme of the Central Act and the provisions of the relevant sections thereof. The object of the Central Act is inter alia to provide for the levy collection and distribution of taxes on sales of goods in the course of inter-state trade or commerce and to declare certain goods to be of special importance in inter-state trade or commerce and specify the restrictions and conditions to which state laws imposing taxes on the sale or purchase of such goods of special importance should be subjected. Under clause (b) of S. 2 the Central Act at the relevant time a dealer meant "any person who carries on the business of buying or selling goods" and included a government which carried on such business. Clause (g) of S. 2 defines the term, "sale". That definitions, so far as is material for our purpose, is as follows :-

"Sale, with its grammatical variations, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration,

Under S. 6 of the Central Act every dealer is liable to pay tax on all sales effected by him in the course of inter-State trade or commerce. Under S. 7 a dealer liable to pay tax is required to get himself registered. The rates of tax on sales in the course of inter-State trade or commerce are prescribed by S. 8. The material provisions of S. 8 during the periods in question were as follows :-

"8. Rates of tax on sales in the course of inter-State or commerce.

(1) Every dealer, who in the course of inter-Stat Trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-s. (3);

shall be liable to pay tax under this Act, which shall be two per cent. of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce month not falling within sub-S. (1) ...

(a) in the case or the declared goods, shall be calculated at the rate applicable to the sale or purchase such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent. or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate state, notwithstanding that he, in fact, may not be so liable under that law.

(3) The goods referred to in clause (b) of sub-s. (1)

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers of materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-s. (1) shall not apply to any sale in the course of inter-State or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner

(a) a declaration duly filed and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the government.

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Under S. 9 of the Central Act the tax is to be levied and collected by the Government of India in the State from which the movement of the goods commenced, and the authorities who would so assess and collect tax are to be the authorities under the Sales Tax Act of that State, S. 10 inter alia provides as follows :

"10. Penalties.

If any person

(d) after purchasing any goods for any of the purpose specified in clause (b) of

sub-S. (3) of S. 8 fails, without reasonable excuse, to make use of the goods for any such purpose;

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he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues."

S. 10A as it stood at the relevant time provided as follows :

"10A. Imposition of penalty in lieu of prosecution.

If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of S. 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing impose upon him by way of penalty a sum not exceeding one-and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed :

Provided that no prosecution for an offence under s. 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

It may be mentioned that subsequently S. 10 has been amended to provide for a penalty in a sum not exceeding one and half times the tax which would have been levied under sub-S. (2) of S. 8 in respect of the sale in question if that sale had been a sale falling within that sub-section. S. 10A was renumbered as sub-section (1) by Act 28 of 1969 with effect from October 1, 1958, and by that Act a new sub-section (2) was inserted under which the penalty inter-alia in the case of an offence falling under clause (e) of S. 10 was to be collected in the State in which the person purchasing the goods obtained the prescribed form.

6. The real controversy between the parties revolves round the interpretation to be placed upon the phrase "for use by him in the manufacture or processing of goods for sale" in the said clause (b) of sub-S. (3) of S. 8 of the Central Act. In order to ascertain the correct interpretation to be given to this phrase we must first try to understand what the scheme of S. 8 is. S. 8 prescribes different rates of tax in respect of various categories of sales made in the course of inter-State or commerce. When we analyse that section we find that these sales are divided in that section into categories, namely, (1) sales to the Govt. of any goods, (2) sales to a registered dealer other than the Government of goods of the description referred to in sub-S. 3 of S. 8, (3) sales of declared goods not falling under the first and the second categories mentioned above, and (4) sales of goods other than the declared goods not falling under the first and the second categories. At the relevant time the rate of tax applicable to sale falling under the first and the second categories was 2 per cent, and in the case of the third

category it was the same rate as in the case of tax on local sales of such goods in the particular State in which the inter-State sales tax was to be collected. In the case of the sales falling under the last category the rate of tax was 10 per cent. Thus, if goods were sold in the course of inter-State trade or commerce to a registered dealer (other than the Government) and if such goods of that class or classes were certified in the certificate of registration of purchasing dealer as being intended (1) for resale by him, or (2) subject to any rules made by the Central Government in this behalf for use by him, in the manufacture or proceeding of goods for sale, or (3) in mining (4) in the generation or distribution of electricity or any other certificate of registration of the purchasing dealer as being intended for certain limited purposes, namely, for resale, for use in the manufacture or processing of goods for sale, in mining or in the generation or distribution of electricity or any other form of power. It will be thus noticed that each of the purposes specified in clause (b) of sub-S. (3) of S. 8 Requires a further transaction of sale, whether of the very goods purchased or of the goods in the manufacture, processing or production or generation of which the goods purchased have been used. Since the goods so purchased in the case of resale and the end-product in the case of a processing, manufacture, mining or generation of power would attract sales tax if sold in its turn, the real intention of the Parliament in providing a lower rate of tax in respect of sales falling under clause (b) of sub-S. (3) of S. 8 was to prevent the price of the end-product from being unduly increased when such product comes into the hand of the ultimate consumer. A seller of goods, though he is liable to pay the tax, would normally reimburse himself by recovering the amount thereof from his purchaser. In the case of raw materials the manufacture would so fix the selling price of the manufactured product as to provide for the amount of tax on raw materials which the vendor of such raw materials has collected from him. Thus, to provide for same rate of tax on the sale of raw materials as on the sale of finished product to an ultimate consumer would be to cause a manufacturer unduly to raise his price, thus increasing the burden on the ultimate consumer. In order, however, to ensure that the goods so purchased are utilized for the purposes mentioned in the purchasing dealer's certificate of registration, sub-S. (4) of S. 8 requires the purchasing dealer to give a declaration setting out the purpose for which the goods are being purchased. The prescribed form is Form C to the Central Sales Tax (Registration and Turnover) Rules, 1957. Nothing turns upon the wording of the said Form inasmuch as in its material parts it merely reproduces the language of the section.

7. Bearing the object of providing a lower rate of tax we will now turn to the language a clause (b) of sub-S. (3) of S. 8 itself. So far as resale is concerned, the words used are "intended for re-sale by him", that is, by the purchasing dealer himself. So far as manufacture or processing is concerned, the words used are "for use by him in the manufacture and processing of goods for sale". It is significant that the words "by him" do not occur in this expression after the words "for sale" as they do in the case of goods intended for resale. In the first

case, therefore, what is required is the resale of the goods purchased by the purchasing dealer himself, and in the second case what is required is not the sale by the purchasing dealer himself but the use by the purchasing dealer himself of goods purchased in the manufacture or processing of goods, which manufactured or processed goods should be for sale, irrespective of whether such sale would be by the purchasing dealer himself or by others. Since the object was to keep the price of manufactured goods within reasonable limits, it would be illogical for the Parliament to have provided that a lower rate of tax would be attracted where the goods were manufactured or processed by the manufacturer or processor himself but not where the goods were got manufactured or processed by him in some one else's factory. Even apart from the intention of the Parliament, on a plain reading of the said clause (b) of sub-S. (3) of S. 8 itself, no other interpretation is possible according to us. The omission of the words "by him" after the words "manufacture or processing of the goods for sale" is significant, and all the more so when we find the words "by him" used after the words "for re-sales" earlier in the same clause. So far as the principles of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* :-

"... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

This passage has been cited with approval by almost every High Court in India and also by the Supreme Court as for instance in *M/s. Baidyanath Ayurved Bhawan (Pvt.) Ltd., Jhansi v. The Excise Commissioner, U.P., and other.* The principle laid down by Rowlatt J. has also been time and again approved and applied by the Supreme Court in different cases. To cite but only one, *Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, Surat, and other.* Principles as applied to the interpretation of an exemption clause should apply in the present case inasmuch as a concessional rate of tax was provided for by sub-S. (1) of S. 8 of the Central Act in respect of the sales of description falling under the said clause (b) of sub-S. (3) of S. 8. We are unable to accept this submission. As pointed out earlier, there is no question of any concession or exemption being granted to a dealer by the said sub-S. (1) of S. 8. This is not a concession or exemption granted to a dealer. The purchase we have pointed out earlier is an economic one and is really in order to maintain the price structure. Even if for the sake of argument two interpretations were possible, the well-known canon of construction is that the benefit of the doubt must be given to the citizen and the construction beneficial to him should be adopted. When we say that a construction beneficial to a tax payer should be adopted, what it really means is that when there are two interpretation open, one of which imposes a heavier burden of tax and the other a lower burden or no burden at all, the Court in a case of doubt would prefer the interpretation which imposes a lower burden

or does not impose any burden. The result of preferring such an interpretation would be, of course, to reduce the tax burden on the taxpayer. This canon of interpretation would be nullified if in every case where on one of the two interpretation a lower rate of tax or no liability to tax is attracted if such interpretation were rejected and the one less beneficial adopted on the ground that the particular statutory provision in question is an exemption or a concession clause.

9. The said clause (b) of sub-S. (3) of the S. 8 has come up for interpretation before different High Courts, and we will now turn to the decisions of those Courts. In *East India Cotton Manufacturing Company Private Limited vs. The Assessing Authority-cum-Excise and Taxation Officer Gurgaon*, and another, a division Bench of the High Court of Punjab and Haryana consisting of Harbans Singh, C. J., and Sarkaria, J., put the same interpretation upon the phrase "for use by him in the manufacture or processing of goods for sale" occurring in clause (b) of sub-S. (3) of S. 8 as we have done. An argument was also advanced before that Court on the canon of principle to be applied, and it was contended that the principle of interpretation enunciated by Rowlatt, J., did not apply. That argument was rejected. It was further sought to be argued that if the interpretation canvassed for by the assessee were to be accepted, it would render the working of the Central Act almost impossible and would place the assessee in a very difficult situation inasmuch as it would not be possible for them to prove to the satisfaction of the taxing authorities that the persons for whom they manufactured or processed the goods did in fact sell the manufactured or processed goods. The Court pointed out that these difficulties were not relevant considerations in interpreting the plain and unambiguous language of the statute. It further pointed out that there was no real basis in facts for apprehending such difficulties inasmuch as it was for the assessee to show that the goods in the manufacture of which they had used the material purchased by them on the basis of their certificate of registration were actually sold by other registered dealers and that if they failed to prove such facts the assessee could be said to have committed a breach of the declarations given by them. On behalf of the respondents, however, the decision of a Division Bench of the Gujarat High Court in *Navasari Cotton Silk Mills vs. The State of Gujarat* in which a contrary view was taken, was relied upon. While deciding that case the learned Judges relied upon the scheme of the Central Act as elucidated by them in an earlier judgment given by them, namely, *The Gaekwar Mills Ltd. vs. The State of Gujarat*. The Gaekwar Mill's case turned upon the question of quantum of penalty to be levied. It turned upon the question whether the assessee had reasonable excuse in utilizing the goods for the purpose of processing the cloth of other parties. It was not contended that utilizing the goods so purchased for processing the goods of other parties was not an offence and was not a contravention of the provisions of clause (b) of sub-s. (3) of S. 8. What was urged was that the contravention was of a technical nature. This contention was rejected. According to the learned Judges, the effect of giving a declaration in

Form C to the Central Sales Tax (Registration and Turnover) Rules, 1957, was that the concessional rate of tax under S. 8(1) was attracted instead of the normal rate of tax under S. 8(2) of the Central Act. As we have pointed out earlier, according to us, it is a misnomer to characterize the rate of tax specified in S. 8(1) as a concessional rate of tax.

10. Turning now to the judgment of the Gujarat High Court in Navasari Cotton Silk Mill's case, with great respect to the learned Judges of the Gujarat High Court we are unable to accept the reasoning which has induced them to place an interpretation upon the said clause (b) of sub-S. (3) of S. 8 different from the one we are inclined to do and the one which the High Court of Punjab and Haryana has done. There are several reasons given by the Gujarat High Court for arriving at its decision. The first reason is that the words "for use by him" govern all the three concepts in clause (b) of sub-S. (3) of S. 8, the three concepts according to the Gujarat High Court being :-

- "(i) The goods which are purchased should be for the use of the dealer himself,
- (ii) such use should be for the purpose of manufacture or processing of the goods, and
- (iii) such manufacture or processing of the goods should be for sale."

The Gujarat High Court then proceeded to observe (at p. 146)

"All these three concepts are so interlocked and interdependent that they cannot be read independently of each other. The result is that the concepts of manufacture, processing and sale are the concepts which are controlled by the concept of personal use by the dealer himself."

With great respect we are not able to equate a sale of goods with a user of goods. To sell goods is not to use them. If the interpretation placed by the learned Judges were correct, the said clause (b) of sub-S. (3) of S. 8 should have read "as being intended for use by him for re-sale or for use by him in the manufacture or processing of goods for sale". Plain grammar would show that the words "for use" cannot govern the words "for sale." The learned Judges of the Gujarat High Court have further held that the interpretation placed by them did not result in reading anything more into the language of the statute. With great respect we are unable to agree with this also. The interpretation placed by them must result in adding the words "by him" after the words manufacture or processing of goods for sale". The Gujarat High Court has stated that it was not necessary to use the words "by him" at the end of the phrase in question as had been done with reference to the word "re-sale", because that would have been a mere repetition in view of the fact that the words connoting the same idea had been already implied by using the words "for use by him" at the beginning of the phrase. In the first place, as we have pointed out, the phrase "for use by him" does not mean the same thing as the phrase "for sale by him". In the second place, to fuse the words "by him" again at the end of the phrase in question,

though it would have been repetition of the same two words, it would not have been repetition of the same concept or idea, for act of user is something wholly different from the act of sale, and the first use of the words "by him" would be with reference to the use of the goods purchased in manufacture or processing and the second use of the words "by him" would be in connection with sale of the goods so manufactured or processed. The Gujarat High Court has also sought to draw support for the interpretation placed by it on the ground that it would be well nigh difficult, if not impossible, for the purchasing dealer to ensure that the undertaking given by him in Form C to the Central Sales Tax (Registration and Turnover) Rules, 1957, was complied with by those persons for whom he manufactured or processed goods. The Gujarat High Court has characterized the result which would follow from the interpretation placed by the High Court of Punjab and Haryana as absurd. The learned Judges of the Gujarat High Court have further held that in such a case nobody would be liable to penalty. With great respect we are not able to follow this line of reasoning. We are unable to see how any absurd result would follow or how there would be nobody would follow or how there would be nobody on whom the penalty could be levied. As pointed out by the High Court of Punjab and Haryana, and in our opinion rightly pointed out, it would be for the person who gave the declaration in the said Form C, when the question arose, to show that he has complied with the undertaking given by him that the goods would be used in the manufacture or processing of goods for sale. If he was unable to prove it, then he might become liable either to prosecution under S. 10 or penalty under S. 10A of the Central Act if he had no reasonable excuse. It is also to be borne in mind that when there is a factory which manufactures or processes goods for others as also for itself, the goods manufactured or processed for others are normally not the goods of ultimate consumers but are goods of other dealers who do not have the facility for manufacturing them and particularly for processing them. The Gujarat High Court also was impressed with the argument that if the interpretation which appealed to the High Court of Punjab and Haryana were accepted, it would result in a large-scale evasion of tax and would frustrate the very object for which the lower rate of tax under sub-section (1) of S. 8 of the Central Act, termed by it as "confessional rate", was provided by the Legislature. We are not unable to share this apprehension. The Gujarat High Court has further pointed out the difficulty for the purchasing dealer who has processed or manufactured goods for other to embark upon inquiries to find out whether those others had in fact sold the goods purchased in manufacture or processing and the second use of the words "by him" would be in connection with sale of the goods so manufactured or processed. The Gujarat High Court has also sought to draw support for the interpretation placed by it on the ground that it would be well nigh difficult, if not impossible, for the purchasing dealer to ensure that the undertaking given by him in Form C to the Central Sales Tax (Registration and Turnover) Rules, 1957, was complied with by those persons for whom he manufactured or processed goods. The Gujarat High Court has characterized the result which would follow from the interpretation placed by the High Court of Punjab and

Haryana as absurd. The learned Judges of the Gujarat High Court have further held that in such a case nobody would be liable to penalty. With great respect we are not able to follow this line of reasoning. We are unable to see how any absurd result would follow or how there would be nobody or whom the penalty could be levied. As pointed out by the High Court of Punjab and Haryana, and in our opinion rightly pointed out, it would be for the person who gave the declaration in the said Form C, when the question arose, to show that he has complied with the undertaking given by him that the goods would be used in the manufacture or processing of goods for sale. If he was unable to prove it, then he might become liable either to prosecution under S. 10 or penalty under S. 10A of the Central Act if he had no reasonable excuse. It is also to be borne in mind that when there is a factory which manufactures or processes goods for others as also for itself, the goods manufactured or processed for others are normally not the goods of ultimate consumers but are goods of other dealers who do not have the facility for manufacturing them and particularly for processing them. The Gujarat High Court also was impressed with the argument that if the interpretation which appealed to the High Court of Punjab and Haryana were accepted, it would result in a large-scale evasion of tax and would frustrate the very object for which the lower rate of tax under sub-section (1) of S. 8 of the Central Act, termed by it as "confessional rate", was provided by the Legislature. We are not unable to share this apprehension. The Gujarat High Court has further pointed out the difficulty for the purchasing dealer who has processed or manufactured goods for others to embark upon inquiries to find out whether those others had in fact sold the goods processed or manufactured. We see no such difficulty as envisaged by the Gujarat High Court. If a question arose and if the purchasing dealer was unable to show that the goods processed or manufactured were sold, he would certainly be said to have committed a contravention of the declaration in the said Form C given by him. In conclusion the learned Judges of the Gujarat High Court have stated that they found support in the view which they took from the decisions of the Kerala High Court in *O. Paramasivan vs. The State of Kerala* and another, the High Court of Madhya Pradesh in *Commissioner of Sales Tax, Madhya Pradesh vs. Sheocharan Radheshyam Sharma*, and the High Court of Karnataka in *S. S. Umadi vs. The State of Mysore* and others. We will now examine these decisions. In *O. Paramasivan vs. The State of Kerala* and another, the facts were that a registered dealer purchased dyes and chemicals against declaration in Form C. In the course of examination of his books of account it was found that the goods were neither resold nor used for manufacture or processing of goods for sale and that they were actually used for dyeing goods belonging to other persons on receipt of dyeing charges. It was contended that mere user of the goods so purchased in manufacture or processing was sufficient. That contention was rejected, and it was pointed out that on a grammatical construction of clause (b) of S. (3) of SD. 8 the words "in the manufacture or processing" went with the words "of goods for sale" and that the goods must, therefore, be used in the manufacture of goods for sale or in the processing of goods for sale. The question, therefore,

whether the goods manufactured or processed which were actually sold thereafter should belong to the purchasing dealer himself or could belong to other parties was not before the Court. What had happened was that the goods purchased were used in the processing of other goods, but the processed goods were not sold. This authority, therefore, has no relevance to the question before us. In *Commissioner of Sales Tax, Madhya Pradesh vs. Sheocharan Radheshyam Sharma*, the facts were again very similar to those before the Kerala High Court. The dealer purchased goods which he utilized in executing contracts of dyeing of goods belonging to other persons, and no sale was ever intended of the goods so dyed. It appears that during the course of the proceedings the dealer contended that the materials which he had dyed were either intended for resale or were actually sold and that the Department should make an inquiry into the matter. No attempt was made by the dealer to show that goods were so in fact sold. This case, therefore, is equally irrelevant to the question which we have to decide. In *S. S. Umadi vs. The State of Mysore and others*, the purchasing dealer had utilized the goods purchased by him for dyeing yarn brought by his customers. The High Court of Karnataka held that under clause (b) of sub-S. (3) of S. 8 of the Central Act the words "for sale" clearly connoted that the goods so processed must belong to the dealer, as otherwise he could not be said to have the right to sell them. In the arriving at this decision the Court referred to an earlier d

decision given by it which does not appear to have been reported and has not been shown to us. None the less, no reason is given in this judgment for giving such a construction to the phrase in question in the sale clause (b) of sub-S. (3) of S. 8. Under that clause the question of a right to sell the goods manufactured or processed does not arise, and the sole question is whether manufactured or processed goods are intended to be sold or not. There is no restriction imported into clause (b) so as to restrict the operation of the phrase in question merely to the goods of the assessee himself.

11. In this connection, we may also usefully refer to the decision of the Supreme Court in *Hansraj Gordhandas vs. H. H. Dave*, Assistant Collector of Central Excise and Customs, Surat and others, to which a reference has earlier been made by us. Under certain notifications issued in pursuance of R. 8(1) of the Central Excise Rules, 1944 exemption was given to cotton fabrics produced by a co-operative society or firm of owners of power-looms subject to certain conditions which are not relevant. It was contended that in order to be qualified for exemption the cotton fabrics should be produced by the co-operative society for itself and not for a third party. This argument was rejected. The Supreme Court refused to read into the notifications the qualifying words "for itself" which the Department was contending for. The Supreme Court held :-

"It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by

calling in aid any supposed intention of the exempting authority".

So far as the phrase in question in clause (b) of sub-S. (3) of S. 8 is concerned, the interpretation which found favour with the Tribunal cannot be placed upon it unless we read into it the words "by him" after the words "for sale", thus adding to the plain words of that clause.

12. Turning now to the second question we have found that there was no contravention of the declaration given by the Applicants inasmuch as they had not failed to use the goods purchased by them in the manufacture or processing of goods for sale. Assuming, however, we are wrong in the interpretation which we have placed upon clause (b) of sub-S. (3) of S. 8, the case of the assessee throughout was that they had not committed any breach of the statutory provisions inasmuch as there was no restriction in clause (b) that the goods produced or manufactured should belong to the purchasing dealer himself. As pointed out earlier this clause has been interpreted differently by different High Courts. It cannot, therefore, be said that in using the goods for a purpose different from that specified in the said clause by reason of placing upon that clause the same interpretation which we and the High Court of Punjab and Haryana have done, the Applicants had acted without reasonable excuse.

13. For the reasons set out above, we answer the questions as reframed by us as follows :

Question No. 1 in the negative.

Question No. 2 in the affirmative.

The Respondents will pay to the Applicants the costs of these three References fixed in all at Rs. 300.

14. The fee of Rs. 100 paid by the Applicants in each of these References will be refunded to them.