

(1972) 08 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 191 of 1968

Gwalior Rayon Silk Manufacturing (WVG.) Company Limited	APPELLANT
Vs	
The Assistant Commissioner of Sales Tax and Others	RESPONDENT

Date of Decision : 29-08-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 8, 9
Constitution of India, 1950 — Article 246, 276, 286, 301, 303

Citation : (1973) 172 : (1973) 18 MPLJ 85 : (1973) 31 STC 9

Hon'ble Judges : Bishambhar Dayal, C.J.; S.M.N. Raina, J

Bench : Division Bench

Advocate : Subrata Roy Choudhury, K.A. Chitale, D.P. Gupta, B. Gupta, S.P. Mehta, S. Pal, R.V. Patel, R.N. Jhunjhunwala and V.S. Dabir, for the Appellant; Y.S. Dharmadhikari, Advocate-General and J.P. Bajpai, Deputy Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Bishambhar Dayal, C.J.

This order will govern the disposal of Miscellaneous Petitions Nos. 30 of 1970, 63 of 1972 and 64 of 1972 also.

All these petitions have been filed by the same company in respect of different periods of assessment challenging the authority of the assessing officer to enquire into the transactions which were claimed by the assessee as outside sales for the purpose of determining whether those transactions were in fact inter-State sales and taxable to sales tax u/s 8(2)(b) of the Central Sales Tax Act. There is no dispute that if the transactions amount to inter-State sales, they would be taxable under that section.

In these petitions, a very large number of questions have been raised by the petitioners. But before us only one question relating to the vires of Section 8(2)(b) and Section 9 of the Central Sales Tax Act has been argued. No other point

has been pressed. The details of facts relating to the transactions have also been incorporated in the writ petitions in order to show that they were really outside sales and could not be treated as inter-State sales. But that question has also not been pressed and it has been definitely stated by the learned counsel for the petitioners that this question may not be decided and, if necessary, they will raise it in other appropriate proceedings. We will, therefore, confine our attention in all these petitions only to the question of the vires of Section 8(2)(b) and Section 9 of the Central Sales Tax Act. The relevant part of Section 8 reads as follows:

8. (1) Every dealer, who in the course of inter-State trade or commerce-

(a) * * * (b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3); shall be liable to pay tax under this Act,....

(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 not falling within Sub-section (1)-

(a) * * * (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;

* * *

The contention of the learned counsel for the petitioners is that the Constitution has vested the Parliament with the exclusive power to impose sales tax in respect of inter-State trade and commerce (Seventh Schedule, List I, entry 42) and his contention, therefore, is that the Central Legislature could not delegate this power to the State Legislature for fixing the rate of sales tax on such transactions. The contention further is that the provision in Section 8 that the State may fix a higher rate than 10 per cent, on intra-State sales and that rate will apply to inter-State sales also in preference to the rate of 10 per cent. fixed by Parliament amounts to an abdication of the legislative power of Parliament in favour of the State Legislatures. The Constitution has taken good care to keep the jurisdiction of Parliament and the State Legislatures completely separate and such a delegation and effacement of itself by Parliament in favour of the State Legislatures is wholly invalid and, consequently, Section 8(2)(b) is ultra vires.

The learned Advocate-General appearing on behalf of the State has contended that this is not a piece of delegated legislation at all and all the principles applicable to delegated legislation are not applicable to this kind of legislation which is a legislation by reference by which an Act of another Legislature is adopted without physically incorporating all the details. He has also contended that Section 8(2) has already been declared constitutionally valid by their Lordships of the Supreme Court, which is now the law of the land and this court cannot declare the same section invalid merely on the ground that some aspects

of the matter were not considered by the Supreme Court. We now proceed to consider the contention of the learned counsel for both the parties.

The principles of delegated legislation and of legislation by reference and adoption are completely different and are well-settled. Driedger in the *Composition of Legislation* (pages 156 to 158) has considered and brought out the distinction between the two kinds of legislations. We may here quote a few passages of the learned author :

In the case of referential legislation each legislature acts independently in the exercise of its own legislative authority ; in the case of delegation, the authority to enact the legislation to be incorporated is derived from the other legislature and cannot stand on its own feet.

The learned author then gives an example of a valid legislation by reference as follows:

On the other hand, Parliament has enacted in the Criminal Code that a person who is qualified as a juror according to the laws in force in a province is qualified to serve as a juror in criminal proceedings in that province. The validity of this provision is beyond dispute.

Laying down the test in this matter the author states as follows :

The test is this ; in the absence of any federal legislation, is the provincial law a valid exercise of constitutional legislative authority ? If so, then a reference to it in federal legislation cannot be delegation.

In *Statutes and Statutory Construction* by Sutherland, Volume 2, 3rd Edition, it is stated as follows in Article 5207 :

There are two general types of reference statutes : statutes of specific reference and statutes of general reference. A statute of specific reference, as its name implies, refers specifically to a particular statute by its title or section number. A general reference statute refers to the law on the subject generally....A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments....A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted.

Applying these principles to the provision in question, it is quite clear that Parliament has not delegated any power or created any body to pass any law for Parliament and it is not, therefore, a case of delegation at all. Parliament has adopted the rates of sales tax applicable in individual States to a particular commodity in case that State has considered it necessary to impose a tax at a rate more than ten per cent. This reference is to the law prevailing in each State and is not to a particular part of any statute and, consequently, this reference must be treated to be an adoption of the law as it stands from time to time when

it is required to be invoked.

The learned counsel for the petitioners relied upon a large number of cases of which we may refer to only one, viz., *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, and contended that where a power was delegated to the State Government to fix a rate without giving any guidance, the delegation was considered excessive and the rate fixed by the Government was held to be unenforceable. The learned counsel contended that the same principle should apply to the present case where Parliament has, without any guidance and without fixing the maximum rate, enacted that the rate prevailing in a particular State in respect of a particular commodity, if it is higher than 10 per cent., will be applicable to inter-State sales also. We think that in the very nature of things when the State Legislature is an independent body with plenary powers in its own sphere, there is no question of giving any guidance to that Legislature for framing its laws. The principles laid down in the cases relied upon by the learned counsel for the petitioners requiring guidance are only applicable to delegated legislation where the authority, which has acquired the power by delegation, has to act on behalf of the Legislature, which delegates the power. In such a case, it would be necessary for the Legislature to keep the delegate within control. But, in the case of laws passed by Legislatures with plenary powers, the laws so passed are good laws and can be adopted by other Legislatures.

With regard to the contention that this was a legislation by adoption, the learned counsel for the petitioners contended that even as such it would be invalid, for Parliament at the time of passing the Act did not even know what rate would be applied in future by different States and there can be no adoption of something which did not exist at the time of adoption and which was not known. For this proposition the learned counsel relied upon *B. Shama Rao Vs. The Union Territory of Pondicherry*, That was a case in which the legislative authority for Pondicherry extended the Madras Sales Tax Act to Pondicherry and authorised the State Government to make it applicable on such date as the Government considered proper and the Madras Act was to become applicable to Pondicherry as it stood on the date on which it was made applicable to Pondicherry by the Government. This was struck down by the Supreme Court as invalid on the ground that the Madras Act had been amended after the passing of the Pondicherry legislation and before the Madras Act was enforced in Pondicherry ; that this amendment could not have been known to the Pondicherry legislative authority and that, consequently, the enforcement of the Madras Act, as amended, was not valid. Replying to the argument of Shri Setalvad that this sort of legislation was accepted by the Supreme Court in the *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, their Lordships of the Supreme Court observed :

In respect of that heading the majority conclusion no doubt was that authorisation in favour of the executive to adopt laws passed by another Legislature or Legislatures including future laws would not be invalid. So far as

that conclusion goes Mr. Setalvad is right. But as already stated, in arriving at that conclusion each learned Judge adopted a different reasoning.... Bose, J., expressed in frank language his displeasure at such legislation but accepted its validity on the ground of practice recognised ever since Burah's case (1878) 5 I.A. 178 and thought that that practice was accepted by the Constitution-makers and incorporated in the concept of legislative function.

Their Lordships, however, distinguished the In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, and held:

In the present case it is clear that the Pondicherry Legislature not only adopted the Madras Act as it stood at the date when it passed the Principal Act but also enacted that if the Madras Legislature were to amend its Act prior to the date when the Pondicherry Government would issue its notification it would be the amended Act which would apply. The Legislature at that stage could not anticipate that the Madras Act would not be amended nor could it predicate what amendment or amendments would be carried out or whether they would be of a sweeping character or whether they would be suitable in Pondicherry.

We, however, think that B. Shama Rao Vs. The Union Territory of Pondicherry, was an instance of adoption of a specific statute and, consequently, the presumption in such a case was that the Act as it stood on the date of adoption was adopted and not its subsequent amendments. It may also be noted that in this case the power to enforce the Pondicherry Act was delegated to the executive and, consequently, it was the act of the executive of enforcing the Madras Act in Pondicherry at a particular date which incorporated the Madras Act into the Pondicherry legislation. As in the meanwhile amendments had been made in the Madras Act, the amended Act was incorporated into the Pondicherry legislation by an act of the delegate and not by an Act of the Legislature. To our mind, therefore, this case is distinguishable from the present one. This case is analogous to revenue laws adopting personal law of succession for some kinds of tenancies or applying CPC to some proceedings in the revenue courts.

Another case, where the Bengal Finance (Sales Tax) Act, 1941, was extended to Delhi, came up for consideration before the Supreme Court in Mithan Lal Vs. The State of Delhi and Another, and the adoption even by modification was upheld as valid.

We, therefore, think that Section 8(2)(b) is not an invalid piece of legislation. Even looked at from a practical point of view it was almost a necessity to enact it in that form. It was not possible for Parliament to know the circumstances prevailing in each of the States with regard to those articles which that State would consider it necessary to tax at a rate higher than 10 per cent. and to enact a detailed legislation with regard to those articles from time to time in regard to different States. The instances where tax is imposed at a rate higher than 10 per cent, are very rare. At least in this State at the time in dispute there was not a

single article which was being taxed at a higher rate. Although we have not gone into the taxation lists of all the sales tax laws in different States, we assume that in other States also there were a very few articles which were taxed at a rate higher than 10 per cent. It would be very difficult for Parliament to investigate into the special circumstances for such articles in different States and to fix a rate for them. We, therefore, think that there is no constitutional defect in this provision. The validity of this section was also considered by a Full Bench of the Punjab and Haryana High Court in *Teh Chand Daulat Rai v. Excise & Taxation Officer* [1972] 29 S.T.C. 585 and it also came to the conclusion that the provision was not ultra vires.

Lastly, as pointed out by the learned Advocate-General, Section 8(2) of the Act has already been declared valid by their Lordships of the Supreme Court in *State of Madras Vs. N.K. Nataraja Mudaliar*, and it was rightly contended that the constitutionality of that section having been upheld, it is not open to this court to go behind that decision even on other grounds which were not considered in that ruling. In *Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur*, their Lordships of the Supreme Court observed as follows at the bottom of paragraph 4 of the judgment :

This court held that levy of tax on cotton ginned by the taxpayer in excess of the amount prescribed by Article 276 of the Constitution was invalid and since the Municipality had no authority to levy the tax in excess of the rate permitted by the Constitution, the assessment proceedings levying tax in excess of the permissible limit were invalid and a suit for refund of tax in excess of the amount permitted by Article 276 was maintainable. The decision was binding on the High Court and the High Court could not ignore it because they thought that "relevant provisions were not brought to the notice of the court".

The same view was taken by the Allahabad High Court in *Ram Manohar Lohia and Others Vs. State of U.P. and Others*, .

With regard to Section 9 of the Central Sales Tax Act the contention of the learned counsel for the petitioners was that before its amendment in the year 1969 by the Central Sales Tax (Amendment) Act (No. 28 of 1969), Section 9 provided for levy of sales tax and for that levy adopted the machinery of the different State Acts and this amounted to an excessive delegation and effacement of the parliamentary powers of legislation. For the same reasons given in respect of Section 8, it is held that Section 9 was not invalid. It was also said that even though after the amendment the power to levy has been taken away by the amendment of Section 9 in 1969, yet the amended provision is also infructuous because Section 9 as originally enacted was invalid and could not be resuscitated by a subsequent amendment. The contention, therefore, is that Section 9, even as amended, is invalid and no assessment can be made by virtue of that Section. This argument also does not appeal to us because the Act as a whole was not still-born. The charging section, viz., Section 6, was not invalid and, consequently, the Act was a valid Act. Even if one section thereof was

invalid, it could subsequently be amended and if the amended section is valid, it takes effect because the Act itself is alive: The Punjab State, Chandigarh Vs. Sansari Mal Puran Chand, .

No other point was argued before us.

We consequently see no force in these petitions and dismiss the same with costs. State counsel's fee is fixed at Rs. 100 in each of these cases. The outstanding amount of the security deposit shall be refunded to the petitioners after deduction of costs in all these cases.

S.M.N. Raina, J.

I agree with my Lord the Chief Justice that these petitions should be dismissed on the terms proposed by him but I would like to deal with some of the points raised in these petitions in my own words.

The learned counsel for the petitioner challenged the validity of Clause (b) of Sub-section (2) of Section 8 of the Central Sales Tax Act mainly on the ground that under the said clause the rate of tax is left to be determined by the Sales Tax Act of the State Legislature within the scope of its own legislative sphere. The said clause is reproduced below :

8. (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 not falling within Sub-section (1)-

(a) ...

(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.

The Central Sales Tax Act is enacted by the Parliament in exercise of its legislative powers conferred by entry 92-A of List I of the Seventh Schedule of the Constitution of India which reads thus :

92-A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of interState trade or commerce.

The State Act on the other hand is enacted by the State Legislature in exercise of its powers under entry 54 of List II of the Seventh Schedule of the Constitution of India which reads thus :

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.

It is clear from the aforesaid entries read with Articles 246 and 286 of the Constitution that the legislative spheres of the Central Legislature and the State Legislature in the matter of sales tax are distinct and separate and each has exclusive jurisdiction within its own sphere. The question, therefore, arises

whether it is open to the Central Legislature in exercise of its powers under entry 92-A of List I of the Seventh Schedule to leave the determination of the rate of sales tax in respect of the sales which take place in the course of inter-State trade or commerce to be determined by the State Legislature.

It may here be mentioned that the validity of the aforesaid provision was upheld by a Full Bench of the Punjab and Haryana High Court in *Tek Chand Daulat Rai v. Excise and Taxation Officer* [1972] 29 S.T.C 585 . But the learned counsel for the petitioner urged that that decision is of no help because in that case the matter was neither argued nor considered from the point of view he wished to press. The validity of this provision was also upheld by their Lordships of the Supreme Court in *State of Madras Vs. N.K. Nataraja Mudaliar*, The learned counsel contended that in that case the validity was examined in the context of Articles 301 and 303 of the Constitution and not from the point of view he wished to press. We have, therefore, considered it proper to examine the whole matter in the light of the arguments advanced by him.

The learned counsel for the petitioner vehemently urged that the rate of tax is an essential legislative function and cannot, therefore, be assigned to another person or body whether by delegation or otherwise. He urged that since under Clause (b) of Sub-section (2) of Section 8 of the Central Sales Tax Act the sales tax on goods other than declared goods is to be calculated at the rate of 10 per cent. or at the rate applicable to the sale or purchase of such goods inside the State, whichever is higher, the rate may depend entirely at the sweet will of the State Legislature if it chooses to fix the rate of sales tax for intra-State sales at any rate it likes above 10 per cent. According to him, this matter could be viewed from two angles. It could either be looked upon as a delegation of legislative power or legislation by reference inasmuch as the rate fixed or which may be fixed by the State Legislature in future hereafter has been adopted by the Parliament. He contended that in the first case the clause in question would be bad on the ground of excessive delegation while in the second case it would be bad as it amounts to abdication by the Parliament of an essential legislative function.

This is not a case of delegation but of legislation by reference, a position practically accepted by the learned counsel for both the sides. Delegation implies entrustment of certain powers to another authority to be exercised by such authority in accordance with such rules or instructions as may be framed or given for its guidance by the delegating authority. This is not a case of delegation because there is no provision in the Act conferring any power on the State Legislature to determine the rate of Central sales tax in respect of any goods. It may, therefore, not be necessary to examine the impugned provision in order to see if it suffers from the vice of excessive delegation. But the principles on which a provision may be held to be bad on the ground of excessive delegation in a case of delegation can serve as a guide for examining the question of abdication of legislative power or self-effacement in a case of legislation by reference and,

therefore, it would be worth-while examining the various principles laid down for determining the scope and extent of valid delegation of legislative power.

In the instant case, the main ground of attack, as pointed out above, is that the power to determine the rate of tax has been left to the State Legislature inasmuch as if the State Legislature itself chooses to determine the rate at a figure exceeding 10 per cent, in the case of intraState sales, such rate would become automatically applicable to inter-State sales under the Central Act. It has been urged that the determination of the rate of tax being an essential legislative function in the field of tax legislation cannot be delegated to another legislative body, the executive or any other authority.

It would be necessary here to consider the various aspects of delegated legislation. The main reasons why delegation has become a normal feature of law-making are as under :

(i) Pressure on parliamentary time. In these days of intensive legislation, Parliament can only concentrate on essentials, leaving the details to be worked out by other authorities subject to suitable parliamentary control.

(ii) Technical character of modern legislation requires that matters of technical detail should be left to others who are more fitted to deal with such matters.

(iii) Need for flexibility-The law must be capable of rapid adjustment to meet the needs of changing circumstances.

(iv) Emergency powers-During times of emergency the national need calls for sudden legislative action which can more quickly and conveniently be taken by departments concerned and not by the Parliament and State Legislature : (vide "Craies on Statute Law", Sixth Edition, pages 291-292).

The usual safeguards against abuse of delegated legislation are that the delegation must be to a trustworthy authority ; the limits of the delegated powers should be clearly defined in the enabling Act and there should be full consultation with affected interests: (vide page 293 *ibid*). The question how far delegation is legal and permissible in the legislative field has come up for consideration before their Lordships of the Supreme Court in a number of cases.

In *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, their Lordships of the Supreme Court observed as under at pages 394-95 :

Now, the authorities are clear that it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods and the like.

In coming to the aforesaid conclusion their Lordships quoted with approval the following observations of Bose, J., at page 301 in *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, in which his Lordship summarised the majority view in *In re The Delhi Laws Act 1912* [1951]

S.C.R. 747, in which case the question of delegation was examined at length by the Judges constituting the Bench :

In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms and there was some divergence of view about this in the former case, but this much is clear from the opinions set out , above ; it cannot include a change of policy.

From the decision of their Lordships in Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, it may be inferred that it is open to a Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rate at which it is to be charged in respect of different classes of goods and the like. It can, therefore, be said that rate of tax is not an essential feature of legislation relating to tax and hence can be assigned to another authority.

The learned counsel for the petitioner was at pains to point out that the aforesaid observations of their Lordships in this case should not be treated as laying down an unqualified principle of law that rate of tax is not an essential feature of tax legislation and as such could be left to be determined by any other authority without any guidance or control. According to him, the delegation of the power to determine the rate of tax would be bad on the ground of excessive delegation if the upper limit is not laid down. He referred in this connection to Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, In that case while dealing with a similar question relating to sales tax under the Punjab General Sales Tax Act, 1948, their Lordships made the following observations which are pertinent :

The law on the subject may briefly be stated thus : The Constitution confers a power and imposes a duty on the Legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened Legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may, not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for the court to hold on a fair, generous and liberal construction of an impugned statute whether the Legislature exceeded such limits.

Their Lordships held that since u/s 5 of the Punjab General Sales Tax Act, 1948, as it originally stood, an uncontrolled power was conferred on the Provincial Government to levy a tax at such rates as the Government might direct, the Legislature practically effaced itself in the matter of fixation of rates inasmuch as it did not give any guidance, either under that section or under any other provisions of the Act. The section was, therefore, held to be void.

The learned counsel for the petitioner urged that the ratio of the decision in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, is that the delegation of power to determine the rate of tax can be upheld only where the limits particularly the upper limit is prescribed by the Legislature but not otherwise. He tried to distinguish the decision of their Lordships in the *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, on the ground that the case of delegation of the taxing power to a municipal corporation stands on a different footing. In that case power conferred by Section 150 of the Delhi Municipal Corporation Act on the corporation to levy certain taxes without specifying any limit was upheld and their Lordships made the following observations in paragraph 27 :

There is, in our opinion, a clear distinction between delegation of fixing rate of tax like sales tax to the State Government and delegation of fixing rates of certain taxes for purposes of local taxation. The needs of the State are unlimited and the purposes for which the State exists are also unlimited. The result of making delegation of a tax like sales tax to the State Government means a power to fix the tax without any limit even if the needs and purposes of the State are to be taken into account. On the other hand, in the case of a municipality, however large may be the amount required by it for its purposes it cannot be unlimited, for the amount that a municipality can spend is limited by the purposes for which it is created. A municipality cannot spend anything for any purposes other than those specified in the Act which creates it. Therefore, in the case of a municipal body, however large may be its needs, there is a limit to those needs in view of the provisions of the Act creating it. In such circumstances, there is a clear distinction between delegating a power to fix rates of tax, like the sales tax, to the State Government and delegating a power to fix certain local taxes for local needs to a municipal body.

The learned counsel for the petitioner also relied on the following observations of their Lordships in the aforesaid case in paragraph 24 in support of his contention that the rates of tax cannot be delegated to a subordinate authority without any guidance :

This case does not support the proposition that rates of tax can be delegated to a subordinate authority without any guidance, though it is an authority for the proposition that this can be done if guidance is given for the purpose. The observation in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, that rates of tax are not essential features of legislation therefore seems, with respect, to be too broadly stated, though it may be admitted that rates of

taxation also can in certain circumstances be delegated to a subordinate authority with proper guidance and subject to safeguards and limitation in that behalf.

In *Gulabchand Bapalal Modi Vs. Municipal Corporation of Ahmedabad City*, , their Lordships upheld the taxing power of the Ahmedabad Municipality under the Bombay Provincial Municipal Corporation Act even though the Act did not prescribe the maximum rate for levying the property tax, ultimate control for raising them rested with the councillors responsible to the people. The delegation of power on corporation to levy property tax was held to be valid because the Act contained the policy or principle furnishing guidance to the delegate in exercising such power. This case also was distinguished by the learned counsel for the petitioner on the ground that it related to a municipal corporation where the principle of delegation is different from the one applicable to delegation to any other authority.

The learned counsel for the petitioner pointed out that in a case under the Punjab General Sales Tax Act in *Rattan Lal and Co. and Another Vs. The Assessing Authority and Another*, , the delegation was upheld because the limits were prescribed and, therefore, it could not be said to be a case of unguided delegation to the administration : (vide paragraph 11 of the judgment).

On carefully examining the various authorities on the subject it appears to me that the principle of delegation in the case of municipal corporations is not essentially different from the one applicable to delegation to other authorities. The basic principle in either case is that the rate of tax can be delegated to an authority provided the statute contains a policy or principle furnishing guidance to the delegate in exercising such powers. The following observations of their Lordships in paragraph 19 of the judgment in *Rattan Lal and Co. and Another Vs. The Assessing Authority and Another*, , are pefthird Edition, Vol. 2) pertinent :

The position which emerged from the decisions so far, therefore, was that the power to fix rates can be delegated if the statute doing so contains a policy or principles furnishing guidance to the delegate in exercising such power.

Thus, it would appear that although fixing the limit of the rate of tax is one of the modeg of controlling the exercise of power of the delegate, it cannot be said that that is the only method to do so. The delegation of such a power may be controlled by indicating the policy or providing guidance otherwise to the delegate in exercise of the delegated power. It cannot, therefore, be said that even in the case of a delegation to an authority other than the municipal corporation fixing of the limits of tax or fixing the upper limit is an indispensable condition. The delegation may be guided and controlled in some other manner as may be laid down in the statute.

As already pointed out above, this is not a case of delegation but a case of legislation by reference. Legislation by reference is of two kinds and there are two general types of reference statutes:

(i) Statutes of specific reference.

(ii) Statutes of general reference, (Vide Article 5207 at page 547 of "Sutherland Statutory Construction", Third Edition, Vol. 2).

A statute of specific reference, as its name implies, refers specifically to a particular statute by its title or section number. It incorporates the provisions referred to from another statute as in force at that time. A general reference statute refers to the law on the subject as may be in force at the time it is invoked. Thus it includes all the amendments and modifications of the law subsequent to the time the reference statute was enacted: (Vide Article 5208 at pages 548 to 551-"Sutherland Statutory Construction", Third Edition, Vol. 2).

So far as a statute of specific reference is concerned, there can be no objection to its validity because the Legislature adopts specific provisions of a particular statute which implies that the Legislature has fully applied its mind to the contents and the implication of the provisions before adopting them. In the case of a statute of general reference, the position is somewhat different because the Legislature adopts the provisions of another statute not only as they exist at the time of enactment but even such as may be enacted by amendment, etc., in future. As the contents of the amended statute cannot be predicated in advance a question would arise whether in such a case the Legislature has abdicated its legislative function or had effaced itself. The question of abdication of the legislative function or self-effacement in a case of reference legislation must, in my view, be examined on the same principles which govern the limits of valid delegation.

The learned counsel for the petitioner strongly relied on the decision of the Supreme Court in *B. Shama Rao Vs. The Union Territory of Pondicherry*, , in respect of his contention that the impugned provision is illegal and ultra vires. In that case, their Lordships held that there was a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras Legislature inasmuch as under the Pondicherry Act the enactment of "the Madras Legislature was adopted which was not in force at the time of enactment of the Pondicherry Act. My Lord, the Chief Justice, has pointed out the distinguishing features of that case in paragraphs 7 and 8 of his judgment. I would like to add that that case stands on a different footing also because an entire enactment which was not in force at the time of the enactment was adopted. Here the position is entirely different. There is a charging section namely Section 6 in the Central Sales Tax Act. There are specific provisions in relation to declared goods to which no objection can be taken. In regard to other goods the minimum rate of tax has been fixed at 10 per cent., but the impugned provision further provides that in case the State Legislature fixes a higher rate of tax for intra-State sales, such rate would be applicable in the case of inter-State sales as well. Thus, the adoption of a provision of the Act of the State Legislature by general reference is limited to the rate of tax and this must have been done keeping in view the policy of the State Legislature in regard to the imposition of tax on intra-

State sales.

The State Legislature is a responsible body and is expected to determine the rate of tax on intra-State sales taking into account every aspect of the matter including the impact of tax on the trade in a particular commodity and not merely the need for augmenting the finance of the State. Thus, this limited adoption of a provision of an Act of the State Legislature which may be enacted hereafter cannot be said to amount to abdication of the legislative function or self-effacement.

Further under Sub-section (5) of Section 8 power is given to the State Government to exempt any commodity from Central sales tax if it considers necessary to do so in public interest. This power has been conferred on the State Government apparently for the purpose that in case the rate of Central sales tax appears to be excessive it may be reduced in public interest. This is a very salutary provision, which must be read along with Section 8(2)(b) of the Act and it indicates that the Central Legislature has clearly laid down the policy of adopting a rate of tax which is consistent with public interest. I, therefore, agree with my Lord the Chief Justice that Section 8(2)(b) of the Act is not ultra vires on the ground that it amounts to abdication of the legislative power by the Parliament.

As regards Section 9 of the Central Sales Tax Act, the contention of the learned counsel for the petitioner was that before its amendment in the year 1969 by the Central Sales Tax Amendment Act (No. 28 of 1969), Section 9 provided for levy of sales tax and for that levy adopted the machinery of different States' Acts and this amounted to abdication of its legislative function by Parliament and, therefore, the said provision was invalid and inoperative and it could not be resuscitated by a subsequent amendment. The argument advanced in support of the contention was similar to that advanced for attacking Section 8(2)(b) of the said Act. It is not necessary for us to consider the validity of Section 9 before it was amended because, as pointed out by my Lord the Chief Justice in paragraph 12, the argument would have carried some force if the entire Act could be assailed as invalid and inoperative. The invalidity of a single provision can be easily rectified by subsequent amendment without affecting the Act as a whole. Therefore, even if it is assumed that the section as it stood prior to the amendment was invalid, the defect has been cured by subsequent amendment without affecting the Act as a whole.