

(1962) 02 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 395 of 1958

Mohanlal Hargovindas

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-02-1962

Acts Referred:

Constitution of India, 1950 — Article 245, 286(1), 286(2)
Madhya Pradesh General Sales Tax Act, 1958 — Section 11A, 22(4), 27A, 4, 4(6)
Sales Tax Laws Validation Act, 1956 — Section 2

Citation : AIR 1962 MP 245 : (1962) J LJ 725 : (1962) 7 MPLJ 935

Hon'ble Judges : T.P. Naik, J; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, A.H. Saifi and D.N. Verma, for the Appellant; M. Adhikari, General and R.J. Bhawe, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.

This petition under Articles 226 and 227 of the Constitution is directed against two notices dated 5th December 1958, one for the period 7th November 1953 to 26th October 1954 (Annexure III) and another for the period 27th October 1954 to 5th September 1955 (Annexure IV), by which the Deputy Commissioner of Sales Tax, Jabalpur (respondent 3), who had entertained the petitioner's appeals against the assessment of sales tax on their turnover for the two periods proposed to tax the turnover of certain transactions made during those periods, which were said to be liable to tax u/s 4(6) of the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter, called the Act) but were not taxed by the assessing authority.

The facts giving rise to this petition may be briefly stated. The petitioners carry on the business of manufacturing and selling bidis on a large scale. They have their head office at Jabalpur where they are registered as a dealer for purposes of the Act. In the course of their business, they import from the State of Bombay

large quantities of tobacco. They had thus imported from that State tobacco worth Rs. 84,29,580/15/- during the period 7th November 1953 to 26th October 1954 and worth Rs. 1,38,27,630/12/6 during the period 27th October, 1954 to 14th November 1955. In the usual course, the tobacco, after being imported into this State, was rolled into bidis; which were largely exported to various other States for sale and consumption in those States. The Sales Tax Authorities threatened to tax the aforesaid purchase of tobacco u/s 4(6) of the Act and obliged the petitioners to file on that basis their returns for two periods, 3 May 1954 to 29 July 1954 and 30 July 1954 to 26th October 1954.

Being aggrieved by the action taken against them, the petitioners moved the Supreme Court under Article 32 of the Constitution for the issuance of a writ of mandamus or any other suitable writ to restrain the respondents from enforcing the provisions of the Act and other consequential reliefs. In Petition No. 67 of 1955, D/-20-9-1955, Mohanlal Hargovind Das, Bidi Merchants, Jabalpur (M.P.) Vs. The State of Madhya Pradesh and Another,) their Lordships observed:

"All the transactions entered into by a registered dealer, however, do not necessarily import a liability to pay tax under the Act because, whenever the question arises in regard to his liability to pay any tax under the Act, such liability would have to be determined in spite of his being a registered dealer with reference, inter alia, to the provisions of Section 27-A of the Act which incorporates within its terms the bans which have been imposed on the powers of the State Legislatures to tax under Article 286(1)(a) and (2) of the Constitution. If, therefore, a dealer who has got himself registered as dealer under the provisions of Section 8(1) of the Act is sought to be made liable in respect of transactions of sale effected by him he could claim exemption from such liability if the transactions of sale or purchase took place in the course of inter-State trade or commerce after the 31st March, 1951, except in so far as Parliament may by law otherwise provide. In the case before us there was no such provision made by Parliament and the transactions in question were all after the 31st March, 1951, with the result that the ban imposed by Article 286(2) was in operation and if the transactions took place in the course of inter-State trade or commerce not only were Shri Chhaganlal Ugarchand Nipani and Shri Maniklal Chunanlal Baroda exempt from the liability to pay the tax on these transactions but the petitioners also were similarly exempt. No liability, therefore, could be imposed either for Sales Tax or for Purchase Tax within the terms of the Act on these transactions which as above stated took place in the course of inter-State trade or commerce." (pp. 515-516 (of SCR): (P. 789 of AIR)).

Their Lordships, therefore, issued a writ in the following terms:

"The respondents will be restrained from enforcing the Central Provinces and Berar Sales Tax Act, 1947, and its provisions against the petitioners and from imposing a tax in respect of the transactions in question and in particular from imposing a tax on the purchase price or goods purchased on the declarations under Rule 26 being goods specified in the registration certificate as intended for

use as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State but utilised for any other purpose under the provisions of Section 4(6) of the Act."

In view of the writ issued by the Supreme Court, the Assistant Commissioner of Sales Tax, Jabalpur, by his orders dated 9 September 1958, and 10 September 1956, exempted from tax the purchases of tobacco made in the State of Bombay, which, after being imported into this State, was used as raw material for manufacturing bidis exported to other States. As already, indicated, the petitioners appealed against the two orders. In the meantime, on 21 March 1956, the Sales Tax Laws Validation, Act, 1956 (7 of 1956), which repealed the Sales Tax Validation Ordinance 3 of 1956, had come into force. Thereupon, on 5th December 1958, the Deputy Commissioner of Sales Tax issued the two impugned notices expressly mentioning that the liability to tax had arisen in consequence of the Sales Tax Laws Validation Act, 1956, passed by Parliament.

The impugned, notices are challenged on the following grounds:

(i) The Sales Tax Laws Validation Act, 1956, does not annul the writ granted by the Supreme Court as a result of a decision *inter partes*.

(ii) If the Parliament's Act, read with Section 4(6) of the Act and Rules 26 and 58 framed thereunder could be regarded as, empowering the making of assessment or re-assessment contrary to the writ of the Supreme Court, it is *ultra vires* and unconstitutional.

(iii) The appellate authority has no jurisdiction to make a fresh assessment under Rule 58 *ibid*.

The petitioners were permitted to also urge the following other grounds:

(1) The transactions in question, are not taxable u/s 12A of the Act in the absence of any notification relating to tobacco issued thereunder.

(2) Section 4(6) of the Act offends against Article 280(1)(a) of the Constitution.

(3) The Sales Tax Laws Validation Act, 1956, has no application because there was no pre-existing law authorising the imposition of tax on sales of goods in the course of inter-State trade and commerce.

(4) Section 4 (6) has no application to the facts of the present case.

The first two grounds relate to the validity and effect of the Sales Tax Laws Validation Act, 1956. The question of validity of that Act has been settled by the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, . Their Lordships pointed out that authorising imposition of tax could be both prospective and retrospective and observed:

"Article 286(2) merely provides that no law of a State shall impose tax on inter-State sales "except in so far as Parliament may by law otherwise provide". It places no restrictions on the nature of the law to be passed by Parliament. On

the other hand, the words "in so far as" clearly leave it to Parliament to decide on the form and nature of the law to be enacted by it. What is material to observe is that the power conferred on Parliament under Article 286(2) is a legislative power, and such a power conferred on a Sovereign Legislature carries with it authority to enact a law either prospectively or retrospectively, unless there can be found in the Constitution itself a limitation on that power. Now, there is nothing express in Article 286(2) imposing a restriction on the power of Parliament to enact a law with retrospective operation." (p. 1460 (of SCR) : (p. 486 of AIR)).

It is, however, urged that in view of the principle of separation of powers implicit in our Constitution, the Parliament could not exercise judicial power and so annul the judgment of the Supreme Court, dissolve the injunction granted by it and re-open a final decision inter partes. On a proper construction of the non obstante clause in Article 286(2), the Sales Tax Laws Validation Act, 1956, only removed the ban and did not affect the injunction issued by the Supreme Court, which had not passed merely a declaratory decree.

Having heard the counsel at some length on this aspect of the case, we have formed the opinion that the contention is untenable. We were referred to Basu's commentary on the Constitution. We find that, at page 413 Volume I (Third Edition), he observed as follows:

"As under the English system, it will be open to the Legislature under our Constitution, to override the effect of a judicial decision, by legislation. The only limitation under the Constitution upon retrospective legislation is that contained in Article 20(1) which we have already discussed. Prior to the commencement of the Constitution, there have been many instances where the Legislature had enacted laws providing that suits which had been dismissed on a particular view of the law must be restored or retried, or providing for the re-opening of decrees for the purpose of affording relief to judgment-debtors, and so on and such legislation had been upheld by the Courts as valid. It does not appear that the Constitution has introduced any change in this respect."

The two leading cases on the subject are AIR 1941 16 (Federal Court) and AIR 1944 1 (Federal Court) . It was pointed out in the first case that the power of validation was ancillary or subsidiary to the power to legislate on particular subject--specified in the Lists. In the second case, Spens C. J. observed, at pp. 101-2 (of FCR): (at p. 8 of AIR), as follows:

"In India, however, the legislature has more than once enacted laws providing that suits which had been dismissed on a particular view of the law must be restored, and retried. Two well-known instances are Section 31(2) of the Indian Limitation Act, 1908, which provided for the restoration of suits dismissed on the ground that the twelve years" period of limitation under Article 132 of the Limitation Act applied to suits for sale by holders of simple mortgages and the Public Suits Validation Act (XI of 1932) which provided for the restoration of suits

dismissed on a particular interpretation of Section 93 of the Code of Civil Procedure. Again, debt relief legislation in the various provinces has provided even for the reopening of decrees passed inter partes. In view of the history of the rule in America, it is questionable whether it would be right to apply the same rule in this country. Further, the American authorities themselves show, that, even in the United States, limitations had to be placed on the strict American rule and that it was not found possible to differentiate by a clear-cut definition the exercise of legislative power from the exercise of judicial power. (See Willis" Constitutional Law of the United States, p. 142.)

The theory of separation of powers in relation to our Constitution was considered, by a Division Bench of this Court in *Biharilal Vs. Ramcharan*, . *Hidayatullah C. J.* (as he then was) observed:

"In India the Supreme Court has been called upon on numerous occasions to decide whether the doctrine of separation of powers obtains in India under the present Constitution. The Supreme Court has laid down that the doctrine of separation of powers is not extant in India but that there is a certain demarcation of the three departments of Government for essential purposes. We need not quote here all the authorities. They begin with *In re Delhi Laws Act* (1912) etc. AIR 1951 SC 332 and come right up to *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, . In all these their Lordships of the Supreme Court have tried to strike a mean between the supremacy of Parliament and the separation of power in attenuated form. The decision of the Supreme Court merely indicates that the legislatures within the field of their enumerated powers are supreme and that within that power they can also validly do things which the English Parliament in the exercise of its plenary powers can do. There is, however, this difference. It has been laid down from time to time that the essential functions of legislation must be performed by the Legislature and it has also been ruled in the Federal Court in cases to which reference will be made hereafter that the Legislature cannot transgress upon the judicial power."

In our opinion the true position is that when the Legislature, without amending the law, directs, contrary to the law in force, that pending cases shall be disposed of in "a particular manner or that cases decided in one way shall be deemed to have been decided in another way, that would be an exercise of judicial power. But the enactment of a retrospective law or the passing of a Validation Act, which incidentally puts an end to the finality of a decision of a Court or re-opens a past controversy cannot be regarded as an exercise of judicial power. In *Bhaskar v. Mohammad Alimullakhan* ILR (1952) Nag 736 : (AIR 1953 Nag 40) *Sinha C. J.* and *Mudholkar J.* (as they then were) observed at pp. 752-3: (of ILR Nag): (at p. 48 of AIR):

"In view of the decision of the Federal Court in AIR 1944 1 (Federal Court) (which is referred to as *Piars Dusadh*'s case in the judgment in the *Patna* case) it must be taken to be beyond question that in India the Legislature is competent to put an end to the finality of a decision of a Court and reopen a past

controversy and even to pass Validating Acts and that enactment of a law having such effects does not constitute exercise of judicial functions by the Legislature."

These observations were quoted with approval in *Jadao Bahuji v. Municipal Committee, Khandwa* ILR (1956) Nag 83: ((S) AIR 1956 Nag (167) and *Gulabrao Keshavrao Dhole Vs. Pandurang Bhanji Dhomne and Others*, . As we would show hereafter, the view taken in *Jadao Bahuji*'s case was upheld by the Supreme Court. In the second case, a Full Bench of the Bombay High Court upheld the validity of an Ordinance passed to get over the effect of the decision in *Kanglu v. Chief Executive Officer, Janapada Sabha, Durg* ILR (1954) Nag 875 : ((S) AIR 1955 Nag 49) (FB). That Ordinance provided inter alia as under:

"Any order of a Court declaring any electoral rolls invalid on all or any of the grounds specified in Sub-section (2) or directing preparation of fresh electoral rolls shall be deemed to be and always to have been of no legal effect whatsoever."

In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, , the majority of the Judges did not consider the question whether the impugned legislation was bad because it was an exercise of judicial power. However, *Sarkar and Jafar Imam JJ.* who delivered the minority judgment, observed as follows:

"Next it is said that the Act is bad as it is really an exercise -by the legislature of judicial power which it does not possess and not an exercise of a legislative power at all. We are unable to hold that this is so. There are two things in the Act on which this contention has been based. The first is that the Act has been given a retrospective operation. It is quite clear to us that that by itself does not make the Act a thing done in the exercise of judicial power. The legislature has the power to give retrospective operation to an Act. That of course interferes with vested rights but the legislature can interfere with such rights in the exercise of its legislative power. That is not adjudicating between parties affected by the Act. It is laying down the law to be followed by Courts in future, it is so nonetheless that the law is altered as from a past date.

Then it is said that the Act provides that it is to have effect notwithstanding any decision of the Court contrary to its provisions. That the Act no doubt does. Can it be said that it thereby adjudicates and not legislates? In AIR 1944 1 (Federal Court) it was pointed out that in India the legislature very often in the enactments that it makes sets aside decisions of Courts. In America a rule appears to obtain that "Legislative action cannot be made to retroact on past controversies and to reverse decisions which the Courts in the exercise of their undoubted authority have made": *Cooley's Constitutional Limitation*, 8th Ed. p. 190. It was held in AIR 1944 1 (Federal Court) at p. 104: AIR 1944 FC 1 at p. 9) that this rule had no application in India. The Observation there made may be set out ;

"It is clear from the American authorities that this limitation has been derived

from the interpretation placed by the American Courts on what are known as the Fifth and Fourteenth Amendments which provide against any person being deprived of life, liberty or property without due process of law." The expression "due process of law" has been interpreted as referring only to "judicial process" and as not including legislation... As this requirement had been made part of the written constitution, it followed that no enactment passed by a legislature limited by that constitution could authorise anything in violation of it. Hence the rule (stated by Cooley) that "it would be incompetent for the legislature, by retrospective legislation to make valid any proceedings which had been had in the Courts but which were void for want of jurisdiction over the parties. The constitutional position in India is different. "

It seems to us that this observation of the Federal Court which no doubt was made with reference to the Government of India Act, 1935 applies with equal force to the position obtaining under our Constitution: It has been held by this Court that there is no scope under our Constitution for the application of the American concept of "due process of law." The American cases cited in support of the contention that a legislation cannot override judicial decisions therefore afford no assistance in our country. Article 31B itself provides that it would apply notwithstanding any judgment, decree or order of any Court to the contrary and it had been enacted by an Act passed by the Parliament. There have been many Acts passed since the Constitution came into force which contained similar provisions. In no case has it ever been contended that such an Act amounted to an exercise of the judicial function, by the legislature. The Act before us lays down a law to be applied by Courts in future in the adjudication of disputes between parties. It also says that the Courts shall apply the law notwithstanding that there is an earlier decision on the rights of the parties which are being litigated upon in a subsequent proceeding. The Act does not itself annul any decision of any Court. All that it says is that the law laid down is to be applied by Courts irrespective of any previous decision. It does not in any sense adjudicate between parties. It, therefore, seems to us that the contention that the impugned Act is really an exercise of judicial power is ill-founded."

The same view was subsequently expressed in *Mst. Jadao Bahuji v. Municipal Committee Khandwa* AIR 1961 SC 1486. Hidayatullah J. delivering the judgment of the Court, observed:

"The powers of the Provincial Legislatures under the Legislative Lists have been the subject of numerous decisions by the Federal Court and also by this Court. It has been pointed out that these powers are as large and plenary as those of Parliament itself. These powers, it has been held, include within themselves the power to make retrospective laws, and as pointed out by Gwyer, C. J. in AIR 1941 16 (Federal Court) , the burden of proving that Indian Legislatures "were subject to a strange and unusual prohibition against retrospective legislation lay upon those who asserted it." This has not been asserted in this case, as indeed it could, not be, after the decision of the case cited by us. In the case before the

Allahabad High Court out of which the appeal before the Federal Court had arisen (sub nom Mt. Atiq Begam and Another Vs. Abdul Maghni Khan and Others, it was held that retrospective legislation was not possible in view of the provisions of Section 292 of the Government of India Act, 1935 which continued all law in force in British India immediately before the commencement of Part III of the Act, until altered or repealed or amended by a competent legislature or other competent authority. This view was not accepted by the Federal Court, which held that Section 292 of the Act did not prevent Legislatures in India from giving retrospective effect to measures passed by them. There have been numerous occasions on which retrospective laws were passed, which were upheld by the Federal Court and also by this Court. It is not necessary to cite instances, but we refer only to the decision in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, , where this Court approved the dictum of the Federal Court.

Retrospective legislation being thus open to the Provincial Legislatures, the Act of the Governor had the same force. Retrospective laws, it has been held, can validate an Act which contains some defect in its enactment. Examples of Validating Acts which rendered inoperative decrees or orders of the Court Or alternatively made them valid and effective, are many. In AIR 1941 16 (Federal Court) the power of validating defective laws was held to be ancillary and subsidiary to the powers conferred by the Entries and to be included in those powers. Later, the Federal Court in AIR 1944 1 (Federal Court) considered the matter fully, and held that the powers of the Governor General which were conterminous with those of the Central Legislature included the power of validation. The same can be said of the Provincial Legislatures and also of the Governor acting as a Legislature."

The learned counsel for the petitioners relied upon *Bankey Singh and Others Vs. Jhingan Singh and Others*, . That case which was dissented from in ILR (1952) Nag 736: (AIR 1953 Nag 40) (supra) and in ILR (1956) Nag 83: (S) AIR 1956 Nag 167) (supra), was subsequently overruled in *Brij Bhukan v. State* ILR 33 Pat 690 : ((S) AIR 1955 Pat I) (SB). Having regard to the view consistently taken in the cases reviewed above, the contention grounded on the theory of separation of powers that a validating Act cannot affect the finality of a decision of Court is clearly untenable. It is implicit in this view that the form in which a Court chooses to formally express its decision will make no difference to the exercise of this power, which in essence is legislative power.

Another limb of the argument on this point is that the Sales Tax Laws Validation Act, 1956 merely lifted the barf imposed by Article 286(2) of the Constitution and did not set aside the injunction issued in this particular case by the Supreme Court. As shown, the Supreme Court held that, since the ban u/s 27A of the Act and Article 286(2) of the Constitution had not been lifted, no liability could be imposed under the Act on transactions which took place in the course of inter-State trade or commerce. Section 2 of the Sales Tax Laws Validation Act, 1956

which lifts the ban with retrospective effect, reads:

"Notwithstanding any judgment, decree or order of any Court, no law of a State imposing or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of interstate trade or commerce during the period between the 1st day of April, 1951 and the 6th day of September 1955 shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purporting to have been validly levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law.

Explanation--In this section, law of a State" in relation to a State specified in Part C of the First Schedule of the Constitution, means any law made by the Legislative Assembly of any of that State or extended to that State by a notification issued u/s 2 of the Part C States (Laws) Act, 1950 (30 of 1950)."

This section enacts that, notwithstanding any judgment, decree or order of any Court, no State law imposing sales tax or purchase tax on transactions made between 1st April 1961, and 6th September 1955 in the course of inter-State trade or commerce shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such transactions took place in the course of inter-State trade or commerce. The section hits every judgment, decree or order which pronounces as invalid any imposition of sales tax or purchase tax on transactions made between those two dates in the course of inter-State trade or commerce merely for the reason that those transactions were made in the course of inter-State trade or commerce. In our opinion, the judgment rendered by the Supreme Court in favour of the petitioners is not excepted and is within the ambit of the section.

The same conclusion can be reached if we look at the matter in another way. The effect of the judgment of the Supreme Court was that, without the lifting of the ban by Parliament, the respondents were restrained from enforcing the Act or imposing any tax in pursuance thereof on the transactions in question which were made in the course of inter-State trade and commerce. The Supreme Court did not say, and cannot be regarded as saying, that the ban could not be lifted with retrospective effect and these transactions could not even then be taxed.

To construe the judgment of the Supreme Court in that sense would amount to placing a fetter on the legislative power of Parliament. The position is that, on 20th September 1955, when the ban had not been lifted, the Supreme Court pronounced that, so far as these transactions are concerned, the Act as it then stood by itself and without the lifting of the ban could not be enforced. The ban was subsequently lifted and what is now sought to be enforced is not only the Act as it stood then but the Act read with the Sales Tax Laws Validation Act, 1956. In our opinion, this was not Interdicted by the Supreme Court. Indeed, in

view of Section 27A of the Act, which we would consider more fully hereafter, the Act was, so far as these transactions were concerned, a piece of conditional legislation, the condition precedent for its commencement being the lifting of the ban by Parliament, The judgment of the Supreme Court, which was given before the lifting of the ban, noticed that lacuna and gave effect to it.

The third ground is that, u/s 22 of the Act, read with Rule 58 framed thereunder, the appellate authority has no jurisdiction to make a fresh assessment of tax on these transactions. Sub-section (4) (a) of Section 22 expressly empowers the appellate authority to "confirm, reduce, enhance or annul the assessment". It is, however, argued that these transactions had escaped assessment and could be taxed only in the manner and within the period prescribed by Section 11A of the Act. In our opinion, that section was not attracted. With reference to a similar provision relating to income escaping assessment contained in Section 34 of the Indian Income Tax Act, the Privy Council pointed out in *Sir Rajendra Nath Mukerjee v. Commr. of Income Tax*, (1934) 61 Ind App 10, AIR 1934 PC 30 that there was no escaped assessment if at any time there were pending proceedings for assessment of assessee's income, which had yet to terminate in a final assessment. In (1938) 6 ITR 414 (Privy Council) their Lordships observed at p. 248 (of Ind App): (at p. 179 of AIR):

"It is possible that the final assessment may not be made until some years after the close of the fiscal year. Questions of difficulty may arise and cause considerable delay. Proceedings may be taken by way of appeal and cause further delay. Until all such questions are determined, and all such proceedings have come to an end, there can be no final assessment."

Relying upon these two cases, a Division Bench of this Court observed in, *Regional Assistant Commissioner of Sales Tax and Others Vs. Ghanshyamdas Chhotelal and Others*, at p. 152:

"From these two cases it is quite clear that there has to be a final assessment before recourse can be had to the provisions analogous to the first sub-section of Section 11-A".

In our view, any turnover of a dealer cannot be said to have escaped assessment and the stage of application of Section 11-A is not reached so long as proceedings are pending in appeal and the appellate authority can exercise the power expressly given to it to tax the turnover. Learned counsel for the petitioners placed reliance upon *Purushottam Kalidas v. Commr. of Sales Tax* 1961 MPLJ 35 for the contrary view. We consider it sufficient to say that that case merely lays down that the power conferred u/s 22-B of the Act could not be exercised in a case not within the ambit of that section and falling substantially u/s 11-A.

It is next urged that the appellate authority has no power to enhance the assessment by assessing entirely new sources of income outside the subject matter of the assessment appealed against and action proposed to be taken in

this case by the appellate authority is wholly outside the scope of the appeal. We are unable to accept this contention for two reasons. In the first place, sales tax is not assessed under different heads. It is only one tax and, when the assessee goes up in appeal, he exposes the assessment as a whole to the scrutiny of the appellate authority. Secondly, the transactions sought to be taxed are not entirely new sources of income outside the subject-matter considered by the assessing authority. This is what the petitioners themselves stated in their petition:

"The Assistant Commissioner of Sales Tax had, by his orders of assessment referred to above exempted the purchases of tobacco imported from the State of Bombay used as raw material in the manufacture of "bidis" exported outside the State of Madhya Pradesh. He proceeded on the basis that Section 4, Sub-section (6) of the Act had no application in relation to the said purchases."

We are unable to accept the contention that, where the assessing authority" erroneously exempts certain transactions, recourse can be had to only Section 11-A of the Act and the appellate authority is incompetent to enhance the assessment by including those transactions in the taxable turnover.

Another limb of the argument put forward to sustain this ground is that the appellate authority did not permit the petitioners to withdraw the appeals and is insisting upon enhancing the tax. In our opinion, no exception can be taken to this course adopted by the appellate authority. Lord Hewart C. J., who delivered the judgment of the King Bench Division in *Rex v. Special Commrs. of Income Tax* (1936) 20 Tax Cas 381 observed at p. 384-

"The fact that the notice of appeal had been given not merely made it possible but made it obligatory upon, the Commissioners that they should take certain steps, not merely or primarily in the interests of the individual appellant but in the performance of their duties imposed upon them in the interests of the general body of the taxpayers, to see what the true assessment ought to be, and that process, a public process directed to public ends, cannot be stopped at the option or the whim of the appellant who after giving notice begins to realise that if he pursues his appeal it may be the worse for him. The matter has passed out of his hands; he has given rise by his notice of appeal not merely to the opportunity but to the duty of performing a public task which may have an effect entirely opposite to that which he contemplated and desired. It seems to me that there is no ground whatever for suggesting that these Commissioners, acting in this way, on these facts, are seeking to do something which they are not entitled to do. On the contrary, they are performing their plain, duties and there is no case at all for prohibition."

The Court of Appeal affirmed this decision. Romer, L. J. stated (at pp. 395-6) :

"The question that we have to determine in this case is whether, when a taxpayer has served a notice of appeal and so brought into effect the machinery designed by Section 138 for the purpose of completing the assessment, he can

stop the further working of that machinery either by withdrawing the appeal or by refusing to be present at the hearing of the appeal. If that be right and he can in that way stop the working of the machinery then, as it appears to me, he is in a position to prevent any final assessment being made upon him at all under the Act. That would be an extraordinary intention to impute to the Legislature. In my opinion that is not the effect of the Act. In my opinion the Income Tax payer has no more power, after he has served the notice of appeal and so brought into operation the machinery of procedure set up for it in Part VII of the Act, to stop the machinery of procedure than he is in the position to stop the machinery of procedure for the ascertainment of his liability to tax in any other part of the Act."

We think similar considerations must persuade us to reject the contention that the petitioners could, either by withdrawing the appeals or by refusing to be present at the hearing of the appeals, prevent the appellate authority from determining on the facts found what the true assessment ought to be.

The fourth ground is that these transactions are not taxable u/s 12-A of the Act in the absence of any notification, issued thereunder. Since the learned Advocate General conceded that Section 12-A was not attracted, it is unnecessary for us to consider this point.

The fifth ground relates to the validity of Section 4(6) of the Act, which was introduced by Act XX of 1953 with effect from 1st December 1953. That provision reads as follows:--

""Where any goods are purchased by a registered dealer as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State, or as being goods specified in such dealer's certificate of registration as intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State and such goods are utilised by him for another purpose, the price paid by him for such goods shall be included in his turnover and be liable to tax in accordance with the provisions of this Act."

It is urged firstly that this provision offends against Article 286(1)(a) of the Constitution and secondly that, when the turnover as defined means the aggregate of the amounts of sale prices, the price paid by the assessee for purchasing the goods could not be regarded as a part of the turnover. In our opinion, the grounds of attack on the validity of Section 4 (6) are not well-founded. If the ban imposed by Article 286(2) of the Constitution is lifted, it is conceded that sales made in Bombay State for the purpose of consumption in the State of Madhya Pradesh could be taxed as fictional inside sales. It is, however, urged that Section 4(6) itself makes a distinction between consumption and use as raw materials in the manufacture of goods and the latter could not, therefore, be regarded as consumption within the meaning of Article 286(1)(a). This contention is easily met by a reference to *Anwarkhan Mahboob Co. v. State of Bombay* AIR 1961 SC 215, where their Lordships held that mere conversion of

tobacco into bidi patti by removal of the stem and dust amounted to consumption within the meaning of Article 286(1)(a). On this reasoning, the use of tobacco for the production of commercially different articles like bidis must be regarded as consumption within the meaning of Article 286(1)(a).

Proviso (b) to Section 6(3) of the Bombay Sales Tax Act (V of 1946), which corresponds to Section 4(6) of the Act, was also assailed on the ground that the price paid for the purchase of goods could not be regarded as a part of the "turnover" as defined in that Act. In repelling that contention, a Division Bench of the Bombay High Court pointed out in *M.N. Gobhai and Co. v. State of Bombay* 1957-8 STC 575 that the definition of the expression "taxable turnover" was an artificial definition invented by the Legislature and observed:

"It is true that the expression "turnover" is defined by the Legislature as meaning the aggregate of the amounts of sale prices received and receivable by a dealer, and it may at first blush be difficult to regard price paid for purchasing goods as part of the turnover of an assessee. But the Legislature has not sought to levy a tax on turnover; it has sought to levy a tax on the taxable turnover and the method of computation of the taxable turnover is prescribed in Sub-section (3) of Section 6, and in the "taxable turnover" is liable to be included a certain amount equivalent to the price paid by the assessee for purchase of goods which have been despatched outside the State of Bombay. We are unable also to agree with the contention that by seeking to levy sales tax on a part of the amount which is substantially price paid for purchasing the goods the Legislature has attempted to alter the incidence of taxation. For obvious reasons when the goods have been, contrary to an undertaking given by the assessee despatched outside the Province of Bombay, it would be difficult for the taxing authorities to ascertain the price at which they are sold and levy sales tax thereon, and would raise complicated questions as to the competence of the authority to tax goods when sold outside the limits of the Province of Bombay. The Legislature therefore has provided that when goods are despatched outside the limits of the State they may be regarded as supplied and the price at which they are purchased should be regarded as the price for which they are sold or supplied. By enacting that definition the incidence of taxation is not sought to be altered from tax levied on sale to tax levied on purchase. It only prescribes a method of ascertaining the sales tax on, goods which have been purchased for sale within the limits of the State and then have been despatched for sale, outside the State."

We respectfully adopt the reasons given by the Bombay High Court. We may also refer to certain observations made by a Division Bench of this Court in *Babulal v. D. P. Dube* 1955-6 STC 255 (Nag). Prior to the enactment of Section 4 (6) of the Act, there was in old Madhya Pradesh Rule 20A which made a similar provision. The power of the State Government to make that Rule under the Act as it then stood was challenged. Their Lordships observed:

"It is however contended for the State that it was open to the Legislature to make the tax recoverable from the purchaser as a penalty for evasion and breach

of the declaration made by him. But even if this could be done, it was necessary to enact the law in the Act and not in the Rules....We note, however, that the Legislature perhaps viewed the matter in the same light, because Rule 20-A with slight modifications has now been enacted as a part of the Act."

In our opinion, even this ground is of no assistance to the petitioners.

The next ground is that Section 27A of the Act placed a restriction, on the power to tax and so long as it stood unrepealed, there was no pre-existing law authorising the imposition of tax on sales of goods made in the course of inter-State trade and commerce with the consequence that the Sales Tax Laws Validation Act, 1950, which merely lifted the ban and did not impose any tax, had no application. The substance of the contention is that before advantage could be taken of the Sales Tax Laws Validation Act, 1956, there had to be a State Act imposing a tax on such sales. Section 27A is reproduced below:

""27-A. (1) Notwithstanding anything contained in this Act,--

(a) a tax on, the sale or purchase of goods shall not be imposed under this Act-

(i) where such sale or purchase takes place outside the State of Madhya Pradesh; or

(ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territories of India;

(b) a tax on the sale or purchase of any goods shall not, after the 31st day of March 1951 be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide

(2) The Explanation to Clause (1) of Article 286 of the Constitution shall apply for the interpretation of Sub-clause (i) of Clause (a) of Sub-section (1)"".

As we have already shown, the Supreme Court considered this section to be merely incorporating the bans imposed under Article 286(1)(a) and 286(2) on the powers of the State Legislature to tax purchases and sales: Mohanlal Hargovind Das, Bidi Merchants, Jabalpur (M.P.) Vs. The State of Madhya Pradesh and Another, (supra).

There is a provision similar to Section 27A in Section 46 of the Bombay Sales Tax Act (3 of 1953) and also in Section 22 of the Madras General Sales Tax Act (9 of 1939). Like explanation III under the definition of sale given in Section 2(g) of our Act, the Bombay Act also similarly incorporates the Explanation to Article 286. This was, however, not done in the Madras Act. In Daldas Parmanand Vs. P.S. Talwalkar and Others, , a division Bench of the Bombay High Court answered the contention we are now considering in this manner:

"In our opinion, the proper view to take of this legislation is that there was an imposition of tax on all sales including inter-State sales, but the imposition oh

Inter-State sales was not effective until the restriction under Article 286 was removed, and that is exactly what Section 46(b) provided.

It did not exempt Inter-State sales or purchases altogether, but the tax was to operate upon the sales or purchases if Parliament by law so provided, and therefore when the restriction was removed retrospectively we must read this Act and construe it as if before the passing of the Act Parliament had provided that the State Legislature may impose tax on Inter-State sales and purchases. Therefore, reading the charging Sections and Section 46 and the validating Act, there can be no doubt that on the validating Act being passed the Inter-State sales and purchases were subjected to tax and they came within the operation of the charging Sections 8, 9 and 10,"

Since there was nothing like Explanation: III under the definition of "sale" in the Madras Act, the Madras High Court held in *Mettur Industries Ltd. Vs. The State of Madras*, and in the *The Mysore Spinning and Manufacturing Co. Ltd., Bangalore City and Others Vs. The Deputy Commercial Tax Officer, Madras and Another*, that Section 22 of that Act had to be read as an explanation to the definition of sale and, so read, it exempted from tax only those sales whose situs was outside the State and not the fictional inside sales. A contrary view was taken in *Government of Andhra v. N. Govindarajulu* AIR 1958 AP 109 wherein it was held that the Explanation u/s 22 of the Madras Act could not be transplanted to the definition of sale and, prior to the removal of the ban by the Sales Tax Laws Validation Act, 1956, there was no State law imposing or authorising the imposition of tax on sales made in the course of inter-State trade and commerce. When the matter went to the Supreme Court, their Lordships held that Section 22 had a positive content and the explanation in the context of Section 22 authorised the State of Madras to impose tax on sales falling within its purview: *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, and *Ashok Leyland Ltd. Vs. The State of Madras*, . In the earlier case, their Lordships, reviewing the decisions of the various High Courts, stated:

""We have so far considered the question on principle and on the language of the statute. We may now refer to the decisions of the High Courts, wherein, this question has been considered. In *Mettur Industries Ltd. Vs. The State of Madras*, the point directly arose for decision as to whether Section 22 of the Madras Act did, in fact, levy a tax on the Explanation sales so as to fall within the protection of the Sales Tax Laws Validation Act (VII of 1956). It was held that the Explanation to Section 22 had the effect of rendering the sale one inside the State so as to fall within the definition of that word in Section 2(h), and that it was taxable. Next in point of time is the decision of the Bombay High Court in *Dialdas Parmanand Vs. P.S. Talwalkar and Others*, in which the question arose with reference to Section 46 of the Bombay Sales Tax Act (Bom. III of 1953), corresponding to Section 28 of the Madras Act. It was held that it did impose a tax, though it was to operate only if Parliament so provided. Then, there are two decisions of the Travancore-Cochin High Court, *Mathew v. Travancore Cochin*

Board of Revenue, AIR 1957 Trav-Co. 300 and Cochin Coal CO., Ltd. v. State of Travancore-Cochin, 1956-7 STC 731 in which it was held that Section 26 of the Travancore-Cochin General Sales Tax Act corresponding to Section 22 of the Madras Act, had not the effect of imposing, of its own force, a tax on the Explanation sales, and the decision in Mettur Industries Ltd. Vs. The State of Madras, was not followed. In (S) The Mysore Spinning and Manufacturing Co. Ltd., Bangalore City and Others Vs. The Deputy Commercial Tax Officer, Madras and Another, the Madras High Court re-affirmed the view which it had taken in Mettur Industries Ltd. Vs. The State of Madras, , and held that Section 22 had the effect of imposing a tax on the Explanation sales. In AIR 1958 Ap 109 the true effect of Section 22 of the Madras Act came up for consideration, before the Andhra High Court, and it was held therein, differing from Mettur Industries Ltd. Vs. The State of Madras, and Daldas Parmanand Vs. P.S. Talwalkar and Others, that in view of the observations of this Court as to the scope of the Explanation in Article 286(1)(a), the Explanation in Section 22 could not be construed as imposing a tax on the sales mentioned therein, and that that conclusion also followed on the opening words of the section that Nothing contained in this Act shall be deemed to impose, or authorise the imposition of a tax.....For the reasons already given, we are unable to agree with the decisions in AIR 1957 Trav-Co. 300 (supra), 1956-7 STC 731 (supra) and AIR 1958 Andh Pra 109 (supra). We are of opinion that the law has been correctly laid down in Mettur Industries Ltd. Vs. The State of Madras, and Daldas Parmanand Vs. P.S. Talwalkar and Others, . We accordingly hold that Section 22 operated to impose a tax falling within the Explanation, subject to authorisation by Parliament as provided in Article 286(2). In this view, the contention urged on behalf of the States that the Explanation to Article 286(1)(a), being a provision of the Constitution, operated by its own force to impose a tax on the sales covered by it, and did not require to be supplemented by any State legislation to become effective, does not call for any detailed consideration. Suffice it to say that it cannot be maintained if the true scope of Article 286 is to define and limit the powers of State Legislatures with reference to imposition of sales tax and not to itself impose it."

The position which emerges is this. Apart from and independently of Section 27-A, there was in our Act a pre-existing law in Explanation III u/s 2(g), which authorised the imposition of tax on fictional inside sales. This was in force from 1st December 1953, when that Explanation was inserted. Also, in the view taken by the Supreme Court, Section 27-A, which was inserted by Act IV of 1951 from 1st April 1951, had a positive content and authorised the imposition of tax on such sales. That being so, the contention that there was no pre-existing law authorising the imposition of tax on the transactions in question, which were inside between 7th November 1953 and 5th September 1955, cannot be accepted;

The last ground is that, on the facts and in the circumstances of this case, Section 4 (6) of the Act, reproduced below, is not attracted:

"Where any goods are purchased by a registered dealer as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State or as being goods specified in such dealer's certificate of registration as intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State and such goods are utilised by him for any other purpose, the price paid by him for such goods shall be included in his turnover and be liable to tax in accordance with the provisions of this Act."

It is urged that Section 4(6) has no application because, as required by that provision, tobacco was not specified in the petitioners' certificate of registration "as intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State." In order to appreciate the controversy, it is necessary to refer to other provisions of the Act. u/s 2(j) of the Act as originally passed in 1947, the taxable turnover had to be computed by deducting therefrom, among other sales,

"sales to a registered dealer of goods specified in such dealer's certificate of registration as being intended for re-sale by him, or for use by him in the manufacture of any goods for sale or in the execution of any contract and on sales to a registered dealer of containers and other materials for the packing of such goods."

This was amended from time to time until, with effect from 1st December 1953, it stood as follows:

"Sales to a registered dealer of goods declared by him in the prescribed form as being intended for resale by him by actual delivery in Madhya Pradesh for the purpose of consumption in that State or of goods specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State, and of containers and other materials used in the packing of such goods."

In relation to goods needed for manufacturing other goods, the words "as raw materials" and "by actual delivery in Madhya Pradesh for the purpose of consumption in that State" were newly added. As indicated earlier, Section 4(6) of the Act was also inserted from 1st December 1953. By appropriate entries "already made in the petitioners' certificate of registration, they had been permitted to purchase tobacco free of tax for the purpose of manufacture for sale. In consequence of the aforesaid amendments made in the Act, it became necessary to amend that certificate. Therefore, on 5th January 1934, even before the relevant Rule was amended, the petitioners applied for substitution of the words "raw manufacture" for the words "for the purpose of manufacture". Instead of complying with Form II, which reproduces what is now said to be wanting in the certificate, the Sales Tax Officer merely specified as raw materials ""Tendu leaves, Tobacco, yarn."

In the first place, the amendment has to be read with the certificate as it stood originally. Secondly, the certificate applied for u/s 8 of the Act has to be construed sensibly in the light of that section and other provisions of the Act. The only legitimate object which a dealer has, or can have in having any class of goods specified in his certificate as "raw materials" is to purchase the goods tax-free in the sense contemplated by the Act. By asking for such specification, the dealer represents that he intends to use the goods to be specified to the manufacture of goods for the purpose of sale by actual delivery in the State of Madhya Pradesh for the purpose of consumption in that State. It is now too late for the petitioners to contend that they did not intend to use the tobacco for that purpose. Thirdly, there is a striking confirmation of the intention of the petitioners in the declarations which they gave to their Bombay sellers. Therein they unequivocally declared that they were purchasing the tobacco for use as raw materials in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that state and that tobacco was so specified in their certificate of registration.

Finally, what the registering authority had to do is contained in Section 8(3) of the Act which reads :

"If the said authority is satisfied that an application for registration is in order, it shall in accordance with such rules as may be made under this Act, register the applicant and grant him a certificate of registration, in the prescribed form which, in the case of a registered dealer who manufactures any goods for purposes of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State shall specify the raw materials which are intended to be used by him in the manufacture of such goods."

As we read the provision, that authority had merely to specify the raw materials which were intended to be used in the manufacture of goods in the case of a registered dealer who manufactures such goods for purposes of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State. In our opinion, the registering authority was not necessarily required to reproduce in the certificate the substance of the whole sub-section, which we think is implied in the certificate. It would be seen that, in this sense, there is no defect in the petitioners' certificate. For all these reasons, we are unable to accept the contention that Section 4(6) has no application to the facts of this case.

In the view we have taken of this case, the petition fails and is dismissed. The petitioners shall bear their own costs and pay out of the security amount the costs incurred by the respondents. The remaining amount of security shall be refunded. Hearing fee Rupees 250/-.