

(1968) 09 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petitions No"s. 361 to 363, 555, 556, 590, 924, 1199, 1319 to 1322, 1326 to 1330, 1388 to 1394, 1406, 1432 to 1436, 1447, 1513, 1514, 1516, 1536, 1537, 1608 to 1611, 1637, 1676, 1708, 1756, 1757, 1795 to 1799, 1828, 1829, 1852, 1863 to 1872, 1909, 1

Radhakrishna and Co.

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 27-09-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 2
Constitution of India, 1950 — Article 14, 286, 304

Citation : (1969) 24 STC 320

Hon'ble Judges : P. Jaganmohan Reddy, C.J.;Ramachandra Rao, J

Bench : Division Bench

Advocate : T. Anantha Babu, I. Venkatanarayana, D. Sudhakara Rao, S. Venkata Reddy, K. Chalapathi Rao, E. Satyanarayana, P. Rama Rao, C.V. Subbarao, N. Madhusudhana Raj, T.V. Narasimha Murthy, D. Narasaraju for T. Venkatappa, S.M. Bahauddin, A.V.S. Ramakrishnaiah, D. Venkatappaiah Sastry, B.K. Seshu, M. Venkatarao and T. Ramam, for the Appellant; Principal Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jaganmohan Reddy, C.J.—In this batch of writ petitions, the validity of item 6 of Schedule III to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called "the State Act") is challenged on the grounds: (1) that it designates two stages of taxation in respect of groundnuts, which being oil-seeds are "declared goods" within the meaning of Section 14 of the Central Sales Tax Act, 1956 (hereinafter called "the Central Act") and is therefore contrary to the provisions of Section 6 of the State Act ; (2) that the classification of dealers as millers and other dealers is discriminatory and unreasonable and as such violative of Article 14 of the Constitution ; and (3) that the levy of tax on turnover of groundnuts in that entry exceeds the maximum fixed u/s 15(a) of the Central Act. Inasmuch as in all these writ petitions a general question of law alone arises, it is unnecessary

to set out the facts in each case, except in one, i.e., W.P. 362 of 1968, as typifying the points that arise for determination in all these cases.

2. The petitioner-firm (hereinafter called the assessee) is a registered dealer under the Central and State Acts dealing in groundnuts, on the purchases of which it is being subjected to tax under item 6 of Schedule III of the State Act, and on which it is paying tax. For the year 1965-66, the assessee was assessed to a tax of Rs. 4,083.00 on its purchases of groundnut, by the order dated 2nd September, 1966. The assessment for 1966-67 is not yet completed, but the assessee paid the tax in advance on a purchase turnover of Rs. 2,83,247.37 at 3 per cent. For the year 1967-68 the assessee has been submitting monthly returns and has also paid the tax up to November, 1967- It is the case of the assessee that it was advised that the levy of tax on groundnuts is illegal and unconstitutional.

3. It is contended that inasmuch as Article 286(3) of the Constitution, added by the Constitution (Sixth Amendment) Act, authorises Parliament by law to impose such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as it may by law specify, on a law made by a State imposing or authorising the imposition of a tax on the sale or purchase of goods declared by the Parliament by law to be of special importance in inter-State trade or commerce, and that since Parliament, in exercise of that power, has passed the Central Act, Section 14 of which lists the goods which are of special importance in inter-State trade or commerce-henceforward termed as declared goods of which item 6 of Schedule III of the State Act, namely, oil-seeds, is one, the levy and imposition of tax on which is the subject-matter of these writ petitions-and Section 15, imposes restrictions on the sales tax law of a State in so far as it imposes or authorises the imposition of tax on the sale or purchase of declared goods inside the State by prescribing that it shall not exceed 3 per cent. of the sale or purchase price thereof and that such tax shall not be levied at more than one stage, any imposition which exceeds the maximum prescribed u/s 15 is invalid.

4. Sri Anantha Babu contends that inasmuch as Section 6 of the State Act provides that notwithstanding anything contained in Section 5, the sales or purchases of declared goods by a dealer shall be liable to tax at the rate and only at the point of sale or purchase specified against each in the Third Schedule on his turnover of such sales or purchases for each year, irrespective of the quantum of his turnover in such goods, and the tax shall be assessed, levied and collected in such manner as may be prescribed, and as item 6 in the Third Schedule, i.e., groundnuts, prescribes the levy when purchased by a miller other than a decorticating miller in the State at the point of purchase by such miller and in all other cases at the point of purchase by the last dealer who buys in the State, it violates the provisions of Section 15(a) of the Central Act, because it permits levy (i) at the stage of first purchase where millers buy, in accordance with the judgment of a Bench of this Court to which one of us (the Chief Justice)

was a party in *State of Andhra Pradesh v. Lakshmi Oil Mills* [1967] 20 S.T.C. 489 and (ii) at the stage of last purchase where dealers other than millers buy. It is submitted that it is contrary to the provisions of Section 15 that the first purchase point and the last purchase point be both prescribed, as has been done in item 6 of the Third Schedule to the State Act. It is also contended that the classification made between miller-dealers and non-miller-dealers bears no rational relation to the statutory purpose and violates Article 14 of the Constitution ; that there being the possibility of the same goods being taxed more than once as is said to have been held by this Court in the above case-even where miller buys and sells groundnuts he is liable as first miller-purchaser under the first limb of item 6 and when such a miller sells to a dealer who is the last purchaser in the State, such dealer would also be liable to pay the tax-it is contrary to the provisions of Section 6 of the State Act and Section 15 of the Central Act, it having authorised the imposition of tax at more than one stage; and that when the entry fixed the stage by stating "when purchased by a miller other than a decortivating miller in the State, at the point of purchase by such miller", the power to prescribe the stage is exhausted and the State Legislature cannot go further and prescribe a second or alternative stage, and accordingly, the second limb of item 6, under which the petitioner is being assessed, should be struck down.

5. The learned Advocate further contends that since under the State Act, tax is imposed on the turnover of declared goods, namely, groundnuts, which is levied under item 6 of the Third Schedule read with Section 6 and since u/s 5-A tax can be levied in addition to the tax payable u/s 5, at the rate of one-fourth naya paisa on every rupee of the turnover of a dealer, if it exceeds Rs. 3,00,000 for that year, the rate of tax exceeds the maximum fixed u/s 15(a) of the Central Act, and hence the levy under item 6 is illegal and must be struck down. Even if it is held, as is contended by the learned Government Pleader, that Section 5-A has no application to declared goods, the levy of tax under the State Act on the turnover of declared goods would exceed the restriction imposed u/s 15(a). In other words, inasmuch as turnover as denned in Section 2(s) of the State Act means the total amount set out in the bill of sale (or if there is no bill of sale, the total amount charged) as the consideration for the sale or purchase of goods (whether such consideration be cash, deferred payment or any other thing of value) including any sums charged by the dealer for anything done in respect of goods sold at the time of or before the delivery of the goods and any other sums charged by the dealer, whatever be the description, name or object thereof, and the definition of sale price under the Central Act is not so wide as to include several things which may not be included in the definition of turnover under the State Act, the rate of tax prescribed in item 6 read with Section 6 of the State Act will, in certain cases, exceed that prescribed in Schedule III to the State Act, and consequently, any levy made under the State Act would be illegal and unconstitutional.

6. Sri Narasaraju in W.P. 1798 of 1968 and the batch in which he appears

contends that the point of levy fixed under item 6 of Schedule III suffers from indefiniteness and lack of precision as it confers on the State an option to tax either under the first limb or under the second limb of item 6, and hence he contends that the principles of the decision of the Supreme Court in *Bhawani Cotton Mills v. State of Punjab* 1967 20 S.T.C. 290, which struck down the provisions of the Punjab Sales Tax Act, imposing a maximum up to 4 per cent, contrary to the restrictions imposed u/s 15(a) of the Central Act on the ground of indefiniteness, is equally applicable to these writ petitions.

7. Sri Venkatappaiah Sastry in W.P. 3385 of 1968 and some others in which he appears while referring to the decision of this Court in *Lakshmi Oil Mills* case 1967 20 S.T.C. 489, seeks to persuade us to the view that that decision is no longer good law having regard to the subsequent decision of the Supreme Court in *Bhawani Cotton Mills* case 1967 20 S.T.C. 290. It is his contention that the Bench in *Lakshmi Oil Mills* case 1967 20 S.T.C. 489 held (i) that miller in the first limb of item 6 is a person who has a mill; (ii) that persons who are described as "other dealers" are different from millers; or in other words, millers and other dealers are mutually exclusive; (iii) that the Legislature never contemplated that a person who has a mill should also be a dealer and (iv) that it is the first miller that is liable for tax. The principles upon which this decision rests, according to the learned Advocate, make it possible for the first miller in whose hands the goods have suffered tax to sell to other dealers and in the course of that transaction, the last of such dealers is liable to suffer tax once again, which is contrary to the provisions of Section 6, which prescribes tax to be levied only at one point of sale or purchase. Further, it is contended that if the interpretation of the judgment of the Bench is right, he cannot conceive of a more arbitrary classification than the one prescribed in item 6. Alternatively, he says that if miller is also construed as a dealer, then there can be no charge u/s 6 on the miller unless it is shown that he is the last dealer.

8. The learned Government Pleader, on the other hand, contends that item 6 of Schedule III does not suffer from any of the vices attributed to it by the learned Advocates, because Section 15(a) of the Central Act which is designed to restrict the rate leviable under the State Act in respect of declared goods specified in Section 14 and to designate the stage at which that tax is to be levied, in fact has only fixed one stage, which stage, for purposes of tax liability under item 6, is the purchase point; and that millers as such and dealers who are not millers have been classified and in respect of transactions by each, the same point of levy, namely, the purchase point, has been fixed, which offends neither Section 15 of the Central Act nor Article 14 of the Constitution, as the classification is both intelligible and reasonable. In so far as miller is concerned, he contends, he is the first purchaser and so far as dealer is concerned, he is the last purchaser; but in both cases, the point of levy is the point of purchase and as such, there is no question of discrimination between the two sets of dealers. Who is the first to pay the tax, i.e., whether it is the first miller or the last dealer, has never been the criterion for determining whether tax has been levied at two different stages.

The decisions cited by the learned Advocates for the petitioners in support of their contention that item 6 classifies dealers into miller-dealers and last dealers, which classification is bad and offends Article 14, were in fact not dealing with cases of discrimination, but were only dealing with the question whether tax imposed impedes movement, in violation of Article 304 of the Constitution. In so far as the contention of the learned Advocates that there is a difference in the definition of sale price and turnover in the Central Act and turnover in the State Act, Sri Ramachandra Reddy at first sought to contend that there is no difference, but on a further scrutiny, he was frank enough to concede that he is unable to contend that they are not different. Even if they are different, he sought to argue that the words "sale price" in Section 15(a) of the Central Act should be understood as defined in Section 2(h) of the Central Act and not as turnover u/s 2(s) of the State Act, because the context in which sale price occurs in Section 15(a) is in respect of the relevant sales tax law of the State. In other words, sale or purchase referred to in Section 15(a) is sale or purchase according to the State sales tax law in respect of declared goods. According to him, all that Section 15 provides is a restriction on the rate of tax on the sale or purchase price. This argument is further elaborated by the learned Government Pleader who says that the tax payable under the Central law is confined to the tax payable on declared goods under the relevant sales tax law of the States, which is being limited to 3 per cent. So the tax payable under the State law must be determined by the definition of State law in respect of sale or purchase price, sale of course connoting a bilateral transaction, which includes purchase. Even if there is a difference between the tax as levied under the State law and the restrictions as envisaged u/s 15 of the Central Act, the State law or the provisions of the State law under which tax is being levied on declared goods cannot be struck down as such, but to the extent of the repugnancy alone it will be invalid. Sri Ramachandra Reddy has referred to the difference in the language between Article 286(1) and 286(3) for the contention that if the inhibition is under the former, that law must be treated as non est, as it will fall outside the purview of the State Legislature to enact in respect of matters specified therein. But where the State Legislature has power and that power has been restricted by law by Parliament as envisaged under Clause (3) of Article 286, the State law will be subject to and is to be confined within the limits of the Central law, so that even if his contention is to be rejected that the 3 per cent. is upon turnover of declared goods as defined under the State Act, and that exceeds the restriction placed by Section 15(a) of the Central Act, the levy under the State Act cannot exceed the maximum fixed by the Central Act. In so far as the argument of the learned Advocates that u/s 6 of the State Act the power gets exhausted once the miller-dealer is taxed under the first limb of Section 6 and therefore the Legislature has no power to specify any further point or stage at which tax can be levied, as is envisaged under the second limb, the learned Government Pleader says that that question does not arise where the classification is different, namely, in one case it is the stage of purchase by the miller and in another, of non-miller; as such when the Legislature has divided dealers in

groundnuts as miller and other dealers, it is only after the power is exercised in respect of both that it can be said to be exhausted.

9. The question whether Section 5-A of the State Act imposes an additional tax over and above that envisaged in item 6 of Schedule III read with Section 6 of the State Act and therefore exceeds the restriction u/s 15(a) of the Central Act, as also its vires as being beyond the powers of the State Legislature and as offending Article 14 of the Constitution has already been dealt with in the judgment of this Court in a batch of Writ Petitions Nos. 748 of 1967 and others (Since reported as *Addepalli Surya Ramachandra Rao & Co. v. The State of Andhra Pradesh and Ors.* 1969 24 S.T.C. 133), which has been pronounced only yesterday, viz., 26th September, 1968, holding that Section 5-A has not been enacted beyond the competence of the Legislature, that it is not discriminatory and that it is not repugnant to the provisions of Section 15 of the Central Act, and that it is inapplicable to declared goods with which Section 15 of the Central Act deals. The reasoning given therein is equally applicable to the contentions raised by the learned Advocates on this aspect of the matter, and we do not therefore propose to burden this judgment by recounting the same reasoning once again.

10. It is now necessary to examine the provisions of Article 286 of the Constitution and the relevant provisions of the State Act and the Central Act.

Article 286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) outside the State ; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rate and other incidents of the tax as Parliament may by law specify.

State Act Central Act Section 2(s): "turnover" means the total Section 2(h): "sale price" means the amount set out in the bill of sale amount payable to a dealer as (or if there is no bill of sale, the consideration for the sale of any total amount charged) as the con- goods, less any sum allowed as cash sideration for the sale or purchase discount according to the practice of goods (whether such considera- normally prevailing in the trade, tion be cash, deferred payment or but inclusive of any sum charged any other thing of value) including for anything done by the dealer in any sums charged by the dealer for respect of the goods at the time of anything done in respect of goods or before the delivery thereof other

sold at the time of or before the than the cost of freight or delivery delivery of the goods and any or the cost of installation in cases other sums charged by the dealer, where such cost is separately whatever be the description, name charged. or object thereof ... S.2(i): "sales tax law" means any Section 6: Notwithstanding anything law for the time being in force in contained in Section 5, the sales or any State or part thereof which purchases of declared goods by a provides for the levy of taxes on the dealer shall be liable to tax at the sale or purchase of goods generally rate, and only at the point of sale or or on any specified goods expressly purchase, specified against each in mentioned in that behalf, and the Third Schedule on his turnover "general sales tax law" means the of such sales or purchases for each law for the time being in force in year, irrespective of the quantum of any State or part thereof which his turnover in such goods; and provides for the levy of tax on the tax shall be assessed, levied the sale or purchase of goods and collected in such manner as generally. may be prescribed : Section 2(j): "turnover" used in Provided that where any such relation to any dealer liable to goods on which a tax has been so tax under this Act means the levied are sold in the course aggregate of the sale prices of inter-State trade or commerce, received and receivable by him in the tax solevied shall be refunded respect of sales of any goods in the to such person in such manner and course of inter-State trade or subject to such conditions as may commerce made during any pres- be prescribed." cribed period and determined in Item 6 of Schedule III the prescribed manner. ----- Descrip- Section 14: "It is hereby declared tion of Point of Rate of that the following goods are of the levy. tax. special importance in inter-State goods. trade or commerce:- ----- Ground- When purchased 2 naye (i) to (v) * * * * nuts. by a miller other paise than a decorti- in the (vi) oil-seeds, that is to say, eating miller in rupee. seeds yielding non-volatile oils the State, at the used for human consumption, or point of purchase in industry, or in the manufacture by such miller of varnishes, soaps and the like, and in all other or in lubrication, and volatile oils cases at the used chiefly in medicines, per- point of pur- fumes, cosmetics and the like, chase by the * * * * last dealer who Section 15 : Every sales tax law of buys in the a State shall, in so far as it imposes State. or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and cond- itions, namely:- (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed 3 per cent. of the sale or purchase price there- of, and such tax shall not be levied at more than one stage ; (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

11. It will be observed that the State Legislatures under Article 286(1) are prohibited from imposing tax on sale or purchase of goods where such sale or

purchase takes place in the course of inter-State trade and commerce or where they are imported or exported, because the power to levy taxes on the aforesaid transactions is exclusively vested in Parliament under entry 92-A and entry 42 respectively of List I of the Seventh Schedule to the Constitution. The power to impose tax on sales or purchases of goods other than newspapers under entry 54 of List II of the Seventh Schedule alone belongs to the State Legislatures. Article 286, it may be stated, is intended to ensure that sales taxes imposed by the States do not interfere with imports and exports and inter-State trade and commerce with which the Union Government alone is concerned. The question would always arise as to when a sale takes place in the course of inter-State trade; and for that purpose, an Explanation had been appended to Article 286(1) (a) clarifying the expression "outside the State" and by introducing the legal fiction for determining the situs of the sale. In *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, the scope of this Explanation became the subject-matter of consideration by the Supreme Court where a difference of opinion was manifest and probably in order to obviate such controversy, the Explanation had been omitted; and by the Constitution (Sixth Amendment) Act, 1956, Clause (2) has been added conferring powers on the Parliament to lay down the principles for determining when a sale shall be deemed to have taken place within a State as envisaged in Clause (1)(a) of Article 286. The Central Act has been enacted in pursuance of that power, Section 4 of which provides a simple test of physical location of the goods for determining the situs of the sale by more than one State. Likewise, Clause (3) which was added empowers Parliament to impose a restriction upon the State Legislature in regard to the system of levy, rates and other incidence of taxes on sales or purchases of goods declared by Parliament to be of special importance in inter-State trade and commerce. It may be noticed that Clause (3) of Article 286 does not fetter a State Legislature from imposing taxes upon goods declared by Parliament to be of special importance. But what it does is to vest powers in Parliament to restrict and confine these powers of the State within certain limits and impose certain conditions in respect of the system of levy, rates and other incidence of taxes. In pursuance of these provisions, as we stated earlier, (the Central Act, by Section 4, lays down the principles for determining the situs of a sale as between more than one State; and, likewise, in exercise of the powers under Clause (3) of Article 286, Section 14 has declared the goods which Parliament considered to be of special importance in inter-State trade and commerce while Section 15 restricted the State law from imposing any tax on declared goods of more than three per cent. of the sale or purchase of goods inside the State, and that such tax shall not be levied at more than one stage. In so far as inter-State trade or commerce is concerned, Section 8 fixes the rate of tax at three per cent, in respect of transactions falling under Sub-section (1). Where goods in the course of inter-State trade or commerce do not fall under Sub-section (1) in the case of declared goods, the tax payable by any dealer on his turnover shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and in the case of goods other than

declared goods tax shall be calculated at the rate of ten per cent. or at the rate applicable to the sale or purchase of goods inside the appropriate State whichever is higher and for the purposes of making any such calculation, any such dealer shall be deemed to be a dealer liable to tax notwithstanding the fact that he, in fact, may not be so liable under that law. It is unnecessary to deal with the other provisions of the Act. Suffice it to say that the tax that is levied either u/s 8(1) or 8(2) of the Central Act is on the turnover and in so far as the expression "turnover" occurring in these provisions is concerned, it is the turnover under the Central Act and not under the State Act. It may be noted that where Section 8(2) is applicable, it is only the rate prescribed by the State law that would be applicable to those transactions and not the entire State law. Section 9 deals with levy and collection of taxes and penalties on sales of goods effected by a dealer in the course of inter-State trade or commerce. Where such sale falls within Clause (a) or Clause (b) of Section 3, tax shall be levied and collected by the Government of India in the manner provided in Sub-section (3) in the State from which the movement of the goods commences. The Central Government empowered the sales tax authorities for the time being to assess tax and collect taxes and penalties under the general sales tax law of the appropriate State, and they have been authorised under Sub-section (3) of Section 9 to collect on behalf of the Government of India subject to any rules that may be made under the Central Act etc. The scheme of the Central Act is therefore in conformity with the provisions of Article 286 and in exercise of the legislative power conferred on Parliament under entry 42 and entry 92-A of List I of the Seventh Schedule to the Constitution.

12. It is not disputed that groundnuts are oil-seeds within the meaning of Clause (vi) of Section 14 of the Central Act; and as such, they are declared goods in respect of which the provisions of Section 6 read with item 6 of the Third Schedule to the State Act become applicable. The question is whether the point of levy of tax in respect of purchases and sales of groundnut at which tax is leviable on these transactions contravenes the provisions of Section 15 ; and if so, what is its effect. The State Legislature has, in respect of item 6 of the Third Schedule, fixed the point of levy in the second column at the point of purchase, whether it be in respect of purchases by a miller or in respect of purchases by a dealer other than a miller. In so far as the miller is concerned, the point of levy is the first purchase and in respect of transactions by dealers other than millers at the point of purchase by the last dealer who buys in the State. The interpretation of this item has been considered by a Division Bench of this Court consisting of Chandrasekhara Sastry and Krishna Rao, JJ., in *Jowli Sunkiah & Co. v. Commercial Tax Officer* 1968 21 S.T.C. 300, in respect of a decortivating miller who has been excepted from this item. In that case the petitioner-firm, who was a dealer in groundnuts, used to purchase and decorticate groundnuts into kernel in a factory taken on lease and sold the kernel thus decorticated to other crushing millers. The Commercial Tax Officer determined the turnover and levied the tax on the purchases made by the petitioner based on the turnover of kernel

supplied to the crushing mills, against which a writ petition was filed to quash the said order of assessment on the ground that groundnut is one of the scheduled goods liable to tax only at a single point, the tax having already been recovered from the crushing millers who purchased groundnut from the petitioner. The Commercial Tax Officer had stated that the "tax had to be collected at the right point of levy and from the right person only notwithstanding the fact that some other dealers paid tax." The question that arose for consideration before the Bench was whether the petitioner, who was a decorticating miller, was liable to pay tax even assuming that the crushing millers who purchased groundnut from the petitioner had paid the tax. In other words, was the tax exigible from the petitioner under item 3-C. This point had come up for consideration before a Division Bench consisting of Chandra Reddy, C.J., and Gopal Rao Ekbote, J., in *Aswathanarayana and Ors. v. Deputy Commercial Tax Officer, Kadiri and Ors.* 1964 15 S.T.C. 795 in which it was held that the word "miller" applies equally to a decorticating miller as well as a crushing miller. This decision appears to have been misconstrued by the sales tax authorities. But before the Bench in *Jowli Sunkiah & Co. v. Commercial Tax Officer* 1968 21 S.T.C. 300, it was common ground that u/s 6, the tax in respect of groundnut is only a single point tax; and, therefore, the only question was whether the petitioner, who was a decorticating miller, was at all liable to pay tax as the crushing miller, who purchased groundnut from the petitioner, had paid the tax. It was contended for the petitioner that the levy of tax being admittedly at a single point of purchase the tax having been once collected from the crushing miller, the power to tax is exhausted and the assessing authority had no jurisdiction to collect the same once again from the petitioner on the ground that he is also a miller coming under item 3. The Government Pleader, on the other hand, replied that the petitioner-miller who happened to be the first purchaser, is the person from whom the tax is exigible and consequently he is the right person on whom the tax can be levied because he being the first purchaser is alone liable to pay tax. This argument was repelled as being opposed to the very language of the second column of item 3 of Schedule IV as amended in 1961 which was "when purchased by a miller in the State at the point of purchase by the miller and in all other cases at the point of purchase by the last dealer who buys it in the State." It was pointed out by Krishna Rao, J., speaking for the Bench that the 1957 Act regarded the first purchase as the point of tax whereas the Amending Act of 1959 shifted the point to the last purchase and by the amendment of 1961 no point for taxation was fixed at all. In view of this our learned brother observed at page 304:

Hence it logically follows that if the taxing authority levied the tax from any miller at any particular point of purchase, whether first, second or last, the power to tax comes to an end. It is not disputed that if the tax is collected from the petitioner, it is not open to the authority to collect the same from the subsequent purchasing millers. It equally follows that when the tax is collected from the crushing millers, who purchased the groundnut from the petitioner, the tax can

no longer be levied against the petitioner who represents the first purchaser of the groundnut.

13. This matter again came up before this Court in *State of Andhra Pradesh v. Lakshmi Oil Mills* 1967 20 S.T.C. 489, where a Bench consisting of one of us and Krishna Rao, J., dealt with item 6 of the Third Schedule, the very same item which now falls for consideration before us. Krishna Rao, J., who delivered the judgment in *Jowli Sunkiah & Co. v. Commercial Tax Officer* 1968 21 S.T.C. 300, also delivered the judgment of the Bench in *Lakshmi Oil Mills* case 1967 20 S.T.C. 489. But probably due to some inadvertence, Krishna Rao, J., had not referred to the previous judgment to which we have referred. It may be that the Bench did not consider that decision applicable to the facts and circumstances of the case which they were considering, namely, what is the interpretation of item 6 of the Third Schedule. It was pointed out that three views are possible of the words "when purchased by a miller" occurring in item 6. The first was that they may refer to any miller on the assumption that unless the single point levy is fixed with reference to any particular miller, there will be a possibility of multiple taxation when the goods passed from one miller to another miller and so on. The second was that those words mean nothing more than that, as soon as a miller makes a purchase, the transaction in his hands becomes exigible to tax and the point of levy is at once fixed in accordance with the provisions of Section 6 of the Act. The third was that taken by the Tribunal, namely, that the words "purchased by a miller" refer to mean the last miller who crushes the groundnut into oil. It was argued that the word "miller" signifies a miller who functions as a miller, that is to say, who converts groundnuts into oil in his mill with respect to the particular groundnuts covered by the transaction in question ; and where a miller, who does not so convert the goods but deals in them-though purchasing it for crushing changes his mind and deals in them-ought not to be held liable but only the last miller who crushes the groundnuts into oil. In other words, it was contended that the word "miller" means only the crushing miller and not a dealer-miller. The case of *Syed Mohamed & Co. v. The State of Madras* 1952 3 S.T.C. 367 was relied upon. But this contention was negatived and it was held that it is only the first miller who purchases the goods that will be liable. The reason for rejecting the argument that it is the miller that should be taxed is that the Legislature did not contemplate a miller dealing in goods which alone would justify the conclusion that in a series of transactions between millers who deal in these goods, it is the last miller who actually crushes the groundnut and whose turnover would be exigible to tax. The basis of the conclusion, in our opinion, has been set out at page 393 by our learned brother who, after noting the argument of the Government Pleader with approval, namely, that once the point of levy is fixed with reference to the first purchase there will not be any possibility of multiple taxation arising at any subsequent point of purchase, observed at page 493 :

Once groundnut is purchased by the first miller, that is enough to bring him within the net of taxation. It is not the duty of the taxing authority to examine as

to what he did with the stock or wait till he thinks of crushing them into oil. The Legislature never contemplated a miller taking the role of a mere dealer. The second part of column 2 of item 6 speaks merely about dealers simpliciter and fixes the point of levy at the purchase by the last dealer who buys in the State. Hence the contingency of a miller figuring as a mere dealer was never contemplated by the Legislature.

14. We are in full accord with these observations because it is also our view that the Legislature had intended to fix only a single point of levy in respect of groundnuts having regard to the class of dealers which are likely to deal with these goods. The point of last purchase is before the goods either lose their identity or are sold out of the State. In both cases only once the tax becomes exigible. In the case where groundnuts are purchased by a miller, the Legislature assumed that he is also the last dealer because of the assumption that when a miller purchases it, he does so only for crushing. If the Legislature had contemplated that millers who own or lease a mill for the purposes of crushing oil-seeds into oil, not only crush them into oil but also deal in the goods just like ordinary dealers who buy and sell them in order to make profit, there was nothing to stop them or from treating them like an ordinary dealer stating that the point of levy would be the purchase by the last miller. In other words, there would have been no need to make a distinction between a miller and a dealer because if a miller is also a dealer in the sense meant in the second limb of item 6, it would have been sufficient to say merely "at the point of purchase by the last dealer who buys in the State". But the fact that it was not done so must be treated as significant and the only manner in which the intention of the Legislature can be spelled out is to treat a miller as a person who crushes groundnuts into oil and not as a dealer who buys and sells these goods as one in a series of transactions of which he can be the last miller. That was the reason why the Bench in *Lakshmi Oil Mills case 1967 20 S.T.C. 489* met the argument that the intention of the Legislature was ambiguous, in that when it used the word "miller" it meant either the first miller or the last miller, by stating that it is the first miller alone. In other words, it is the first miller alone that will be liable to tax because he alone could be deemed to have crushed it, in so far as he is concerned, notwithstanding the fact that he may have done something which he was not expected to do, namely, by dealing in the goods as if he was an ordinary dealer. The law does not play to the whims and fancies of persons who are expected to discharge a particular function by acting in a manner they are not expected to act. If it is not the business of a miller to buy and sell goods, the fact that he buys and sells goods has to be ignored. But if a miller can establish that he ceased to do milling business but is only buying and selling, he may come under the class of other dealers; but certainly as long as he is actively running a mill and buys oil-seeds, he will be deemed to have bought them only to crush. From this aspect, there is no doubt as to the intention of the Legislature that it is only at one point that it had intended to make the tax exigible. In the case of a miller, if the groundnuts are crushed into oil, there is no question of purchase by

any other person from him; and in the case of other dealers it is the purchase by the last dealer. The Legislature does not contemplate a purchase by any other dealer. In both the cases, it is in effect the last purchase alone before the goods lose their identity as a taxable commodity. In this manner the Legislature has dealt with the entry in both the limbs and there is, therefore, no question of the power being exhausted as soon as it prescribed in the first limb the point of levy.

15. It is however contended by the learned Advocate that their Lordships of the Supreme Court have laid down certain principles which make the decision of the Bench no longer good law. Let us, therefore, examine what it is that their Lordships of the Supreme Court have decided which makes the decision in *Lakshmi Oil Mills case* 1967 20 S.T.C. 489 bad law.

16. In that case Section 5(1) and Clause (vi) of Section 5(2)(a) of the Punjab General Sales Tax Act, 1948, were challenged on various grounds, among the most important was that it was opposed to the material provisions of Section 15 of the Central Act; as such, a levy of purchase tax on cotton is neither definite nor ascertainable under the Act and that as the provisions now stand, there is a possibility of the tax being levied at more than one stage. It was also contended that there is no indication either in the Act or in the rules or the form prescribed as to whether the persons from whom the appellant purchased cotton have paid tax or not, and that the stage, which consists of fixation of a single point or stage, either by the State Act or the rules framed thereunder had not been fixed. At any rate, it is not definite. It was contended that there was always a possibility or even a certainty, of more persons than one having paid tax or being made liable to pay tax in respect of the same goods at different stages, and that it is opposed to the provisions of Section 15(a) of the Central Act. Further it was argued that the second proviso to Section 5(1) of the Punjab Act is contrary to Section 15(a) of the Central Act, inasmuch as the main section which prescribes the rate of tax, viz., Section 5(1) as well as the notification issued under it, clearly show that the Act levies tax at a far higher rate than the maximum provided u/s 15(a) of the Central Act. Under those circumstances, it was pointed out that both the second proviso to Section 5(1) and Clause (vi) of Section 5(2)(a) of the Act will have to be struck down. It was brought to the notice of their Lordships in that case that in the Sales Tax Acts in force in the States of Andhra Pradesh, Madras, Mysore and Uttar Pradesh, the stage at which the tax is to be levied either on purchase or on sale, has been definitely and clearly been indicated, but that was not the case in respect of the Punjab Act. On behalf of the State of Punjab, it was argued that the second proviso to Section 5(1) of the Punjab Act makes it very clear that the rate in respect of declared goods shall not exceed the rate mentioned in Section 15(a) of the Central Act, either on purchase or on sale, and that the proviso further reiterates that the levy of tax, either on purchase or on sale, shall not be at more than one stage. These arguments on behalf of the State were rejected. It was observed that even without the proviso no tax can be levied which contravened the restrictions in Section 15(a) of the Central Act and that in fact there was absence of provisions

either in the Punjab Act or the rules or forms indicating the stage at which the tax has to be levied, that there is no machinery by which a dealer can ascertain whether his vendor of the declared goods has paid the tax already ; and that even otherwise, it will be seen that if a dealer, A, sells the declared goods to B, six months after the close of the year (B being a registered dealer) A becomes liable to purchase tax, but if B sells the identical declared goods again after the period mentioned in Sub-clause (vi), he will also be liable to pay purchase tax, which means that in respect of the same item of declared goods, more than one person is made liable to pay tax and the tax is also levied at more than one stage, which is not permissible u/s 15(a) of the Central Act. The further argument of the learned Advocate for the State that if any tax is collected it could always be refunded u/s 12 of the Punjab Act was characterised by Vaidialingam, J., who spoke for the majority as "not so simple". He observed: "Even in the matter of obtaining refunds, there can be no controversy, that the appellant will have to place, before the officer concerned, particulars of transactions connected with the commodity in question, and also the basis on which it claims the relief. It will be absolutely difficult, if not impossible, for persons like the appellant to collect materials in this behalf, because, there is no provision contained either in the Act or the Rules, on the basis of which it will be entitled to be supplied with all the material information relevant for sustaining a request for refund. If the Central Act makes it mandatory that the tax can be collected only at one stage, in our opinion, it is not enough for the State to say that a person, who is not liable to pay tax, must, nevertheless, pay it in the first instance, and then claim refund at a later stage." Sikri, J., however, delivering the minority judgment of himself and Ramaswami, J., held that the provisions of the Punjab Act in effect complied with the requirements of Section 15 of the Central Act, because it is possible to find out the stage at which the purchase tax becomes leviable on goods mentioned in Schedule C. This stage, it was observed, is the first purchase by a dealer, which is not exempted from taxation or which is not deductible from the taxable turnover of a dealer u/s 5(2) of the Punjab Act. Further, he thought that the second proviso to Section 5 makes the Punjab Act immune from challenge on the ground that the provisions of that Act infringe Section 15 of the Central Act. It was further pointed out that if an unregistered dealer wants to escape taxation and his transactions are not known to the sales tax authorities till he is assessed u/s 11(6) of the Punjab Act, the only way of complying with the second proviso to Section 5 and Section 15 of the Central Act is to give refund to a dealer who has been taxed in the meantime. Be that as it may, the Sales Tax Act of the Andhra Pradesh State which was noticed by their Lordships of the Supreme Court, has definitely fixed a stage and that stage in so far as item 6 of Schedule III relating to groundnuts is concerned, is at the point of purchase. There is no ambiguity, there is no uncertainty or any difficulty in ascertaining with precision who a miller is and who "dealers other than millers" are ; and if millers cease to act as millers and become dealers or if dealers other than millers cease to act as such and become millers during the course of the transaction, it is not the law that is uncertain, nor does it vest any power of

selection but is definite in setting out the stage at which each class of exigible goods are to be taxed. On the other hand, it is the miller or the dealer that is fickle, because of exigencies of his business which prompt him to act in a way contrary to the provisions of law. Therefore, either he or people who deal with him have to take the consequences.

17. We do not think that there is anything in the judgment of their Lordships of the Supreme Court which militates against the interpretation given by us in respect of item 6 of the Third Schedule in the earlier decision of the Bench in Lakshmi Oil Mills case 1967 20 S.T.C. 489 or in the view we have taken which is in consonance with that decision.

18. The next question is whether the provision in item 6 of Schedule III offends Article 14, in that the classification into millers and other dealers is discriminatory. The entire argument proceeds on the assumption that millers have also been treated as dealers just in the same way as any other dealers who are not millers. On that assumption, it is argued that if different points with respect to different classes of dealers in the same declared goods are permissible, then there is discrimination because the first purchaser has an advantage over the last purchaser, because the last purchaser has not only to bear the tax which the goods have already suffered, but has to pay a further tax. On this assumption, the discrimination which has been struck down in *Firm A.T.B. Mehtab Majid & Co. v. State of Madras* 1963 14 S.T.C. 355 and *Hajee Abdul Shukoor & Co. v. State of Madras* 1964 15 S.T.C. 719 was sought to be pressed into service. The case of *Firm Mehtab Majid* [1963] 14 S.T.C. 355. is one under Articles 301 and 304 of the Constitution which deal with freedom of trade, commerce and intercourse throughout India. In that case, the provisions of Rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, were held to discriminate between hides and skins imported from outside the State and those manufactured or produced inside the State and, therefore, they contravene the provisions of Article 304(a) of the Constitution and are invalid, inasmuch as taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not compensatory taxes or regulatory measures. Sales tax on hides and skins imposed under the Madras General Sales Tax Act, 1939, and the Rules framed thereunder, it was held, cannot be said to be a measure regulating any trade or compensatory tax levied for the use of trading facilities, and that sales tax, which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 of the Constitution of India and will be valid only if it comes within the terms of Article 304(a). It was further held that the similarity contemplated by Article 304(a) is in the nature of the quality and kind of the goods and with respect to whether they were already the subject of a tax or not. In that view, it was held that the provisions of Rule 16(2) discriminated against imported hides or skins which had been purchased or tanned outside the State and was as such struck down as contravening Article 304(a). In *Abdul Shukoor and Co.*'s case 1964 15 S.T.C. 719 it was held that

Sub-section (1) of Section 2 of the Madras Genral Sales Tax (Special Provisions) Act, 1963, discriminates against imported hides and skins which were sold up to 1st August, 1957, up to which date the tax on the sale of raw hides and skins was at the rate of 3 paise per rupee or 19/16th per cent. It was observed that the sub-section is discriminatory and invalid for the same reasons which led the Supreme Court to hold Sub-rule (2) of Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, invalid in *Firm Mehlab Majid's case* 1963 14 S.T.C. 355. In *Mehiab Majid's case* 1963 14 S.T.C. 355, as we have already seen, the discrimination was brought about on account of sale price of tanned hides and skins to be higher than the sale price of untanned hides and skins, though the rate of tax was the same, while in *Abdul Shukoor's case* 1964 15 S.T.C. 719, the discrimination did not arise on account of difference of the price on which tax is levied as the tax on the tanned hides and skins is levied on the amount for which those hides and skins were last purchased in the untanned condition, but on account of the fact that the rate on the sale of tanned hides and skins is higher than that on the sale of untanned hides and skins. It was also held that raw hides and skins and dressed hides and skins constitute different commodities or merchandise and they could therefore be treated as different goods for the purposes of that Act. We do not think that there is anything in these decisions which throw light on the question of discrimination under Article 14. They are all cases in which the tax burden on the same class of dealers in respect of similar goods was different, so as to impede free flow of trade, commerce and intercourse. It is well known that the vice of Article 14 is attracted where the classification is arbitrary and there is no rational basis between the classification and the object sought to be achieved. As Das, J., observed in *The State of West Bengal Vs. Anwar Ali Sarkar*,

The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

19. It cannot be said that when the Legislature classifies millers and dealers other than millers who deal in the same commodity, it is arbitrary or unreasonable; nor can it be said that there is no rational basis between the object sought to be achieved and the classification. The object to be achieved is to tax declared goods at one point, and before they cease to be exigible to tax, either by being crushed into oil or by leaving the State. The whole argument relating to discrimination is based on the assumption, as we have said earlier,

that millers are generally engaged in purchase and sale of groundnuts and do not crush them, which is not what Legislature assumed to be their function. The contention based on Article 14 has therefore no validity and must therefore be rejected.

20. The last contention is that the tax levied under the State Act exceeds that which is prescribed in Section 15(a) of the Central Act. The contention of Sri Ramachandra Reddy that the tax levied under item 6 of Schedule III is on the sale price as defined in the Central Act is, in our view, without force. Section 15 of the Central Act restricts that tax payable under the State law in respect of any sale or purchase of such goods inside the State is not to exceed 3 per cent, of the sale or purchase price. It is difficult to envisage that when Parliament was referring to the tax payable under the State law in respect of any sale or purchase of any declared goods in the State, it was referring to tax that is payable under the Central Act, because no tax is payable under the Central Act. No doubt "sale" or "purchase" has not been defined in the State Sales Tax Act, but "sale" as understood under the Sale of Goods Act is a transfer of property in goods by one person to another in the course of trade or business, which is in effect the sale or purchase. In the first part of Section 15(a) Parliament was only referring to the tax payable under the State law on sale or purchase of goods inside the State, so that it has to be ascertained whether tax payable on any declared goods under the State sales tax law is more or less than the maximum permitted u/s 15(a) on the sale or purchase price thereof. When it comes to fixing the maximum, Parliament has advisedly referred to sale or purchase price, which it has defined in the Central Act itself, so that safes tax which has to be determined is a tax payable under the State Act on purchase or sale of declared goods in the State imposing tax at the maximum rate on sale or purchase price in accordance with the definition of sale price given in Section 2(h) of the Central Act. In this case it is said that tax on the turnover of declared goods u/s 6 read with item 6 of Schedule III exceeds the maximum fixed, because in both cases the rate is 3 per cent., with this difference, however, that the tax on the turnover under the State law would not only include sale or purchase price, but also other matters which the Central Act in defining sale price does not include. In this way, there is a likelihood of exceeding the maximum in so far as item 6 is concerned. But merely because one of the items in Schedule III is likely to exceed the maximum fixed in Section 15(a) it does not justify this Court in striking down item 6. In our view, Article 286(3) uses language which supports our view. We have already seen that the State law in so far as it authorises the imposition of tax on the sale or purchase of declared goods is subject to such restrictions and conditions in regard to the system of levy, rates and other incidence of the tax as Parliament may by law specify. The words "subject to" would necessarily imply that the power to impose tax is restricted to that extent and nothing more. *Hidaya-tullah, J. (as he then was) in Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax 1965 16 S.T.C. 310*, while dealing with this aspect of the matter, negated the contention of Mr. Pathak that Section 5(1) of the

Punjab Sales Tax Act, which prescribed the maximum rate of 4 nP. in the rupee as tax must fail in view of Sections 14 and 15. It was held that the meaning or the intention of Clause (3) of Article 286 of the Constitution is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with Section 15(a) of the Central Act, but to modify them in accordance therewith, and that the law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would pro tanto stand modified. These observations were referred to and approved by the majority in Bhawani Cotton Mills case 1967 20 S.T.C. 290. The above observations in our view are applicable to the facts and circumstances of the case before us, and though in effect the tax imposed by the State is likely to exceed that which is fixed as the maximum u/s 15(a) the whole of the item cannot be struck down ; but the rate of tax and the tax liability is so modified as not to exceed the maximum fixed in Section 15(a).

21. In the result, we direct that the tax payable under the State law in respect of sale or purchase of declared goods inside the State under item 6 of Schedule III should not in any case exceed the tax at the maximum rate of 3 per cent. on the sale or purchase price in accordance with the definition, contained in the Central Act, of sale price which would also include, as we have said earlier, the purchase price, inasmuch as sale would consist of a bilateral transaction and connotes also a purchase-see Syed Mohamed & Co. v. The State of Madras 1952 3 S.T.C. 367. These directions will be applicable to two sets of cases :

(1) in cases in respect of which no assessments are made, the sales tax authorities will give effect to the same; and

(2) in other cases in respect of which assessments have already been made, on applications being filed by the concerned assessees, the sales tax authorities will re-examine and if need be, revise the assessments in the light of the directions given by us in this judgment. With these directions, these writ petitions are dismissed with costs. Advocate's fee Rs. 25 in each.