

(1971) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 2080, 2360 and 3848 of 1970 and 5875 of 1971

Mohan Lal Verma

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 20-12-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 8
Constitution of India, 1950 — Article 14, 19

Citation : (1972) 29 STC 398

Hon'ble Judges : S.N. Dwivedi, J; R.L. Gulati, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Dwivedi, J.—In all these petitions, the petitioners are brick producers. In Writ Petition No. 2080 of 1970 the petitioners pray for the issue of a writ in the nature of prohibition restraining the sales tax authorities from assessing sales tax on its turnover of the sale of bricks in accordance with a notification issued u/s 3-A of the U.P. Sales Tax Act, as it stood before the passing of the U.P. Sales Tax (Amendment and Validation) Act, 1971. In Writ Petition No. 2360 of 1970 the petitioner has been assessed to sales tax on its turnover of the sale of bricks from the assessment year 1959-60 to the assessment year 1964-65. Assessment proceedings for the assessment years 1968-69 to 1970-71 are still pending. It prays that the assessing authority should not assess tax for the said years. There is a further prayer that the Judge (Revisions), Sales Tax should not confirm the assessments for the years 1965-66 to 1967-68. There is a third prayer that the assessing authority should modify the assessment orders from 1959-60 to 1964-65 and reduce the rate of tax to the rate mentioned in Section 3 of the U.P. Sales Tax Act. In Writ Petition No. 3848 of 1970 the petitioner has been assessed to sales tax on its turnover of the sale of bricks for the assessment years

1965-66 to 1969-70. Its appeals are still pending. In Writ Petition No. 5875 of 1971 the petitioner has been assessed to sales tax on its turnover of the sale of bricks for the assessment years 1961-62 to 1968-69. The assessments in all these petitions are challenged.

2. It is now necessary to give the history of the present litigation. It is a history of long drawn battle between the State and the brick producers. As the Sales Tax Act emerged from the legislative anvil in 1948, it had only one charging section. It was Section 3. Section 3 imposed sales tax on the sale of goods which were being sold at more than one point as well as goods which were sold only at one point. Section 3-A was inserted in the Sales Tax Act sometime later in 1948. Sub-section (1) of Section 3-A provided for the levy of sales tax on the sale of any goods "at such single point in the series of sales by successive dealers" as might be prescribed by the State Government. Sub-section (2) of Section 3-A provided that where the State Government had acted under Sub-section (1), it might further declare that the turnover of a dealer in respect of the sale of such goods be taxed at such rate as might be specified, not exceeding one anna per rupee on the sale of goods enumerated therein. All the goods enumerated in Sub-section (2) were being sold at more than one point. Notification No. ST-906/X dated 31st March, 1956, was issued by the State Government u/s 3-A. The Notification imposed sales tax on the turnover of the sale bricks at the point of sale by the manufacturer. This notification was superseded by the Notification No. ST-1362/X-105 dated 5th April, 1961. The 1961 notification, in turn, was superseded by the Notification No. ST-6438/X-1012 dated 1st December, 1962. The validity of these notifications was challenged in *Gurna Mal, Brick Kiln Dealer v. State of U.P.* 1970 A.L.J. 584 A Division Bench of this court held that the notifications did not fall within the purview of Section 3-A as in this State bricks were sold directly to the consumers by the manufacturer. As there were no intervening transactions of sale, Section 3-A, which applied to such goods as were being sold at more than one point, would not cover the case of bricks. While the case was pending, the U.P. Legislature passed the U.P. Sales Tax (Amendment and Validation) Ordinance, 1970. This Ordinance amended Section 3-A(1) with retrospective effect and validated the notifications already issued, assessments already made and taxes already recovered under the said notifications. The Ordinance sought to substitute the words "at such single point in the series of sales by successive dealers as the State Government may specify" by the words "at such single point of sale as the State Government may specify". It was held in *Gurna Mai's case*¹ that this amendment was ineffective to save the notifications. Then the U.P. Legislature intervened. It passed the U.P. Sales Tax (Amendment and Validation) Act, 1970. The Amending Act substituted Sub-section (1) of Section 3-A. The substituted section read :

Notwithstanding anything contained in Section 3, the State Government may, by notification in the Official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point of sale as the State Government may specify and such declaration may be made

notwithstanding that the goods or class of goods are not capable of being sold or according to the prevalent commercial practice are not ordinarily sold at more than one point." (emphasis added). The Legislature also validated the assessment orders made and the tax collected under the previous notifications.

3. The validity of the 1970 Amendment Act was also challenged in this court in *Krishna Brick Field v. State of U.P.* 1971 A.L.J. 919 A Full Bench of this court held that part of Section 3-A(1) which has been underlined by me is unconstitutional inasmuch as it delegates essential legislative power to the State Government and is violative of the provisions of Article 14 of the Constitution.

4. After the decision of the Full Bench, the Legislature again intervened and passed the U.P. Sales Tax (Amendment and Validation) Act, 1971 (No. 20 of 1971). By this Amending Act the Legislature has substituted Sections 3 and 3-A of the existing Sales Tax Act and has added Section 3-AB.

5. It is now necessary to set out the material portion of the substituted Sections 3, 3-A and 3-AB. The material part of Section 3 reads :

(1) Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rates provided by or u/s 3-A, Section 3-AB or Section 3-AA on his turnover of sales which shall be determined in such manner as may be prescribed.

(2) No dealer shall, except as otherwise provided in Section 18, be liable to pay tax under Sub-section (1) if his turnover of the assessment year is less than twelve thousand rupees or such larger amount as the State Government may, by notification in the Gazette, specify in that behalf either in respect of all dealers in any goods or in respect of a particular class of such dealers.

Explanation.-For the purpose of computing the minimum turnover under this sub-section, but not for the purpose of determining the amount of tax due under Sub-section (1), the aggregate amount for which goods are supplied or distributed by way of sale or are sold by him, whichever is greater, shall be deemed to be the turnover.

(3) Nothing in Sub-section (2) shall apply in respect of-

(a) the sale by a dealer of goods imported by him from outside Uttar Pradesh, the turnover whereof is liable to tax under Sub-section (1) of Section 3-A, or

(b) the sale by a dealer of-

(i) goods imported by him from outside Uttar Pradesh after furnishing to the selling dealer a declaration under Sub-section (4) of Section 8 of the Central Sales Tax Act...; or, as the case may be,

(ii) goods manufactured or processed by him by using the goods referred to in Sub-clause (i).

(4) Where the amount specified in a notification under Sub-section (2) is reduced

during an assessment year, the tax payable by a dealer under this section shall be computed as follows, that is to say-

(a) on the turnover relatable to the period previous to the reduction, as though the amount had not been reduced, and

(b) on the remainder, as though the reduced amount had been in force on all material dates.

(5) Where tax is payable, and has been so paid, by a commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

6. Section 3-A materially reads:

(1) (a) The turnover in respect of the goods specified in the second column of the First Schedule shall be liable to tax at the point specified in the third column thereof at such rate, not exceeding ten per cent., as the State Government may, by notification in the Gazette, declare :

Provided that the rates prevailing, by virtue of Section 3-AB, immediately before the commencement of the U.P. Sales Tax (Amendment and Validation) Act, 1971, shall continue in force until altered by any such notification....

(2) The turnover in respect of all goods, which are not specified in the First Schedule or in Section 3-AA or in the notification u/s 3-D, shall be liable to tax at the rate of 3 per cent.

7. Section 3-AB materially reads :

(1) Notwithstanding any judgment, decree or order of any court, any tax imposed, assessed, levied or collected, or purporting to have been imposed, assessed, levied or collected before the commencement of the U.P. Sales Tax (Amendment and Validation) Act, 1971, under any of the notifications specified in the Second Schedule shall be deemed to have been validly imposed, assessed, levied or collected in accordance with law, as if the said notifications had been included in and formed part of this section and this section had been in force at all material times ,when such tax was imposed, assessed, levied or collected.

8. Relying on Section 3-AB, the respondents are in some cases refusing to refund the amount of sales tax collected from the petitioners ; in some other cases they are demanding sales tax from some of the petitioners due under orders assessing tax on the turnover of sale of bricks in accordance with the notifications already mentioned ; in yet another set of cases they are proceeding to assess tax on the turnover of sale of bricks in accordance with the said notifications. So these petitions have been filed. The petitioners have challenged the constitutionality and efficacy of Section 3-AB on the following grounds :

(1) Section 3-AB is an instance of legislative trespass on judicial power; (2) as the notifications have been bodily lifted into the section, Section 3-AB makes no

sense and is inefficacious ; (3) Section 3-AB will not apply to proceedings of assessments for the assessment years previous to the commencement of the Amending Act, 1971, which are pending on the date of the commencement of the Amending Act, 1971, as it is not a charging section and the charging Section 3 is not retrospective; (4) Section 3-AB is violative of the provisions of Article 14 of the Constitution ; (5) Section 3-AB is violative of the provisions of Article 19(1) (f) and (g) of the Constitution¹; and (6) Section 3-AB is repugnant to the old Section 3-A.

9. Legislative trespass on judicial power.-The argument of Sri Raja Ram Agarwal is that Section 3-AB seeks to validate the notifications already declared invalid by this court and does nothing more. So the Legislature has arrogated to itself the functions of a Judge. This the Legislature cannot do under the scheme of the Constitution. He has heavily relied on *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*, .

10. The provision of law under fire in *Janapada Sabha*¹ is radically different from Section 3-AB. There the Legislature had truly speaking, not legislated at all ; it had shifted the legislative function to the judiciary. It seems to me that that is a case where the court was asked to legislate. It is not so here. Section 3-AB is modelled on *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, Section 3(1) of the Sugarcane Cess (Validation) Act, 1961, is an Act of Parliament and it was challenged before the Supreme Court. It is in these terms:

Notwithstanding any judgment, decree or order in any court, all cease's imposed, assessed or collected or purporting to have been imposed, assessed or collected under any State Act before the commencement of this Act shall be deemed to have been validly imposed, assessed or collected in accordance with law, as if the provisions of the State Acts and of all notifications, orders and rules issued or made thereunder in so far as such provisions relate to the imposition, assessment and collection of such ceas had been included in and formed part of this section and this section had been in force at all material times when such ceas was imposed, assessed or collected.

11. One of the contentions of the learned counsel for the appellant was that Section 3(1), in fact and in substance, had validated the invalid State statute which Parliament could not do. Dealing with the contention, Sri Gajendragadkar, C.J., said:

The plain meaning of Section 3 is that the material and relevant provisions of the State Act as well as the provisions of notifications, orders and rules issued or made thereunder are included in Section 3 and shall be deemed to have been included at all material times in it. In other words, what Section 3 provides is that by its order and force, the respective cease's will be deemed to have been recovered, because the provisions in relation to the recovery of the said cease's have been incorporated in the Act itself. The command under which the cease's would be deemed to have been recovered would, therefore, be the command of

Parliament, because all the relevant sections, notifications, orders, and rules have been adopted by the Parliamentary Statute itself.

(emphasis added).

12. The Chief Justice went on to add:

When demands were made for the recovery of the said cease's they will be deemed to have been made not in pursuance of the State Acts but in pursuance of the provisions of the Act itself.

13. The argument of counsel for the appellant was not accepted. Nor can it be accepted in the case of Section 3-AB which is cast in the mould of Section 3(1).

14. It cannot be said that the Legislature has translated its legislative function to courts or that it has simply validated the notifications. The notifications specified in the Second Schedule shall now be deemed to be the text of Section 3-AB. The difference is this: while the notifications were sub-legislation issued by the State Government under the Sales Tax Act, the notifications now form the text of Section 3-AB and are legislative laws.

15. If the Legislature removes the defects discovered in the invalidated law by courts and then declares that the invalidated law shall be deemed to have been made under the subsequent law which is made to operate retrospectively on the date of the coming into force of the invalidated law, there will be no encroachment on judicial power by the Legislature. (See *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, *The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, and *the State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others*,).

16. In *Krishna Brick Field* 1971 A.L.J. 919 this court had struck down the notifications issued under the old Section 3-A of the Sales Tax Act imposing tax on the turnover of sale of bricks at the point of sale by the manufacturer. The bases of the court's decision were two: (1) the last part of old Section 3-A delegated essential legislative power to the State Government; and (2) the said part also violated Article 14 of the Constitution. It cannot be disputed that the first defect is removed by Section 3-AB. In my view, the second defect is also removed. Accordingly, the Legislature cannot be accused of intrusion into judicial domain.

17. Section 3-AB makes no sense and is inefficacious.-The next argument of Sri Raja Ram Agarwal is that as the notifications issued under the old Section 3-A had been bodily lifted into Section 3-AB, it makes no sense and is inefficacious. The phrase "bodily lifted" is taken from *Collector of Customs v. Sampathu Chetty* [1962] 3 S.C.R. 786 . There, pointing out the distinction between a mere reference to or citation of one statute in another statute and legislation by reference, the Supreme Court said that legislation by reference "in effect means the bodily lifting of the provision of one enactment and making it part of

another". It was held that the statute in that case fell within the first class and not within the second class. Section 3-AB falls within the second class undoubtedly. It is an instance of legislation by reference.

18. Sri Raja Ram Agarwal has laid particular emphasis on certain words in the notifications specified in the Second Schedule. Those words are: "In the exercise of his powers u/s 3-A the Government is pleased to declare." He maintains that those words will also be deemed to be incorporated in Section 3-AB, and Section 3-AB will be reduced to a jargon and become inefficacious. But those words cannot be read in Section 3-AB. I think that while enacting Section 3-AB the Legislature intended to weed out all such words in the notifications as are not pertinent in the context of a tax law made by the Legislature. We should give effect to this intention of the Legislature. Accordingly only those parts of the notifications which impose a tax will be deemed to form the text of Section 3-AB. But Sri Raja Ram Agarwal says that it is not open to the court to make adaptations, for that is the work of the Legislature. The argument overlooks the decisions of the Supreme Court in *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, and *Sri Sadasib Prakash Brahmachari Vs. The State of Orissa*, and cannot be accepted.

19. Section 3-AB will not apply to pending proceedings.-Another argument of Sri Raja Ram Agarwal is that Section 3-AB will not apply to proceedings of assessment for the assessment years previous to the commencement of the Amending Act, 1971, which were pending on the date of the commencement of the said Act. The reason is that the new Section 3 and not Section 3-AB is the charging section and Section 3 is not retrospective. It is now necessary to examine what Section 3-AB seeks to accomplish. It provides that the notifications specified in the Second Schedule shall become part of the section. These notifications were issued between 31st March, 1956, and 18th June, 1971. They impose sales tax on sale by a manufacturer or importer. So all notifications specified in the Second Schedule issued between 31st March, 1956, and 18th June, 1971, form the text of Section 3-AB. For this purpose Section 3-AB is made retrospective in operation. It shall be deemed to be in force on the various dates on which the aforesaid notifications have been issued. Some of those notifications have been declared invalid. Others have not yet been declared invalid. Section 3-AB will save imposition of tax by the notifications which have not yet been declared invalid and which, according to the Legislature, have been validly made : it also saves taxes assessed, levied and collected under the said notifications. The important words to be noticed are "imposed, assessed, levied and collected". Section 3-AB also saves imposition of taxes by the notifications which have already been declared to be invalid: it also saves assessment, levy and collection of taxes under them under the cover of the phrase "purporting to have been imposed, assessed, levied and collected".

20. In a nutshell, Section 3-AB seeks to protect (1) imposition of taxes, (2) assessment of taxes, (3) levy of taxes, and (4) collection of taxes under the

notifications specified in the Second Schedule.

21. It seems to me that the argument proceeds from overlooking the significance of the word "levy" in Section 3-AB. The Legislature should be presumed to have used the word "levy" in a sense different from "imposition", "assessment" and "collection" of taxes. The word "levy" means "any step taken or any proceeding initiated for the ultimate purpose of determining the liability of the assessee. (See *Dialdas Parmanand Vs. P.S. Talwalkar and Others*, . So that "taxes levied" in Section 3-AB would mean any step taken or any proceeding initiated for determining the tax payable by an assessee. The phrase "taxes levied" will save whatever inchoate steps or proceedings have already been taken for assessing tax on the turnover of the sale of bricks of an assessee before the commencement of the Amending Act, 1971. These proceedings for assessment in respect of the assessment years prior to the Amending Act and pending on the date of the commencement of the said Act shall be deemed to be valid proceedings. Section 3(1) of the Amending Act, 1971, provides that "every dealer shall, for each assessment year, pay a tax at the rates provided by or u/s 3-A, Section 3-AB or Section 3-AA, on his turnover of sales." Sections 3-A and 3-AA of the Amending Act are prospective. Section 3-AB is admittedly retrospective. As Section 3(1) expressly provides that every dealer shall, for each assessment year, pay a tax at the rates provided by or u/s 3-AB, it seems to me that proceedings for assessment in respect of the previous years and pending on the date of the commencement of the Amending Act shall be completed in accordance with Section 3(1). Part of Section 3(1) which says "every dealer shall, for each assessment year, pay a tax at the rates provided by or u/s 3-AB" cannot apply prospectively at all. This part is not superfluous. It must be purposive. I think that this part is enacted for the purpose of continuing the pending proceedings which are vivified by the word "levied" in Section 3-AB.

22. The Amending Act, 1971, splits up old Section 3 in two parts, and puts one part in the new Section 3 and another part in the new Section 3-A. Let me quote the old Section 3 :

Subject to the provisions of this Act every dealer shall, for each assessment year, pay a tax at the rate of 2 naye paise per rupee on his turnover of such year which shall be determined in such manner as may be prescribed:

Provided that a dealer shall not, except as otherwise provided in Section 18, be liable to pay the tax if his turnover of the assessment year is less than twelve thousand rupees or such larger amount as may be notified by the State Government in that behalf either in respect of all dealers in any particular goods or in respect of a particular class or category of such dealers, unless-

(a) he has sold any goods imported by him from outside Uttar Pradesh the turnover whereof is liable to tax under Sub-section (1) of Section 3-A, in which case he shall be liable to pay tax on the turnover of such goods at the rate specified under Sub-section (2) of the said section, anything in this proviso as to

the minimum amount of turnover notwithstanding; or

(b) he is registered under the Central Sales Tax Act, 1956, and has furnished a declaration under Sub-section (4) of Section 8 of the aforesaid Act, in which case he shall be liable to pay tax on his sale of any goods in respect of the purchase of which he has furnished the aforesaid declaration notwithstanding anything contained in this proviso as to the minimum amount of turnover:

Provided also that the State Government may, by notification in the Official Gazette, enhance the rate of the tax on the turnover in respect of any goods or class of goods so, however, that the rate does not exceed 3 paise per rupee and may, likewise, reduce it, and the tax shall thereupon be payable on the relative turnover at the enhanced or reduced rate as may be applicable:

Provided further that where the amount notified under the first proviso is reduced during an assessment year, the tax payable as aforesaid by a dealer shall be computed as follows: that is to say-

(a) on the turnover relatable to the period previous to the reduction as though the amount has not been reduced, and

(b) on the remainder, as though the reduced amount had been in force on all material dates.

Explanation.-Where tax is payable and has been so paid by the commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

23. Let us now compare the new Section 3 with the old Section 3. Sub-section (1) of the new Section 3 is identical with Sub-section (1) of the old Section 3 except its rate part. The rate part is transferred to Sub-section (2) of the new Section 3-A. Sub-section (2) of the new Section 3 is identical with the main part of the first proviso to Sub-section (1) of the old Section 3. But for one difference Sub-section (3) of the new Section 3 is identical with the second part of the first proviso. Sub-clause (ii) of Clause (b) of Sub-section (3) of the new Section 3 is an addition. But it is to the benefit of the assessee. So he cannot make any complaint if the new Section 3 is applied to all pending proceedings. Sub-section (4) of the new Section 3 is identical with the third proviso to Sub-section (1) of the old Section 3. Sub-section (5) of the new Section 3 is identical with explanation to the old Section 3. The explanation to Sub-section (2) of the new Section 3 is new. But it hardly makes any difference to pending proceedings. As the new Section 3 and the old Section 3 are substantially identical, it makes no difference whether we apply the new Section 3 or the old Section 3, with the aid of Section 6 of the General Clauses Act to the pending cases. In this view of the matter, the question of supposed non-retrospectively of the new Section 3 loses importance. Section 3-AB is violative of Article 14. The first argument is that as Section 3-AB is made retrospective, it would co-exist with the old Section 3-A and then there will be two different methods of taxation. It will entail

discrimination.

24. The old Section 3-A applies to goods which are salable at more than one point. Section 3-AB incorporates notifications of two kinds. The first kind of notifications deals with goods salable at more than one point. The other class consists of a single notification concerning bricks. This court has held that bricks are salable only at one point. It is not necessary in these cases to consider the notifications which deal with goods salable at more than one point and form part of Section 3-AB. We are concerned with bricks in these cases. This court has held that no notification concerning bricks could be issued under the old Section 3-A. In the result, while existing side by side with the old Section 3-A, Section 3-AB would exclusively deal with bricks. Section 3-AB and the old Section 3-A do not overlap with respect to bricks. There will accordingly be no discrimination in the case of bricks.

25. I am unable to appreciate the argument that as the old Section 3-A and Section 3-AB would exist together, the decision of the Full Bench in Krishna Brick Field 1971 A.L.J. 919 is binding on us on the question of Article 14. The Full Bench Considered the old Section 3-A in the context of the exercise of power of imposing tax by a delegated authority. u/s 3-AB, the Legislature itself has legislated on the imposition of tax on the sale of bricks.

26. Another line of argument is that there is no reasonable basis in Section 3-AB for different rates of taxes for different kinds of goods. In Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, it was said :

There is no doubt that it is for the Legislature to decide on what objects to levy what rate of tax. It is not for the courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax.

27. In V. Venugopala Ravi Varma Rajah Vs. Union of India and Another, Sri Shah, J., observed:

Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax-laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways; the Legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the Legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification : it is not a condition of the guarantee of equal

protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the Legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment.... A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.

28. He went on to add:

It is for the Legislature to determine the objects on which tax shall be levied, and the rates thereof.

29. To the same effect are the observations of Hidayatullah, C.J., in the *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, .

30. In *Corpus Juris Secundum* (Vol. XVI-A, page 391), it is said: "Taxation is largely a question of policy; so the legislature possesses the largest measure of discretion in tax matters. If selection is based on a reason, it is sufficient even though in the opinion of the court the reason is a poor one. The test is good faith and not wisdom."

31. At page 423 it is said that the differences in organisation, management and the type of business transacted are sometimes sufficient to justify the classification. These guide-lines will be helpful in examining the argument.

32. The Second Schedule to the Amending Act, 1971, specifies a large number of notifications dealing with a large number of goods. It specifies a notification concerning timber. The rate of tax on timber is 6 per cent. It also specifies bricks, cement and cement water proofing compound. The rate of tax on the sale of these goods is 7 per cent. It also specifies sanitary goods, fittings excluding pipes and fittings, taxable at 8 per cent. Iron and steel are also specified. They are taxable at 3 per cent, at the point of sale by the dealer to the consumer. It should be observed that all building materials except iron and steel are taxed at a higher rate than other goods. Iron and steel are taxed at 3 per cent, because they are "declared goods" under the Central Sales Tax Act and the rate of tax is fixed on the sale of iron and steel by the said Act. A higher rate of tax on building materials does not seem to be unreasonable. Who erect buildings generally belong to the higher or middle income groups and can bear heavier incidence of taxation than the persons belonging to the lower income group.

33. Higher taxation on bricks may be supported on yet another basis. Coal is used in burning bricks. No sales tax was imposed on the sale of coal up to 31st March, 1956, Thereafter a tax of one per cent, was imposed thereon up to 30th September, 1965. From October, 1965, the tax was raised to two per cent. On 6th July, 1966, it was raised to 3 per cent. Since then the rate has remained stationary. The sale of coal is governed by the U.P. Coal Control Order, 1959,

Clause (8) of the Order provides for fixation of the price of coal. It says: "No licensee and no person acting on his behalf shall sell, agree to sell or offer for sale at a price exceeding the price to be declared by the licensing authority in accordance with the formula given in Schedule III to the Order." It will thus appear that the consumer of coal is getting two advantages in this State. Firstly, he pays a small tax on the purchases of coal on account of the fact that coal is "a declared goods" under the Central Sales Tax Act and the maximum rate of tax is prescribed thereunder. The other advantage that he gets is the fixed price under the Order. In the absence of the Order the price of coal would have been subject to the vagaries of the open market. The consumer would have been required to pay generally a higher price than the price fixed under the Order. The petitioners, who are consumers of coal for burning bricks, are getting these two advantages. It seems to me that it is fair and reasonable for the Legislature to ask them to pay a higher tax on the sale of bricks, as they are making larger profits on the sale of bricks than they could have made if the rate of tax on the sale of coal had been higher and its price had not been fixed under the Order. On account of these two benefits they have better capacity to pay higher tax on the sale of bricks.

34. There is yet another aspect for consideration. The Uttar Pradesh Bricks Control Order, 1956, controls burning of bricks in the State. Clause (3) of the Order provides that no person shall burn bricks with coal except as provided in the Uttar Pradesh Coal Control Order, 1955. In view of the Uttar Pradesh Bricks Control Order and the Uttar Pradesh Coal Control Order, the Government, knows for definite the names of the brick-producers and the places where they produce bricks. As their names and places of business are already known, it is easier to collect tax from them than from a large mass of unknown dealers. Tax may be collected with greater administrative convenience and less cost of collection. The Legislature may reasonably take into consideration administrative convenience and cost of collection in fixing a higher rate of tax on the sale of bricks. For the reasons already discussed, I am of opinion that the Legislature is not defying the command of equal protection in demanding higher rate of tax on the sale of bricks than on the sale of certain other goods.

35. Another argument proceeds in this way. The notifications specified in the Second Schedule deal with two kinds of goods : (1) goods which are salable at more than one point; (2) bricks which are salable at only one point. It is said that by and large the scheme of the Second Schedule still is identical with the scheme of the old Section 3-A which dealt with the single point taxation; and bricks do not fit in that scheme. Accordingly the inclusion of bricks in the Second Schedule is violative of Article 14. I am completely unable to appreciate the argument. That is not the only way in which the notifications ought to be read, I have already discussed earlier that the goods mentioned in the various notifications in the Second Schedule may be classified in another manner also. They may be classified into (1) goods which constitute building materials, and (2) goods which do not constitute building materials. The scheme of the new

Sections 3, 3-A and 3-AB is radically different from the scheme of the old Sections 3 and 3-A. The new sections classify goods into scheduled goods and non-scheduled goods. The scheduled goods may be sub-classified as I have done earlier. Several other sub-classifications may be made of those goods.

36. Sri S. C. Khare has relied on *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another*, *Budhan Choudhry and Others Vs. The State of Bihar*, *M. Ct. Muthiah and Others Vs. The Commissioner of Income Tax, Madras and Another*, *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, *KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND ANOTHER.*, *National Engineering Industries Ltd. v. Its Workmen* [1963] 1 S.C.R. 779, *Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others*, and *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, . The provisions of law which were considered in those cases are different from Section 3-AB. In the first case the discrimination was sought to be justified on the basis of a date line. The second case is not a tax case. The third case deals with procedural discrimination in a taxing statute. In the fourth case a flat rate of tax was condemned. In the fifth case a taxation provision was held as not violative of Article 14. For historical reasons the classification was found reasonable and not discriminatory. The sixth case is not a tax case. The seventh and eighth cases relate to exemption clause in a taxing statute.

37. Section 3-AB is violative of Article 19(1)(f) and (g).-This argument is advanced in view of the fact that Section 3-AB is retrospective in operation. It is said that retrospectively of the provision infringes Article 19(1)(f) and (g) of the Constitution. It may be recalled that under the old Section 3-A, the State Government had issued several notifications imposing a higher rate of tax on the sale of bricks by the producers. All those notifications have been struck down by this court for one fault or the other. In the meanwhile, the State Government had assessed and collected taxes on the sale of bricks. A huge amount of tax had been collected till the date of the commencement of the Amending Act, 1971. The Legislature accordingly felt it necessary to enact Section 3-AB to save the Government from a critical financial predicament. In similar circumstances the Supreme Court has upheld the retrospectively of the statute. (See *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, *Rai Ramkrishna and Others Vs. The State of Bihar*, and *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*,).

38. Repugnancy of Section 3-AB to the old Section 3-A.-I have already discussed earlier that as regards bricks, Section 3-AB is not repugnant to the old Section 3-A, for that section did not authorise the issue of a notification concerning bricks. Even in relation to other notifications I am unable to discern any repugnancy. Section 3-AB incorporates all the notifications issued under the old Section 3-A till the date of the commencement of the Amending Act, 1971. Accordingly, no question of repugnancy can arise.

39. In view of the foregoing discussion, the petitions are dismissed with costs.

R.L. Gulati, J.

40. I agree with brother Dwivedi that these writ petitions be dismissed. However, I wish to add a few comments of my own regarding the validity of Section 3-AB with reference to Article 14 of the Constitution.

41. Under the Amended Act, commodities have been divided into two groups. Those included in the First Schedule attached to Section 3-A are taxable at single point at the rates specified in Section 3-AB. The other commodities are taxable at the rate of 3 per cent. Bricks is one of the commodities which is included in the schedule and its turnover is taxable at the rate of 7 per cent. at the point of sale by the importer or the manufacturer. Bricks is a commodity which, so far as this State is concerned, is sold directly by the manufacturer to the consumers so that it undergoes only one sale. If bricks had not been included in the schedule, their turnover would be taxable in the hands of the manufacturer at the rate of 3 per cent. The dealers in bricks who are none other than the manufacturers complain as to why bricks have been included in the schedule and thus subjected to higher tax. The commodities included in the schedule are none other than the commodities which were previously included in the various notifications issued u/s 3-A and were subjected to higher tax. Section 3-A before its amendment had a basis. In the case of commodities which underwent various sales before reaching the consumer, the State Government was authorised to pick out a single point of sale and to levy tax at a higher rate. The reason behind Section 3-A was administrative convenience as also to afford, in some cases, relief to the consumer. The various notifications issued u/s 3-A before the amendment have now been incorporated in Section 3-AB. The justification for a higher rate u/s 3-AB is still the same as in the case of notifications issued u/s 3-A. Bricks, however, are an exception. They do not pass through multiple sales. They could not be the subject-matter of higher tax u/s 3-A. Can they be subjected to higher tax u/s 3-AB ? In taxing the turnover of bricks at a single point, no administrative convenience is involved, because there is only one point of sale. The tax can be collected from the manufacturer as well under Sub-section (2) of Section 3-A as u/s 3-AB. There are no middlemen involved. The higher rate of tax cannot be said to afford relief to the consumer. What then is the basis upon which bricks should be subjected to a higher tax ? No reason has been disclosed in the counter-affidavit filed on behalf of the State. The reasons put forward at the time of the hearing are all farfetched and I would not venture a guess of my own. The only reason which might have prompted the Legislature to fix a higher rate for bricks can be that the consumer of bricks is a person belonging to a well to do class of society and can bear a greater burden of tax. If that be the reason, it would indeed be a poor reason. But when the Legislature makes a classification, it cannot be struck down on the ground that the basis for discrimination is not good. According to the quotation from the Corpus Juris Secundum (Vol. XVI-A, page 391) given by brother Dwivedi, "taxation is largely a question of policy; so

the Legislature possesses the largest measure of discretion in tax matters. If selection is based on a reason it is sufficient even though in the opinion of the court the reason is a poor one. The test is good faith and not wisdom."

42. On the material on record, it is difficult to accuse the Legislature of bad faith. The history of the litigation relating to bricks shows that the State Government wanted to levy a higher rate of tax on bricks u/s 3-A. This court held that the State Government was not competent to do so. The Legislature came to the aid of the State and made repeated attempts to justify its action. This by itself cannot be said to be an act of bad faith.

43. Moreover, the Supreme Court in *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, has observed that it is for the Legislature to decide on what objects to levy what rate of tax.

44. In *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, the Supreme Court, no doubt, observed that the classification with regard to the tax ability and the rate of tax made by the Legislature must be reasonable. But it went on to add that "it is for the Legislature to determine the objects on which the tax should be levied and the rates thereof".

45. In the circumstances I would uphold the validity of Section 3-AB even though I am doing so reluctantly.

By the Court

46. The petitions are dismissed with costs.