

(1956) 01 MP CK 0014

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Applns. No"s. 20 and 21 of 1953 and Civil Ref. No"s. 71 and 72 of 1953 and 80 of 1954

Mohammad Siddiq Gautamlal and Others

APPELLANT

Vs

The State of Madhya Bharat and Another

RESPONDENT

Date of Decision : 17-01-1956

Acts Referred:

Constitution of India, 1950 — Article 200, 226, 286, 286(3), 303
Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act, 1952 — Section 3
Madhya Bharat Sales Tax Act, 1950 — Section 13(1), 4(2), 4(3), 5, 5(2)

Citation : (1956) 01 MP CK 0014

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : R.G. Waghmare, in Nos. 20 and 21 of 1953 and 80 of 1954, M.B. Rege, in No. 71 of 1953 and R.S. Machalpurkar, in Nos. 71 and 72 of 1953, for the Appellant; K.A. Chitale, General, for the Respondent

Judgement

Nevaskar, J.—These are five cases, two petitions for the issue of a writ of mandamus and three references u/s 13(1), M.B. Sales Tax Act, involving practically the same points or points which are over-lapping. All these cases were heard together with the consent of the Counsel on either side and are being disposed of together.

I shall deal with the writ-petitions in detail in the first instance and then proceed to apply my conclusions in those cases to the cases under reference. Wherever any particular case needs special treatment in view of some special point involved therein it will be dealt with separately while dealing with that case.

2. As regards the two writ-petitions they are petitions under Article 226 of the Constitution of India for the issue of a writ of mandamus or any other kind of writ or direction submitted by the Firm of M/s Mohammad Siddiq Gautamlal and M/s Nemichand Fulchand against the State of Madhya Bharat and the Sales Tax Officer, Indore.

3. The Petitioners firms carry on business of sale and purchase of pugrees, Their shops are situated in M.T. Cloth Market, Indore. It is alleged by the Petitioners that the pugrees in which they deal are manufactured mainly in Uttar Pradesh and Rajasthan as also elsewhere. They are made of cotton yarn. The process employed for their manufacture is one of hand-looms. The pugrees bear "pallas" of jari yarn breadth of which varies from 1/8" to 4".

It is said that cost of jari yarn employed for the purpose of these pugrees does not exceed 5 per cent of the total cost of the commodity. u/s 4(3), Madhya Bharat Sales Tax Act (30 of 1950) the Government of Madhya Bharat issued Schedule No. 1, mentioning therein the particular kinds of goods which are exempt from sales tax.

4. Item No. 2 in this Schedule mentioned cotton cloth manufactured on handlooms as one of such goods.

5. The Petitioner was served with a notice dated 11-7-1953 by the Sales Tax Officer, Indore intimating drat he was liable to pay Sales Tax in connection with his business of "pugrees" for the years 1950-51, 1951-52 and 1952-53 and called upon him to submit its accounts.

6. The Petitioner contends that the action of the Sales Tax Officer requiring him to submit accounts for the assessment of sales tax is illegal and void.

7. The principal grounds set forth by him in support of this contention are:

1. That the pugrees in which he deals being those manufactured on handlooms are exempt from sales tax under Schedule I of Madhya Bharat Sales Tax Act, No. 30 of 1950.

2. That by Central Act No. 52 of 1952 Parliament declared "all cloth woven on handlooms "as a commodity essential for the" life of the community and on account of this as no assent of the President was secured in respect of Act No. 30 of 1950 the provisions therein inconsistent with the Central Act aforesaid became void by reason of Article 286(3) of the Constitution of India.

3. That the State of Madhya Bharat has exempted similar goods manufactured on handlooms in Madhya Bharat from Sales Tax by issuing a Notification to that effect dated 31-1-1953 (Notification No. 5/7 S.R. 546/52 published in the Gazette dated 5-2-1953 Part 1 page 708). The pugrees manufactured by similar process in other States cannot then be subjected to tax as that would offend Article 304 of the Constitution of India.

8. In the returns submitted by the Sales Tax Officer it is asserted that the Petitioners were rightly called upon to comply with the requirements of Madhya Bharat Sales Tax Act and to pay Sales Tax, at the rate of Rs. 6 1/4 per cent under item No. 19 Of Schedule of rates dated 30-4-1950 u/s 5(2) of the Madhya Bharat Sales Tax Act.

9. The pugrees, it is said, constitute cloth manufactured on handlooms but the

said cloth is not purely of cotton but consists of cotton cloth with jari borders or pallas. The price of these pugrees, according to the opponent, varies from Rs. 1-4-0 per pugree to Rs. 21/- the variation being proportionate to the fineness of count of cotton yarn used therein as well as the quantity of gold or silver threads of the jari borders. The price charged is a composite price and the value of the borders of "pallas" is not negligible.

The pugrees in question therefore do not fall in the category of cotton cloth woven on handlooms and as such are not exempt from taxation under the Act. It is denied that the levy of Sales Tax amounts to unreasonable restriction of the fundamental right of the Petitioner to carry on trade and that the requirement under the Act to obtain licence violates any provision of the Constitution.

10. It is further asserted that inasmuch as vires of the Act is not challenged by the Petitioner he could not invoke this remedy under Article 226 of the Constitution of India. His only remedy lies under the Sales Tax Act itself.

11. The return further asserts that Article 286(3) of the Constitution of India and Act 52 of 1952 affect only such legislation as would be made after that Act came into force on 9-8-1952. It cannot affect a legislation which was already in force since prior to coming into force of Act 52 of 1952. It is denied that Act 30 of 1950 is rendered ultra vires in so far as it was inconsistent with Central Act No. 52 of 1952 owing to absence of assent of the President.

12. The questions which therefore arise for consideration are:

Firstly: Whether the liability to tax in respect of the goods in question is affected by Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act No. LII of 1952 as no assent of the President was obtained in respect of the provisions of the former Act which are inconsistent with the latter by reason of Article 286(3) of the Constitution of India.

Secondly: Whether the exemption of all kinds, of handloom cloth produced at Chanderi, Maheshwar, Sarangpur and Shajapur from taxation under the Act would justify the Petitioners to claim similar exemption by reason of Article 304 of the Constitution of India.

Thirdly: Whether the handloom pugrees in which the Petitioner deals are not liable to tax because they fall under Item 2 of the list of exempted articles?

13. It is contended on behalf of the Petitioner by Mr. Waghmare that the pugrees which are subject to the impugned tax are cotton cloth manufactured on handlooms and the mere fact that they contained jari borders, stripes or pallas will not make them anything else than cotton cloth. He contended that both having regard to the area of jari occupied in each pugree as well as the proportionate cost of the gold or silver threads, proportion of jari is inconsiderable or negligible. The goods therefore ought to fall under Item 2 of the list of the exempted goods.

14. He urged that the existence of Pallas will not make the goods as cloth of Jari (gold or silver threads). The description of the goods, according to him, will be determined by its substantial character.

15. He further contended that whatever might be the position prior to 9-8-1952 the goods in question will not be liable to tax after that date as on that date Essential Goods Act 52 of 1952 came into force, which declared all cloth woven on handlooms as a commodity essential to the life of the community under the Act and that this deprived the State Sales Tax Act of its efficacy to tax handloom made Pugrees though they contained Jari Pallas, borders or stripes as the said State Act, assuming it has rightly taxed this kind of goods prior to the coming into force of the Central Act, had not received the assent of the President. Article 286(3) of the Constitution of India was invoked by the learned Counsel in support of his contention. Reference was made in this connection by him to the cases reported in - "Ishwar Das Kupoor v. Member, Board of Revenue", ILR (1946) 2 Cal 395(A); - "Soma Singh v. The State of Pepsu", AIR 1954 SC 311 (v 41)(B) and - "Firm of Soma Rajaiah v. Sales Tax Officer, Secunderabad", AIR 1954 AP 50 (v 41)(C).

16. Lastly he rested his third ground of attack on Articles 303 and 304 of the Constitution of India. He contended that cloth manufactured on handlooms at four places in Madhya Bharat viz. Shajapur, Sarangpur, Chanderi and Maheshwar, is exempt from sales tax by reason of specific notification issued under the Act, This has the effect, according to him, of creating discrimination between goods imported from outside the State and those produced at these principal places of manufacture of that kind of goods. The power of the State to tax the imported goods under the circumstances is lost during part of the material period viz., 1952-53. This he tried to support on the strength of an affidavit filed practically at the close of the argument.

17. In order to arrive at our conclusion with regard to the aforesaid three questions we shall have to refer to the provisions of Article 286(3) of the Constitution of India which is as follows:

No law made by the Legislature of the State imposing or authorising the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

18. The next material provision is the one contained in Section 3, Essential Goods (Declaration and Regulation of Tax on Sale Or Purchase) Act No. 52 of 1952 (Central Act 52 of 1952) which is as follows:

No law made after the commencement of this Act by the Legislature of a State imposing or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for die life of the community shall have effect unless it has been reserved for the consideration of the President and has

received his assent.

19. On comparing the two provisions it will be clear that the words "made after the commencement of the Act in Section 3 are extra and do not appear in the constitutional provision under Article 286(3) .

20. It was contended that Section 3 in so far as it contains the aforesaid words is in conflict with the corresponding provision contained in Article 286(3) of the Constitution of India and is to that extent void. It is therefore suggested that any legislation whether made before or after the coming into force of Act 52 of 1952 by a legislature of a State imposing or authorising the imposition of a tax on sale or purchase of goods declared by Parliament to be essential for the life of the community will be void if no assent of the President has been obtained.

21. In my opinion this argument is untenable as will be clear from the following discussion.

22. In the first place I do not think that the words "made after the commencement of this Act" in Section 3 of Act 52 of 1952, go beyond the legislative power of the Parliament and run counter to the provision of the Constitution as contained in Article 286(3) but they correctly interpret the true import of Article 286(3) of the Constitution of India.

23. If we have regard to the words "law made by the Legislature of a State" and "as have been declared by Parliament by law" in Article 286(3) it is clear the State legislation contemplated is a post-constitutional legislation. For if that had not been the intention the Article would not have used the words Legislature of a State and Parliament. This is also clear from the decision of their Lordships of the Supreme Court reported in AIR 1954 SC 311 (V. 41)(B). There it is stated at page 312:

The Petitioners are dealers in coarse cloth and medium cloth and their contention is that these commodities having been declared as essential for the life of the community they are not liable to pay sales tax on them. In the petition an allegation has been made that Section 3 of Act 52 of 1952 is in direct contravention of Article 286(3) of the Constitution. There does not appear to be any substance in this contention.

Section 3 is in line with Article 286(3) and there is no inconsistency between that section and the relevant provision of the Constitution. The Petitioner are sought to be taxed under Ordinance 33 of 2006 which, as an existing law, has been continued by Article 372. The question is whether that Ordinance, contravenes the provisions of Article 286(3) or has since been altered, repealed or amended by any competent legislative authority.

It is quite clear that Section 3 of Act 52 of 1952 does not affect the Ordinance, for the Ordinance was not made after the commencement of that Act. The only question, therefore, is whether the Ordinance runs counter to Clause (3) of Article 286 of the Constitution. A perusal of that Clause will at once indicate that

that Clause contemplates a post-Constitution law, for it must be a law made by a "Legislature of a State" which must refer to the Legislature of a State created by the Constitution.

Further, and what is more important, it contemplates a law which can be but has not been reserved for the consideration of the President and has not received his assent. This provision clearly points to post-Constitution law, for there can be no question of an existing law continued by Article 372 being reserved for the consideration of the President for receiving his assent.

As we are concerned in this application with a pre-Constitution law, it is not necessary for us to express any opinion as to the validity or otherwise of a law made after commencement of the Constitution but before the coming into operation of Act 52 of 1952.

(23a) According to their Lordships the use of the words Legislature of a State and the provision regarding the assent of the President clearly point to a post-Constitution legislation.

(23b) Their Lordships having expressed the view earlier that there is no inconsistency between Section 3 of Act 52 of 1952 and Article 286(3) of the Constitution and that the former is in line with Article 286(3) ultimately did not think it necessary to express an opinion as to the validity or otherwise of law made after the commencement of the Constitution but before the coming into operation of Act 52 of 1952. This question was kept open.

24. In the present case Madhya Bharat Sales Tax Act came into force after the Constitution and therefore we are concerned with a question upon which their Lordships had refused to express an opinion.

25. For the purpose of Consideration of this question we have to take into account the phrase "as have been declared" by Parliament. The perfect tense used in this section by using the words "as have been declared" indicates that the declaration must precede the impugned State legislation. It therefore follows that the said Act 52 of 1952 will not affect a State legislation made prior to the coming into force of that Act.

Moreover the declaration has to be made by Parliament. It therefore follows that, even if there be in force Essential Supplies (Temporary Powers) Act of 1946, having been continued as the existing law by Article 372 of the Constitution of India, still 7 declaration made thereby of certain commodities as essential cannot be construed to be a declaration by Parliament regarding goods as being essential to the life of the community under Act 52 of 1952.

26. This view, which I have taken, can find its support in the case reported in AIR 1954 AP 50 (V 41)(C). In that case it was also held that the Hyderabad General Sales Tax Act 1950 was properly passed after it received the assent of the Rajpramukh, as it was a competent legislation then. There was no question of reservation of the Act for assent of the President when it was made into law.

The learned Judges of the Hyderabad High Court relied upon the observations of the Supreme Court in - Kameshwar Singh and Others Vs. State of Bihar, which are as follows:

It is significant that the Article 200 docs not contemplate the Governor giving his assent and thereafter, when the bill has become a full-fledged law, reserving it for the consideration of the President. Indeed, the Governor is prohibited from giving his assent where such, reservation by him is made compulsory. The Constitution would thus seem to contemplate only "bills" passed by the House or Houses of Legislature being reserved for the consideration of the President and not "Laws" to which the Governor has already given his assent.

27. In the aforesaid case of the Supreme Court question for consideration related to Article 31(3) and not to Article 286 of the Constitution but considerations which weighed with their Lordships in that case were held in the aforesaid Hyderabad case (C), to be equally applicable. With this I respectfully agree.

28. I, therefore, am of opinion that the liability of a dealer to the tax in question is not affected by the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 52 of 1952.

29. Next question to be considered is whether the Petitioner even if he be considered to be a dealer in a variety which cannot strictly be called cotton cloth made on handlooms, cannot be subjected to sales tax as similar goods in Madhya Bharat are exempted from such taxation and that taxing the Petitioner would under the circumstances violate the provisions of Article 304 of the Constitution at least in respect of the period from 1-4-1952 to 31-4-1953 out of the impugned period.

30. This question was raised by Mr. Waghmare with distinctness and clarity at a very late stage and ordinarily I should not have considered it but having regard to the decisive material produced along with an affidavit bearing on the point I propose to consider it.

31. The Gazette Notification No. 5/7 S.R. 546/52 dated 31-1-1953 published in the Madhya Bharat Government Gazette dated 5-2-1953 Part I indicates that all handloom cloth manufactured at Maheshwar, Sarangpur and Shajapur was exempted from sales tax for the period from 1-4-1952 to 31-3-1953. This had the effect of creating a discrimination as against goods, manufactured outside the State of Madhya Bharat. It is clear that whereas handloom cloth manufactured at say Maheshwar was not subjected to a tax handloom cloth imported from say Uttar Pradesh or Rajasthan was subjected to a sales tax.

32. This worked discrimination and placed goods from outside at a disadvantage. The fact that there were places within the State itself which were placed under similar disadvantage was in my opinion immaterial. The material question is whether the imposition of tax on sale of goods coming from Uttar Pradesh or Rajasthan was sought to be discriminated or not and whether similar goods

produced at least at some places in Madhya Bharat were free from such taxation. It is clear from the above mentioned notification that there was discriminatory taxation of goods coming from other States.

33. Similar notifications have been issued by Madhya Bharat Government in respect of four places viz. Chanderi, Maheshwar, Sarangpur and Shajapur for subsequent years upto 31-3-1955. But in this petition we are concerned only with the year ending on 31-3-1953.

34. I am, therefore, of the opinion that as all varieties of goods manufactured on handlooms in three places in Madhya Bharat viz. Maheshwar, Sarangpur and Shajapur had been exempted from sales tax, taxation of similar goods coming from outside the State violated the provisions of Article 304 of the Constitution by creating discrimination as against such goods.

35. I may in this connection refer to the decision reported in - "Fox v. Robinson", 8 CLR 115(E). In that case it was held that the law of a State requiring higher licence-fees for authorising sale of wine manufactured from fruit grown in any other State than what was required in respect of wine manufactured from fruit grown inside the State was invalid to the extent of the difference.

36. The wording of Article 304 of the Constitution indicates that the taxing power of the State is only valid so far as it does not work discrimination as against similar goods coming from other States. The moment it begins to work discrimination the taxing power is rendered invalid to the extent of discrimination.

37. Learned Advocate-General contended that the law imposing sales tax is valid. What is invalid, is the discriminatory nature of exemption granted. The result will be that the exemption will cease to operate and the similar goods made at the aforesaid places in Madhya Bharat will be subjected to tax. The tax on Puggies imported from Uttar Pradesh or Rajas than will not be free from taxation.

38. I am unable to agree with this contention. The Constitution permits taxation upon goods imported from States other than taxing States within certain defined limits as laid down in Article 304 of the Constitution. The moment the limits are crossed by whatever means whether by the provision of the State Law passed by the Legislature or under any power vesting in an authority by reason of power delegated to it the taxing power is gone. And when the taxing power to the extent of discrimination is gone the tax becomes invalid and cannot be recovered.

39. The suggestion of the learned Advocate-General that discrimination can be removed by taxing sales of handloom cloth of all varieties manufactured in 1952-53 at the three places in Madhya Bharat mentioned above is impracticable. The hand-loom cloth manufactured at those places in 1952-53 had been free from taxation. No dealer there could be expected to keep an account in respect of sale of that commodity during the exempted period. It is impossible therefore to require the dealer to render an account of sale of the exempted goods for the purpose of enabling the Sales Tax Officer to determine the amount

of tax.

40. For all these reasons I am of the opinion that taxation of the handloom cloth of whatever variety, imported into Madhya Bharat for consumption into Madhya Bharat from any other State is invalid for the period from 1-4-1952 to 31-3-1953.

41. As we are not concerned in this petition for any other period it is unnecessary to say anything in respect of it. But it may be stated that similar line of reasoning will apply to the subsequent period as well.

42. The last question to be considered is whether the goods in question fall within the category of cotton cloth made on handloom.

43. Section 4(2), M.B. Sales Tax Act is as follows:

No tax shall be payable under this Act on the sale of goods specified in the second column of Schedule 1 on conditions mentioned in column three of this schedule.

44. Schedule 1 contains the following as the second item exempted from sales tax:

Cotton cloth manufactured on handlooms.

45. It is clear from this provision that all cotton cloth manufactured on handlooms is exempt from sales tax.

46. The question however is whether "Pugrees" With Jari borders of Pallas fall within the category of cotton cloth.

47. The literal meaning of the term cotton cloth would be cloth made of cotton. Where there are embellishments in the texture by making use of a negligible quantity of other fabrics such as of Jari or silk, the cloth in my opinion, will still be cotton cloth. But where the embellishment on account of use of Jari or silk or other fibre is substantial in quantity causing a substantial increase in price it would be difficult to call it cotton cloth. In my opinion it is in each case a question of fact as to whether a particular variety of cloth can legitimately fall within the category of cotton cloth or not.

48. The object of granting exemption to handloom cotton cloth is to stimulate production of cheap cloth which would provide cloth to the poor and provide employment to the people. In producing such cloth attention has to be given to popular tests and cloth of different varieties and standards has to be produced. This will involve use of fibres such as Jari or silk.

If even where a small amount of these fibres is used the cloth is to be subjected to a tax the purpose of exemption will substantially be adversely affected. Where the quantity of fibres other than cotton is substantial and the use of it has substantially increased the value of the cloth it is difficult to call it a cotton cloth. As I held above it will in each case be a question of fact as to particular variety is a cotton cloth or not as explained above.

49. Learned Advocate-General relied upon the decision reported in (1950) 1 STC 153(A), where it is held that the term "handloom woven cloth" used in the Bengal Finance Act 1941 in connection with the exemption granted to such a variety does not include cloth which after it comes out of the loom is subjected to needle-work performed by hand or machine. The term was held to mean only that cloth which is in the same State in which it was when removed from the loom.

50. Learned Advocate-General further contended that the Sales Tax Act is a fiscal statute and it should be interpreted strictly while dealing with taxing provisions or exemptions granted under the Act. He therefore argued that where a particular variety does not strictly fall within the letter of exempted goods no exemption can be claimed. He therefore argued that what is exempted is cotton cloth so that, even if there be slight or negligible quantity of fibres of other material the exemption cannot be claimed.

The learned Counsel, however, expressed that he could not lay his hand on any authority dealing with the question regarding substantial character of particular variety of goods in the matter of taxation except the aforesaid Calcutta case. In that case apparently stricter interpretation was put but it appears from the facts in that case that the additional work done after the cloth was removed from the looms considerably increased its value.

51. Another case to which a reference was made in his argument by the learned Advocate-General was one reported in - *Varasuki and Co. Vs. The Province of Madras*,

52. In that case the question was whether where the exempted commodity was salt, gunny bags used for carrying salt could be exempted. It was held that they were not exempt. We cannot derive much assistance from this case as the commodity in respect of which exemption was claimed was altogether a different commodity.

53. If I were to accept the contention of the learned Advocate-General that even if a small or negligible quantity of Jari or silk is used and even when there is no substantial increase in the value of the cloth it ceases to be cotton cloth and is therefore subject to a heavy tax even though made on hand-looms then I should be authorising the taxation of handloom made cotton cloth which is the major and substantial part of it and thereby going contrary to the wishes of the legislature at least as regards that part.

I can very well see that if I exempt a portion of the cloth which is not of cotton but is either silk or jari then too. I would be allowing exemption which is not justified. In this state of conflict arising out of accepting either of the strict interpretation I think it proper to accept a rule that if the quantity of Jari or silk is small negligible the article will be exempt.

But if it is substantial so as to materially increase its value then the exemption

cannot be claimed. For if I hold that a cotton cloth even with a small quantity of Jari or silk is a Jari or silk cloth that would be wrong. It is still cotton cloth with only a portion of it which cannot strictly be called purely cotton cloth although even a Jari fibre may presumably consist of fibres of cotton mixed with gold or silk fibres. In the absence of a clear authority bearing on this rather difficult question I have chosen to follow the rule of substantial character of the variety, sought to be exempted.

54. On the question whether the Pugrees in respect of which the statement is called by the Sales Tax Officer contain negligible or substantial amount of" Jari and whether the increase in value is substantial or otherwise the parties are not at one. In this state of things it is difficult for this Court to hold that fall Pugrees will be exempt or all will not be. The matter, in my opinion, will have to be examined by-the Sales Tax Authorities in light of what has been, stated above and the liability of tax determined.

55. I must say that the practical difficulty in these cases arises where instead of laying down test for exemption based on price of a commodity of specified description the test selected is by describing the commodity itself irrespective of its price. In many States the former test is selected. If the exempted goods had been described as cloth made on handlooms of value at a specified rate the difficulty would have been over. In that case Pugrees and cloth containing negligible quantity of embellishment would have been free and these containing substantial quantity of embellishment would not have been so.

56. There is one more argument which may justify, the view I have taken. If a cotton cloth contains coloured fibres it will be exempt. The reason apparently, is that the colour forms a negligible part. I see no reason why the analogy cannot be extended.

57. On the third question therefore I hold that it is in each case a question of fact as to whether Pugrees with Jari border or Pallas are entitled to exemption or not depending upon the question whether the quantity of Jari is substantial or small and negligible.

58. The result is that Civ. Misc. Applns. Nos. 20 and 21 of 1953 are partly accepted and it is held that for the period from 1-4-1952 to 1-5-1953 the Petitioners are not liable, to be taxed. As regards the rest of the period included in the claim whether they will be liable to tax or not will depend upon the nature of the goods as indicated above.

59. I therefore hereby order that the Sales Tax Officer shall not require the Petitioners to submit account of their turnover regarding sale of Pugrees with Jari Pallas for the period from 1-4-1952 to 31-3-1953.

60. Mandamus is refused, subject to the observations made above, for the rest of the period.

61. As regards the references made u/s 13(1), Madhya Bharat Sales Tax Act, 30

of 1950 questions referred in Civil References Nos. 71 and 72 of 1953 are common. They are as follows:

(1)(a) Whether the handloom cotton cloth saris with real, artificial silk or Zari Yarn in its borders can be considered in the category of cotton, cloth manufactured on handlooms within the meaning of Item No. 2 of Schedule 1 appended to the Madhya Bharat Sales Tax Act.

(b) Whether the handloom cotton cloth Saris with real, artificial silk or Zari Yarn in its Pallas can be considered in the category of cotton cloth manufactured on handlooms within the meaning of item No. 2 of Schedule 1 appended to the Madhya Bharat Sales Tax Act.

(2) Whether the sale of such handloom Saris or cloth having silk, artificial silk or Zari Yarn in its texture or borders or Pallas enjoy the exemption provided: vide Item No. 2 to the Schedule 1 appended to the Madhya Bharat Sales Tax Act.

(3) Whether handloom cotton cloth saris with only imitation silk or real silk or imitation and real silk mixed borders and stripes can be regarded as silk cloth for the purposes of Item No. 19 of the Rate Schedule published u/s 5 and as such be liable to sales tax at the rate of Rs. 6-4-0 per cent.

62. I shall deal with each of the questions referred in what follows:

63. Question No. 1: The question is discussed by me while dealing with Civ Misc. Applns. Nos. 20 and 21 of 1953 in this judgment. Those were the cases dealing with Pugrees with Pallas of Jari. In the present cases the commodities affected are saris with jari borders or pallas. However the reasoning employed in those cases will equally apply to the case of saris.

I held in those cases that whether the particular Pugrees with Jari border or Pallas made on handloom will fall within the description of cotton cloth made on handlooms or not will depend upon the circumstance as to whether the quantity of jari used either in the border or pallas is small or negligible or is substantial so as to increase its value. If it is small or negligible they will be entitled to exemption under Item No. 2 of Schedule 1 made in exercise of powers u/s 4(2), Madhya Bharat Sales Tax Act, and if it is substantial so as to increase its value materially it will not be exempt.

I held that it will in each case be a question of fact as to whether the exemption can legitimately be claimed. What applies to jari will equally apply to silk or artificial silk. I therefore answer questions Nos. (1)(a) and (b) accordingly.

64. Question No. 2: The answer to this is involved in the answer given earlier on question No. (1).

65. Question No. 3: This too will be answered by my answer regarding question No. (1).

66. It was pointed out by the learned Advocate General that Item No. 19 in the

charging Schedule mentions;

bl izdkj dk diM+k] js"keh] muh o d`=he js"keh o vU; js"ksnkj inkFkZ dk cuk gqvK A

While Item No. 20 mentions:

gj izdkj dk lwrh diM+k A

and that the tax chargeable for the former is Rs. 6-4-0 per cent while that for the latter is Rs. 3-2-0.

67. He therefore urges that in Item No. 19 general words are followed by particular and for that reason the scope of generality is not curtailed by what followed. The particular words were merely illustrative and should not be taken to be exhaustive.

68. As regards Item No. 20 it referred to purely cotton cloth. He therefore wanted to contend that any cloth which is not purely cotton cloth will have to be taken to be covered by the residuary Item No. 19 and held chargeable as such.

69. In my opinion even assuming that the words in Item No. 19 following the general words are illustrative they refer to the fibres of a single material such as silk, woolen imitation silk, hemp and the like. It does not speak of mixed variety partly of silk and partly of cotton.

70. As chargeability of such a mixed cloth made on handloom, similar principles as laid down in my answer to questions Nos. (1) and (2) will have to be followed.

71. If the cloth is cotton and silk threads or any other threads are negligible or are not substantial it will be charged under Item 20; otherwise it will be chargeable under Item 19 Item 19 as I understand refers to cloth made of fibres other than cotton. So that where cotton enters as a mixed fibre the difficulty of charging is not solved and one has to resort to the principle referred to above.

72. In Civil Ref. No. 80 of 1954 the following questions are referred to this Court u/s 13(1), Madhya Bharat Sales Tax Act, 30 of 1950:

1. Whether State of Madhya Bharat has power to levy tax upon handloom cloth and whether Madhya Bharat Sales Tax Act is ultra vires the State Legislature.
2. Whether imposition of sales tax on handloom Sarees manufactured in Madhya Pradesh or other States, by the State of Madhya Bharat is in violation of Article 304 of the Constitution of India and if so, what is its effect?
3. Whether it is within the power of the State Legislature to define the handloom cloth or in the alternative whether all cloth that is exempted from Central Excise Duty would be treated as handloom cloth and has got to be accepted as such by the State Legislature.
4. Whether cloth manufactured on handlooms and containing cotton yarn, silk or

artificial silk yarn or Jari Fibres falls under Item No. 2 of Schedule 1 issued u/s 4(2) of the Act, vide Madhya Bharat Gazette dated 30-4-1950.

5. Whether under Item No. 19 of the Rate Schedule issued u/s 5 of the Act and published in the Madhya Bharat Gazette, Extraordinary dated 22-5-1950 the proportionate price of silk, artificial silk yarn or Jari fibre is liable to sales tax or the whole price of the cloth containing such yarns is taxable.

73. Question No. (1): The answer to this question will be found in this decision given by me while dealing with Civ. Misc. Applns. Nos. 20 and 21 of 1953. I have held therein that the Madhya Bharat Sales Tax Act is not ultra vires the State legislature and is a valid piece of legislation even after passing of the Central Act 52 of 1952.

Argument of Mr. Waghmare was based on the contention that after the passing of the Central Act 52 of 1952 declaring handloom cloth as goods essential to the life of the community provisions in the Madhya Bharat Act contrary to the Central Act are void to that extent. This was answered by me in the negative. The reasons for my view are fully given above while discussing those cases. No other ground of invalidity was urged except the one based on Article 304 of the Constitution of India.

74. Question No. (2): This question too regarding the invalidity of the provisions in the Madhya Bharat Sales Tax Act taxing handloom cloth not purely cotton being discriminatory and in violation of Article 304 of the Constitution I have answered by holding it to be so when such a discrimination was made and the invalidity will apply to the period during which discrimination continued.

75. Question No. (3): This question was not pressed by the learned Counsel for the Petitioner and no arguments were advanced on this point before us.

76. Question No. (4): This question is discussed in detail while dealing with the writ petitions. It is discussed as third question.

77. Question No. (5): This question deals with the question of apportionment of the tax according to the extent to which material other than cotton is used in the texture, borders or Pallas.

78. As I held above if the admixture of other material is small or negligible the essential description or quality of cloth is not altered. But if the material other than cotton is used to a substantial extent or in a manner so as to increase its value materially principle of apportionment will have to be followed as in my opinion Sales Tax Act is a fiscal statute and taxing provisions and exemptions have got to be strictly construed. The extent and value of apportionment of tax will in each case be a question of fact.

79. The references are answered accordingly.

Samvatsar, J.

80. I agree.