

(1997) 03 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No's. 2507 of 1996, 2227 of 1994, 15555 1995, 2835-37, 15960-61 and 3230-32 of 1996

M/s. Falma Laboratories Pvt. Ltd., Bangalore

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka General Clauses Act, 1899 — Section 3 (31)

Citation : (1997) 03 KAR CK 0047

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri Venkatesh for Smt. A. Rama, for the Appellant; H.G. Ramesh, Additional Government Advocate, for the Respondent

Judgement

1. Each of these petitions under Art. 226 of the Constitution raises the same question. Since the facts, issues and questions of law raised are identical, these petitions are clubbed, heard together and disposed off by this common order.

2. The reliefs sought in these petitions are mainly for a declaration to declare that Karnataka Industrial Area Development Board is a local area and the entry of scheduled goods into that area would not attract charging provisions under Entry Tax Act, since the Karnataka Ordinance No. 2 of 1992 which came into effect from 1-5-1992 having lapsed by efflux of time, the notifications issued pursuant to Section 3(1) of the Act to effectuate the charge with respect to items coming under First Schedule to the Act having become inoperative, the notifications have been rendered redundant and non-operative, that the notification dated 30-7-1992 inserting Entry 81 which brought to effectuate the charge relating to Entry 80 of the First Schedule to the Act is beyond the competence of the Rule making authority. Apart from all this, the petitioners have questioned the correctness or otherwise of the pre-assessment notices, assessment orders framed by the assessing authorities for the assessment years 1992-93, 1993-94 and 1994-95.

3. Though the point for decision is a simple one lying a very narrow compass, to reach it, one has to wade through various amendments, notifications and judicial pronouncements. To begin with we have the "Principal Act," known as "The Karnataka Tax on Entry of Goods Act, 1979" (the Act for short). The Act is made to provide for the levy and collection of tax on the entry of certain goods into local areas in the State for consumption, use or sale therein, at rates not exceeding five percent of the value of the goods. The charging section under the Act is relatable to Entry 52 of List II of the seventh schedule which speaks of "Taxes on Entry of Goods into local area for consumption, use or sale therein". Section 2 of the Act defines certain expressions occurring in the Act. Sub-section (5) defines "local area" to mean, an area within the limits of the city under Karnataka Municipal Corporations Act, 1976, a municipality under the Karnataka Municipalities Act, 1964, a notified area Committee, a Town Board, a Sanitary Board or a cantonment Board constituted or continued under any law for the time being in force and a mandal under the Karnataka Zilla Parishads, Taluk Panchayat Samithi, Mandal Panchayats and Nyaya Panchayats Act, 1983. The Act received the assent of the President on 27-5-1979 and published in the Karnataka Gazette on 1-6-1979. There were several amendments to it. By Act No. 12 of 1981, the date from which the Act was to come into force was shifted to 1-10-1980.

4. Section 3 in Chapter 11 of the Act is the charging section. Charging provisions as originally enacted provided for the levy of Entry tax under the Act on Entry of Schedule Goods into the local area. The local area for the purpose of levy was defined to mean only Municipal Corporation.s and Municipalities. The levy of tax under this Act was only on three items mentioned in the Schedule appended to the Act. By subsequent notification the Act was extended to notified area committee, a town hoard, a sanitary board, a Cantonment Board, a mandal under Karnataka Zilla Parishads, Taluk Panchayat Samithis. Mandal Panchayats and Nyaya Panchayats Act, 1983 and Panchayat area under Karnataka Panchayat Raj Act, 1993.

5. Some of the petitioners in these petitions are traders, having their industries in Industrial area at Housecoat, Bangalore. The said area is developed and administered by the Karnataka Industrial Area Development Board as defined under the provisions contained in the Karnataka Development Act, 1966. Petitioner-industry causes entry of first schedule goods into the area of KIADB industrial area. The controversy between the parties to the lis is that since KIADB industrial area is not covered under the definition of "local area" u/s 2(5) of the Act, the petitioners are not exigible to tax under the charging provisions, alternatively they assert that since the petitioners' industrial unit is situate in KIADB land, which is not a notified local area and also since it has not been converted into panchayat area, the petitioners' industrial units are not exigible for payment of tax under the Act. In order to meet this assertion, respondents have filed their objection statements and in that, they assert that the petitioners' industrial units come within the definition of local area and as such

they are liable for payment of tax under the Act.

6. Local area is defined under the Act. It means an area within the limits of city under the Corporation Act, 1976, a municipality, under Municipalities Act, a notified area committee, a town, sanitary and cantonment board, mandal under 1983 Act and a panchayat area under Panchayat Raj Act, 1993. The definition is very exhaustive.

Local area in Entry 52 of List II means an area administered by a local body or local authority, like a municipality, a district board, a local board a Union board, a panchayat or the like.

Earlier to the introduction of the Act, the earlier Municipal Laws provided for imposition of a duty of tax called "octroi". This "Octroi" happened to be the main source of revenue to the local bodies. Explaining this octroi system, the Supreme Court in the case of Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, was pleased to observe thus (Para 16) :

"Octroi is an old and well known term describing a tax on the entry of goods into a town or a city or a similar area for consumption, sale or use therein. According to the Encyclopaedia Britannica, "octroi" is an indirect or consumption tax levied by a local political unit, normally the commune or Municipal authority, on certain categories of goods on their entry into the area. It is important to note that the tax was with regard to the entry of goods into the area of the communes (France) which were political units.

It is further stated (Para 17) :

"The characteristic feature of an octroi tax then was that it was on the entry of goods into an area administered by a local body....."

7. This octroi system was replaced by a legislation called Karnataka Tax on Entry of Goods Act. The levy and collection even under this legislation is on the entry of certain goods into the area administered by the "local authority". The question before this Court is whether KIADB is a "local area". If so, since legislature has specifically omitted KIADB in the definition of local area, whether the tax under the Act is leviable on industries situated in the area coming within the KIADB area.

8. The expression "local authority" or "local Board" is not defined under the Act. Necessarily reference has to be made to Section 3(31) of General Clauses Act, which definition has been adopted even under Karnataka General Clauses Act. Clause 3(31) defines the expression local authority to mean a municipal committee, District Board, Body of Port Commissioners or other authority legally entitled to or entrusted by the Government with the control or management of Municipal or local fund.

Explaining the meaning of the expression "local authority", the Supreme Court in the case of Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, was pleased to observe as under (Para 2) :

"In order to be a "local authority" within the meaning of Section 3(31) of the General Clauses Act, an authority should possess most, if not all, of the distinctive attributes and characteristics of a Municipal Committee. District Board or Body of Port Commissioners, that it is legally entitled to or entrusted by the Government with, the control and Management of Municipal or local fund.

The Court was further pleased to observe :

The following are the distinctive attributes and characteristics, all or many of which a Municipal Committee. District Board or body of Port Commissioners shares with any other local authority. The authority must not be mere Governmental agency but must be a legally independent entity. It must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area, It must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and, the degree of dependence may vary considerably but, an appreciable measure of autonomy there must be. It must be entrusted by statute with such Governmental functions and duties as are usually entrusted to Municipal bodies. It must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges or fees. This may be in addition to moneys provided by Govt. or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

9. Keeping in view, the precise meaning of expression "local authority", let me now advert to the contentions raised by the learned counsel for the petitioners. The KIADB is a statutory authority established under Karnataka Industrial Area Development Act. 1966. The Act is a special provision for securing the establishment of industrial areas in the State. The Board is constituted to promote the establishment and orderly development of industries in such industrial area. For the purpose of the Act, the State Government may by notification declare any area in the State to be an industrial area.

10. The expressions like "Board" and the "industrial area" are defined under the Act. "Board" means the industrial areas development Board established under the Act. The word "industrial area" means any area declared to be an industrial area by the State Government by notification which is to be developed and where industries are to be accommodated and includes an industrial estate. Section 5 of Chapter III of the Act provides for establishment and incorporation of a Board by name Karnataka Industrial Area Development Board. Sub-section(2) states that the Board shall be a body corporate with a perpetual succession and common seal with authority to hold and acquire both movable and immovable property. It consists of ten members. All the members are nominees of the State Government. The Secretary to the Govt. of Karnataka. Commerce and Industries Department shall be the Chairman of the Board. There will not be any person as a member of the Board elected locally from the

industrial area. The nominated members shall hold the office at the pleasure of the State Government. Employees of the Board are appointed by the State Government. The terms and conditions of the employment of the employees of the Board is determined by Regulations made under the Act. The functions of the Board is to promote and assist in the establishment, growth and development of industries in industrial area. The Board has its funds. The funds consist of sums charged by the Board for disposal of lands and buildings and other properties movables and immovables and from other transactions; as also sums allotted to the Board by the State Govt. and other fees, costs, deposits and charges received by the Board under the Act. It is very relevant to notice here that the Board has no authority to impose any form of taxes and absolutely has no control over the local funds.

11. The definition of "Local Area" under the Entry Tax Act is restrictive in the sense, it speaks of areas coming within Municipal Corporations Act, a municipality under the Karnataka Municipalities Act, a notified area committee, a town, sanitary or cantonment board, a mandal under Karnataka Zilla Parishads Act and a panchayat under Karnataka Panchayat Raj Act. These local bodies are political sub-divisions and agencies of the State Government which exercise a part of State functions. These bodies have the power to raise funds for furtherance of their activities and fulfilment of their projects by levying taxes, rates, charges or fees. These bodies are legally independent enclitics functioning in a defined area, enjoying certain degree of autonomy with freedom to decide for themselves questions of policy affecting the area administered by them. These local bodies are entrusted with the performance of civic duties and functions which is other wise Governmental functions and duties. These local bodies normally will consist of members elected from the area administered by them. These essential characteristics and important ingredients are conspicuously absent in the constitution and functioning of the Karnataka Industrial Areas Development Board. Board does not have a separate legal existence and it is mere Governmental Agency. It is not entrusted with the performance of civil duties as are usually entrusted to Municipal Bodies such as health, education, planning, development, welfare etc. The State Govt., has also not entrusted the Board with the management and control of the local fund. The Board has no authority like any other local authority to impose any form of taxes. The Board also does not consist of members elected by owners of industries in the industrial area and all the members of the Board are nominated by the State Government. The Board has no power to develop the area administered by it except to promote and assist in the rapid and orderly establishment, growth and development of industries in industrial area. In view of this, it is difficult to hold that Karnataka Industrial Areas Development Board is a "local authority" or a "local body" and the area administered by it would fall within the meaning of the expression "local area".

12. Section 2 of the Act defines the expression "local area". Immediately after the word "local area", the legislature uses the expression "means" and says area

within the limits of city under Municipal Corporation Act, a Municipality under Municipalities Act so on and so forth. The expression "means" in a definition clause renders the definition exhaustive of the matter defined. As pointed out in *Cruise on Statute law*, where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and prima facie restrictive. In that view of the matter, the word "local area" in the definition can take only what is defined therein, and it cannot take in its fold any other "local body" or local authority administering a particular area. In that view of the matter, it cannot be said KIADB is a local area but the area administered by the Board may come within the limits of a city, a municipality, a mandal or a local panchayat. It is the case of the respondents that KIADB layout in Housecoat is within local limits of Doddabailapur Grama Panchayat, which is a panchayat area under the Panchayat Raj Act. The entry of Schedule Goods into panchayat area would definitely attract charging section under the Act. Therefore, the contention of learned counsel for the petitioner that causing entry of scheduled goods into "area" managed by Karnataka Industrial Areas Development Board would not attract levy under entry tax Act cannot be accepted.

13. The Second contention of the learned counsel for petitioners is that since Karnataka Ordinance No. 2 of 1992 which came into effect from 1-5-1992, having lapsed by efflux of time, the notification issued pursuant to amended charging section to effectuate the charge with respect to items mentioned under the first schedule to the Act also gets lapsed and therefore becomes inoperative since there is no saving clause under the Ordinance.

14. To appreciate the contention of the learned counsel it would be useful to refer to some of the amendments carried out in the Act during the relevant period. They are as follows :

Karnataka Amendment Act No. 15/1992 received the assent of the President on 12-2-1992 and was published in the Gazettee on 1-5-1992. By the said amendment charging provision under the Act was drastically amended. Since charging provision is material for present discussion, it is necessary to refer to Section 3 of the Act as amended by Act 15 of 1992. It is not necessary to notice the entire Section. It will be sufficient if we notice sub-sections (1) and (6) of Section 3 of the Act.

Sub-section (1) of Section 3 is as under :

"Section 3 levy of tax: (1) There shall be levied and collected tax on entry of any goods into local area for consumption, use or sale therein at such rates not exceeding five percent of the value of the goods as may be specified by the State Government, by notification from time to time and different rates as may be specified in respect of different goods or different classes of goods or different local areas."

Sub-section (6) of Section 3 is as under :

(6) No tax shall be levied under this Act on any goods mentioned in the schedule on its entry into the local area for consumption, use or sale therein."

15. Section 3(1) of the Act as amended provides for levy of tax under the Act on entry of "any goods" into local area for consumption, use or sale therein at such specified rates not exceeding five percent of the value of the goods. The existing schedule, which spelt out the items which are liable to tax was replaced by a schedule containing items which are not liable to tax. Sub-section (6) of Section 3, provided that no tax shall be levied on any of the goods mentioned in the newly inserted schedule. May be, being of the view that the charging provisions may be susceptible for successful challenge on the ground of arbitrariness and vagueness. Ordinance No. 2 of 1992 was promulgated by the Governor of Karnataka in exercise of his power under Art. 213 of the Constitution of India on 1st Day of May, 1992, purporting to amend Karnataka Tax Entry of Goods into local areas for Consumption, Use or Sale Therein Act, 1979, hereinafter called the "Principal Act". The said ordinance was published in the Karnataka Gazette on the same day. Under this ordinance for the word "entry of any goods" in sub-section (1) of Section 3 of the Principal Act, the words "entry of any goods" specified in the first schedule" came to be substituted and the first schedule came to be inserted containing 103 items including a residuary item. The words "schedule" in subsection (6) of Section 3 was substituted by words "second schedule". This Ordinance did not provide for any saving clause.

16. As a corollary to this ordinance. State Government exercising its powers under subsection (1) of Section 3 of the Act, has issued a notification bearing No. FD 69 GET 92(1) dated 30th April, 1992 to come into effect from 1st May, 1992 in supersession of all other earlier notifications specifying 80 commodities for the purpose of levy at the rates specified in the corresponding entries in column (3) of the table.

17. In due course. Karnataka Ordinance 2 of 1992 was repealed by the Karnataka Tax on Entry of Goods (Amendment) (No.2) Ordinance 1992 (Karnataka Ordinance No. 10 of 1992) and that was published in the Karnataka Gazette on 20th Aug. 1992. The said ordinances merely reproduce the clauses in the Karnataka Ordinance No. 2 of 1992. This ordinance was given retrospective effect from 1-5-1992. Further in the ordinance, repeal and saving provisions had been introduced to save anything done or any action taken under Ordinance 2 of 1992, is deemed to have taken under the present ordinance. This ordinance was first published in the Karnataka Gazette on 20-8-1992.

18. By yet another amendment Karnataka Act 3 of 1995, legislature amended the Principal Act. This amendment received the assent of the President 6th Sept. 1994 and was published in the Karnataka Gazette on 23rd Day of March., 1995. The Act was given retrospective effect from 1-5-1992, the day on which Karnataka Ordinance 2 of 1992 was promulgated by the Governor of Karnataka and was repealed by Karnataka Ordinance 10 of 1992 w.e.f. 1-5- 1992. This amended Act merely reproduced Karnataka Ordinance No. 10 of 1992. This

amended Act also repeals Karnataka Ordinance 10 of 1992 and by a saving clause saves anything done or any action taken under the Principal Act as amended by Karnataka Ordinance No. 10 of 1992.

19. Keeping in view all these amendments, notifications and the ordinances, let me now advert to the case of the petitioners before this Court. Their primary contention seems to be that in view of lapsing of Ordinance No. 2 of 1992, by efflux of time in view of Art. 213(2) of the Constitution, the notification issued by the Government dated 30-4-1992, pursuant to the ordinance also gets lapsed and therefore, becomes inoperative.

20. Article 213(1) of the Constitution empowers the Governor of a State to issue ordinance when the Houses of the Legislatures are not in session, if he is of the opinion that immediate action is necessary. Clause (2) of Art. 213 gives the ordinance the same force and effect as an Act of the legislature of the State. Sub-clause (a) of Clause (2) of Art. 213 requires that every ordinance should be placed before both the Houses and ordinance shall cease to operate at the expiration of six weeks from the re-assembly of the legislature or if before the expiry of that period a resolution disapproving it is passed by the legislative assembly and agreed to by the legislative council, if any, upon the passing of the resolution. Under sub-clause (b) of clause (2), the Governor can withdraw the ordinance at any time. The explanation appended to the Art. 213 provides that where there are legislative assembly and legislative council and they are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the latter of those dates. It is in exercise of this power under Art. 213 of the Constitution. Karnataka Ordinance 2 of 1992 was promulgated by the Governor of State of Karnataka on 1st May, 1992. No material is placed by either side, to demonstrate when the Legislative Assembly and Legislative Council was convened and when actually the Ordinance 2 of 1992 lapsed by efflux of time as contemplated under sub-clause (a) of clause 2 of Art. 213 of the Constitution. But one thing is certain that the Karnataka Ordinance 2 of 1992 was repealed by Karnataka Ordinance 10 of 1992 and was given effect to from 1st May, 1992; the day on which the Governor of State of Karnataka had issued Karnataka Ordinance 2 of 1992. This Ordinance provides for repeal and savings; "to save all things done or all actions taken under the aforesaid ordinance deemed to have been done or taken under the Ordinance 10 of 1992. This ordinance reproduces merely Ordinance 2 of 1992 without any change or modifications. Section 24 of the Karnataka General Clauses Act provides that where any State Act is repealed and re-enacted with or without modifications, the notifications issued under the repealed State Act, are to continue in force and be deemed to have been issued under the provisions re-enacted. In view of retrospective effect given to Ordinance 10 of 1992, w.e.f. 1-5-1992 and also in view of Section 24 of the General Clauses Act, the notification issued under the repealed ordinance will continue to be in force and be deemed to have been made under Karnataka Ordinance No. 10/1992 and therefore, the Notification No. FD 69 CET92(1) dated 1-5-1992 will continue to have life even if it is assumed that ordinance 2 of 1992

under which the aforesaid notification was issued was lapsed by efflux of time in view of Art. 213(2) of the Constitution.

21. Alternatively, the answer to the issue raised by the petitioners can also be answered in this manner. An ordinance promulgated shall be deemed to be an Act for the purpose of General Clauses Act. The purpose of an amending Act is to plant the necessary amendment to the parent Act and once such planting has been effected, the amending Act having served its purpose need not remain anymore there to lend the plant as it were; and thereafter the amending Act has only to be repealed by a repealing Act, the repeal does not affect the plant, the amendment already planted in the parent Act. Therefore, the expiry of the ordinance which is of enduring in nature does not affect the amendments which have been already brought into the main Act. The rule of construction with regard to the effect of amendment is that a statute amended is to be understood in the same sense as if it had read from the beginning thus amended.

22. Lastly, the problem posed before the Court can be answered in this manner also. By Karnataka Act No. 3 of 1995, the parent Act 1979 came to be amended w.e.f. 1-5-1992. The said amendment was published in the Karnataka Gazette on 3-3-1995. This amendment merely reproduces Karnataka Ordinance 2 of 1992 without any modification. Further, for the words "entry of any goods", in sub-section (1) of Section 3 of the Act, the words "entry of goods" specified in the "first schedule" came to be substituted and for the words "mentioned in the schedule" in subsection (6) came to be substituted by the words "specified in second schedule". The amended Act also provides for Repeal and Savings clause. The amended Act repeals Karnataka Ordinance 10 of 1992. Sub-section (2) of Section 5 of the Amendment Act provides a saving clause. The same is extracted and reads as under :

"(2) Notwithstanding such repeal anything done or any action taken under the Principal Act as amended by the said ordinance shall be deemed to have been done or taken under the Principal Act as amended by this Act."

23. The substitution of earlier Section 3 by amending Act 3 of 1995, the effect would be original section ceases to exist and the new Section supersedes it and becomes part of the law just as if the amendment has always been there. Without giving room for any doubt and discussion, whether this amendment will have any retrospective effect, the legislature has given retrospective effect to the amendment w.e.f. 1-5-1992. The amendment to an Act should be considered as if embodied in the whole Statute of which it has become a part. The amended statute is regarded as if the original statute has been repealed and the whole statute re-enacted with the amendment. Under the Ordinance, the Principal Act had been amended and under the amended charging provisions of the Principal Act. a Notification No. FD 69 CET 92 (1) dated 30th April. 1992 had been issued specifying the commodities and the rate of tax. By virtue of Act 3 of 1995, which is introduced with effect from 1-5-1992 and in view of specific saving clause to save whatever that has been done under the Principal Act as amended by

Ordinance 10 of 1992 and since there is no inconsistency between the provisions of Ordinance 10 of 1992 and the repealing Act, in my view, all things done including notifications issued under those ordinances should be treated as being continued right from 1-5-1992, notwithstanding the lapse of the ordinance. A reading of repeal and saving clause in Act 3 of 1995, and the object of the Ordinance 10 of 1992 gives out the apparent intention of the legislature, which is paramount, to save the notification dated 30-4-1992 issued under the Principal Act as amended by the Ordinance. In my view, the legislature has the power to make a law imposing law retrospectively or validating ineffective laws by subsequent legislation or even past unlawful collection, the power of validation being ancillary to and included in the power to legislate on a particular subject and taking a total view of the circumstances envisaged in the validating Act, in my view, the legislature more than simply validating an invalid law but has re-enacted it with retrospective effect by adding the amended charging provisions to the statute book. In view of this, in my opinion, there is no merit in the second contention raised by learned counsel for the petitioners.

24. Sri R. V. Prasad, the learned counsel appearing for some of the petitioners submitted that notification dt. 30-7-1992 issued by the State Government had not prescribed the rate of tax to Entry 81 of the First Schedule and the Notification cannot be saved by the issue of corrigendum notification dated 19-8-1992 and even if it is saved the corrigendum, notification is bad for non-compliance with Section 31 of the Act. To appreciate the contention of the learned counsel, it is useful to notice the two notifications issued by the State Government on 30-7-1992 and 19th August, 1992.

25. The State Government exercising its powers under sub-section (1) of Section 3 of the Act, has issued notification bearing No. FD 69 CET 92 (III) dated 30th July, 1992 to come into effect from 1st August, 1992. By the said notification, the Government has inserted a new entry immediately after entry 80 of the Schedule with regard to raw materials, component parts and inputs which are used in the manufacture of intermediate or finished products other than those mentioned in the Second Schedule. In the said notification, there was no mention of rate of tax applicable when the goods mentioned in the entry enters into the local area. A correction has been effected by the State Government by issuing corrigendum-notification indicating the rate of tax and with a further declaration that the rate of tax of 1% for the entry at serial No. 81 is deemed always to have been inserted.

26. Section 3 of the Act, which is the charging provision provides that to give effect to the charge. State Government should specify the rate of tax in respect of different goods or different classes of goods or different local areas by issuing necessary notification/notifications. The existing provision during the relevant time did not authorities the Govt. to issue notification retrospectively.

27. By Notification No. FD 69 CET 92 (III) dated 30-7-1992, the State Govt., inserted a new entry into First Schedule to the Act, immediately after Entry 80 of

the Schedule. Notification did not specify the rate of tax applicable to the class of goods at column No. 2 of the table. Omission could be mere accidental. To rectify the omission/ mistake, State Government brought out a corrigendum-notification dated 19-8-1992 specifying the rate of tax on the class of goods in Entry 81 of the Schedule. The notification was given effect from the date of original notification dated 30-7-1992. The corrigendum-notification does not refer to any provisions of the Act under which it is issued. The notification does not say that it is effective from a particular date but only says it is deemed always to have been inserted. This could be naturally from 30-7-1992 on which date the Entry 81 was inserted into the First Schedule to the Act.

28. Notification expressly states that it is corrigendum-notification. It could only mean correction or rectification of a mistake in the original notification. Such correction dates back to notification corrected namely Notification No. FD 69 CET 92 (III) dated 30-7-1992. By this corrigendum-notification, the nature of charge is not changed. The character of the earlier notification remains the same. By this corrigendum-notification, an ineffective notification has been made effective. Power to issue notification is conferred by a statute and that power includes power to vary or rescind the notification. Such power is ancillary to the substantive power conferred by the statute. Such power is necessary for an effective exercise of substantive power. This power cannot be denied to the State Government. I have adopted this reasoning, keeping in view the well established principles, that every law must be reasonably interpreted and no interpretation should be made which tends to defeat the very purpose of the law. In view of this, it cannot be said that by issuing corrigendum-notification, the State Government is levying tax on class of goods retrospectively, which power they did not have during relevant period.

29. Secondly, it is not in dispute that the original Notification No. FD 69 CET 92 (III) dated 30th July, 1992, issued under sub-section (1) of Section 3 of the Act had been published after it was placed before each House of legislature. Since I have taken the view that the corrigendum-notification is only a notification correcting a mistake in the original notification, in my view, it is unnecessary to place it before the legislature as required u/s 31 of the Act. In view of this, it cannot be said that notification dated 30-7-1992 is not saved by corrigendum-notification dated 19-8-1992.

30. The next contention of the learned counsel for the petitioner is that Entry 81 of the First Schedule to the Act as inserted by notification dated 30-7-1992 is ultra vires of the Act. This contention is raised in view of the Entry 81 of the Schedule, which was inserted by Notification No. FD 69 CET (III) dated 30-7-1992 to effectuate the charge relating to Entry 80 of the Schedule to the Act.

30A. Entry 80 of the First Schedule to the Act reads as under :

"80. Raw materials, component parts and inputs which are used in the

manufacture of intermediate or finished product other than those specified in the Second Schedule."

Entry 81 of the notification dated 31-7-1992 reads as under :

"81. Raw materials, component parts and inputs, (other than those specified in the second schedule) which are used in the manufacture of an intermediate or finished product."

(explanation is not extracted as it is not necessary for the purpose of this case).

31. Entry 80 to the First Schedule to the Act is mere topic of legislation and it must receive liberal construction. The entry merely says that the entry into local area of the raw materials, component parts and inputs used in the manufacture of intermediate or finished products other than raw materials, component parts and inputs specified in the Second Schedule are liable to tax under the Act. The expression "other than those specified in the second schedule" refers to raw materials, component parts and inputs and by no stretch of imagination refers to items which are not liable to tax under the second schedule. However, Sri R. V. Prasad, the learned counsel, appearing for some of the petitioners would vehemently contend that a liberal construction of the Entry 80 of the first schedule to the Act would only mean that tax under the Act is leviable only on such of those raw materials, component parts or inputs, which are used in the manufacture of "any other goods" other than those mentioned in the second schedule. By way of analogy, the learned counsel would submit that "news print" is a raw material for the purpose of manufacture of "Newspaper" which is exempted commodity since it finds a place in the schedule to the Act and the causing of entry of the aforesaid raw material namely "newsprint" into the local area was non-liable for taxation under the Entry Tax Act in view of the language employed in Entry 80 of the Schedule to the Act and then contends Entry 81 which has been inserted by a notification dated 30-7-1992 has brought to tax something which the legislature did not authorise the Rule making authority and therefore, he contends that Entry 81 of the notification dated 30-7-1992 is ultra vires of the Act and the notification issued is beyond the competence of the Rule making authority.

32. Though the argument is attractive. I am satisfied that it is not sound. The intention of legislature during the relevant period was to levy tax under the Act on all goods which enter into the local area except those goods mentioned in the second schedule. In the list under Entry 80, the legislature has authorised the Rule making authority to levy tax on raw materials, component parts and inputs which are used in the manufacture of intermediate or finished products other than those raw materials specified in the schedule. The expression other than those specified in the second schedule in my view, should be read along with raw materials, component parts and inputs and not along with intermediate or finished products. Keeping the intention of legislature in mind, the Rule making authority in my view, has rightly exempted only such of those raw materials

component parts and inputs which are specified in the second schedule from levy of Entry Tax, which are used in the manufacture of intermediate or finished products and not those raw materials which are used in the Manufacture of second schedule goods. Alternatively, it can be said that it is not the raw materials used in the manufacture of finished product which finds a place in the second schedule is exempted from levy but raw materials, components parts and inputs specified in second schedule are exempt from levy. Take for instance "cotton yarn" which is a second schedule commodity and this is a raw material used in the manufacture of textiles. Causing of entry of this raw material into local area for the manufacture of a finished product would have been exigible for levy of tax under the Act, since it is a second schedule goods exempt from levy, the legislature has thought fit to exempt it even when it is used as a "raw material for the manufacture of finished product. The intention of the legislature seems to be that goods specified in the second schedule are exempt from levy under the Act and they are also exempt from levy even when they are used as raw materials. This intention of the legislature is truly reflected in the Entry 81 of the notification dated 30-7-1992 by the Rule making authority while inserting the said entry under the first schedule. In that view of the matter, it cannot be said that the notification so issued is beyond the competence of the Rule making authority or ultra vires of the Act.

33. The learned counsel for the petitioners did not urge any other ground in support of the reliefs sought in the writ petitions.

34. Lastly, in so far as the factual aspects of the matter is concerned, these can be properly agitated before the prescribed authorities under the Act. They have nothing to do with the constitutional validity of the provisions. Therefore, I do not feel it is necessary to deal with them in detail.

35. For the reasons stated, there is no merit in anyone of the contentions raised by the petitioners in these petitions. Accordingly, they are liable to be rejected. Hence, they are rejected.

36. In the result, the following order is made -

(a) petitions are dismissed. Rule discharged.

(b) Petitioners are permitted to file objections, if any, in such of those petitions, where the assessee is before this Court at the stage of show cause notice/pre-assessment notices within four weeks from to-day. In such of those petitions, where assessment orders are called in question, petitioners are permitted to file appeals within four weeks from today and if such appeals are filed within the time granted by this Court, appellate authorities are directed to decide the appeals on merits without reference to the period of limitation.

(c) In the facts and circumstances of the case, parties are directed to bear their own costs.

37. Petitions dismissed.