

(1964) 02 AHC CK 0011

In the Allahabad High Court

Case No : Special Appeal No"s. 486 and 488 of 1961

Ram Chand Textile

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 12-02-1964

Acts Referred:

Constitution of India, 1950 — Article 286(3)
Uttar Pradesh Sales Tax (Amendment) Act, 1952 — Section 4, 8
Uttar Pradesh Sales Tax Act, 1948 — Section 24, 3A

Citation : AIR 1965 All 24 : (1964) 15 STC 340

Hon'ble Judges : M.C. Desai, C.J;R.S. Pathak, J;J. Sahai, J;Gangeshwar Prasad, J;D.P. Uniyal, J

Bench : Full Bench

Advocate : S.C. Khare and L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, C. J.

1. This is an appeal from a judgment of (sic) Gupta. I dismissing the appellants' petition for certiorari to quash assessment orders under the U. P. Sales Tax Act for the assessment years 1950-51 to 1955-56 and proceedings for realisation of the tax assessed for the years and mandamus calling upon the Sales Tax Officer and the Collector of Aligarh not to enforce the assessment orders the demand notices and the certificates of recovery The appellants are manufacturers of and dealers in cotton yarn and cloth Upto 31-3-1954 they formed a partnership and the partnership manufactured and dealt in cotton yarn and cloth Section 3 of the U. P. Sales Tax Act has been amended several times. As originally enacted the section laid down that subject to the provisions of the Act every dealer would pay on turnover of each assessment year a tax at a certain rate. The section as amended by Act No VIII of 1954 provided that subject to the provisions of the Act every dealer would in each assessment year pay a tax at a certain rate on his

turnover of the previous year to be determined in the prescribed manner Section 3-A was added by Act No 15 of 1948 and has been amended several times. As originally enacted it provided that notwithstanding anything contained in Section 3 "the State Government may, by notification in the official Gazette, declare that the proceeds of sale of any goods shall not be included in the turnover of any dealer except at such single point in the series of sales by successive dealers as may be prescribed" and that "if the State Government makes a declaration . . it may further declare that the turnover of the dealer in respect of such sale, be taxed at such rate as may be specified" "Prescribed" is defined in the Act to mean "prescribed by rules made under the Act."

Section 24 lays down that the State Government may make rules to carry out the purpose of the Act and in particular to provide for "all matters expressly required or allowed by this Act to be prescribed"; the rules must be made after previous publication for a period of not less than four weeks, be published in the Gazette and be laid for fourteen days before the legislature as soon as possible after they are made and be subject to such modification as the legislature may make during the session in which they were laid; see Sub-sections (3), (4) and (5) On 8-6-1948 the State Government issued a notification No. ST. 117/X-928-1948 laying down that in exercise of the powers conferred by Section 3-A the Governor had declared that proceeds of sale of cotton yarn and cotton cloth manufactured by mills in U. P would be subject to sales tax at the point of sale by the manufacturer and at the rate of six pies per rupee. The notification was published in the official Gazette. The State Government did not make any rules u/s 24 prescribing that proceeds of sale of these goods would be taxed at the point of sale by the manufacturer. It could issue a notification that proceeds of sale of certain goods would not be taxed except at such single point in the series of sales as may be prescribed and also specify the rate of tax, but it could prescribe the single point in the series of sales by a rule and not by a notification. Its prescribing the single point in the series of sales namely the sale by the manufacturer by a notification was, therefore, null and void. If the prescribing of the single point was null and void, specifying the rate became ineffective. This was realised by the legislature and by Section 4 of Act No. 40 of 1952 it amended Section 3-A.

Section 4 is to the effect that in Section 3-A "for the words "as may be prescribed" the words as the State Government may specify" shall be and be deemed always to have been substituted" The effect of the amendment was that it was not necessary for the State Government to make a rule prescribing the single point in the series of sales and that it could specify it in the notification. Had the amended Section 3-A been actually in force on 8-6-1948 when the notification No. ST 117 was issued it would have been valid and the assessee would have been liable to pay sales tax on the turnover of sale of cotton cloth and cotton yarn at six pies per rupee. No fresh notification containing the specification was issued by the State Government after Act No. 40 of 1952 came into force on 15-1-1953 Section 8 laid down that "every declaration or

assessment made, tax levied, action or proceedings taken or jurisdiction exercised under and in accordance with the provisions of the principal Act prior to the commencement of this Act shall be deemed to be good and valid in law as if the principal Act, as amended by Section 4. had been in force on all material dates." The State Government might have thought that because of the legal fiction contained in Section 4 the notification specifying the rate was valid and that every act done on the basis of this validity would be sustained by virtue of Section 8.

2. The appellants partnership was assessed to tax for the years 1951-52 and 1952-53 in April and November 1953 and the appellants were assessed for the assessment years 1950-51, 1953-54, 1954 55 and 1955-56 in October 1954 and later, after the dissolution of the partnership. The appellants paid part of the tax assessed on them and the partnership and for recovery of the balance demand notices were issued by the assessing authorities and then proceedings were taken to recover the arrears by the Collector. Thereupon the petition living rise to this appeal was filed by them. They contended that the notification No. S. T. 117/X could not be a valid authority for the levy of tax at the point of sale by the manufacturer, that under Article 286(3) the U. P. Sales Tax Amendment Act No. 40 of 1952 imposing tax on sale of cotton cloth and yarn which had been declared by the Essential Goods (Declaration and Regulation of Tax on Sales and Purchase) Act 52 of 1952 to be essential commodities should have received assent of the President, that ft had not received the assent and was, therefore, void and that after the dissolution of the partnership no assessment could validly be made on it.

3. In the associated special appeal No. 488 also the appellant is a manufacturer of, and dealer in, cotton cloth and yarn and was registered u/s 8A of the Sales Tax Act. It was assessed for the year 1955-56 to tax of Rs. 8,000/- and odd and a demand notice was issued by the Sales Tax Officer. It applied for certiorari for the quashing of the assessment order and the demand notice and for mandamus calling upon the Sales Tax Officer to refrain from enforcing his assessment order and demand notice. It contended that the notification No. S. T. 117/X was ineffective and that Act No. 40 of 1932 not having received the President's assent could not be enforced.

4. The two petitions came up for hearing be fore Brijlal Gupta, J., who dismissed both. He held that Act No. 40 of 1952 by Section 4 validated the notification, that the decision In Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra, was to be distinguished, that S. 3A is not a law imposing or authorising the imposition of sales tax, Section 3 being the charging section, that consequently Act No. 40 of 1952 was not hit by Article 286(3) and that the plea that the partnership could not be assessed after its dissolution had been given up by the appellant's counsel.

5. These appeals have been filed from the judgment of Brijlal Gupta, J. They came up for hearing before a Bench of which one of us was a member. The

learned Judges thought that the decision in the case of Firm Bangali Mal Satish Chandra Jain 1958 All LJ 228: AIR 1938 All 478 requires reconsideration by a Full Bench and, therefore, the appeals were laid before us.

6. I do not accept the contention that the notification No. S. T 117/X (which will be referred to as "the notification") was null and void even according to Section 3-A as it stood on 8-6-1948 when it was issued. The only invalidity alleged in it is that it could not be used for prescribing the single point at which the turnover could be assessed. Section 3A provides for a declaration to be made by notification; therefore, the declaration that the turnover of sale of cotton cloth and yarn would be taxed at a particular single point was validly made through the notification. The State Government was given the choice of selecting one point in the series of sales by successive dealers at which the turnover was to be assessed and the word "prescribed" was used in original Section 3A with reference to the exercise of the choice. Prescribing was required only for exercising the choice and not for issuing the declaration. Now selecting a particular single point and declaring that the turnover shall not be taxed except at that point could not be severed from each other; there could not be any question of selecting a particular single point except in relation to the declaration. There could not be a notification of the declaration unless it specified the particular single point at which the turnover was to be assessed; in other words no notification could have a meaning unless the particular single point was specified in it. A rule simply laying down that a particular single point was prescribed and a notification containing the declaration without specifying the particular single point would make up sense at all; the particular single point had to be specified in the notification and the word "prescribed" in the original Section 3A meant nothing more than "specified". In the context in which the word was used it meant "prescribed in the notification". The definition of "prescribed" is to be adopted "unless there is anything repugnant in the subject or context"; see Section 2. Giving the word "prescribed" the meaning given in the definition would be repugnant to the context and has to be avoided.

7. Even if it be said that the word "prescribed" used in Section 3A meant "prescribed by rules" the only consequence would be that the notification in so far as it specified the particular single point for assessability was ineffective and not to render the whole notification ineffective. As far as the declaration minus the specification of the particular single point was concerned it was valid because it had to be made by a notification. Whatever might have been the invalidity in respect of the specification of the particular single point it was removed by the retrospective effect given to the amendment of Section 3A by Act No 40 of 1952. Had the words "as the State Government may specify" been used in the original Section 3A instead of the words "as may be prescribed" there would have been no flaw at all in the notification because it could not then be urged that the specification could not be done by a notification. Same result is, however, achieved by the legal fiction imposed by Section 4 of Act No. 40 of 1952 that those words shall be and be always deemed to have been substituted. The effect

of the legal fiction is that Section 3A must always be read as if it contained the words "as the State Government may specify" instead of the words "as may be prescribed" and that anything that could have been done validly if those words had actually existed when it was done must be deemed to have been validly done. In judging the validity of the act those words must be deemed to have existed when it was done. Lord Asquith of Bishopstone stated the effect of a legal fiction as follows in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 AC 109 at p. 132:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

This statement was approved by the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, Mahajan, J. speaking for the Supreme Court relied upon *Ex parte Walton: In re Levy* (1881) 17 Ch D 746 in which James, L. J. said at p 756 that when a legal fiction is created by a Legislature the Court must ascertain for what purposes and between what persons it is to be resorted to, that full effect must be given to it and that it should be carried to its logical conclusion. Therefore, not only should the amended Section 3A be deemed to have been in existence on 8-6-1948 but also the validity of the notification issued on that date must be judged accordingly Full effect to a legal fiction can be given only by judging validity of acts done on the assumption that the fiction was a fact when they were done. It is not permissible to the Court to halt after assuming that the amended section was in existence on 8-6-1948 and hold the notification as invalid because when it was issued the amended section did not actually exist. The evident object behind the retrospective effect given to the amended section was to validate all acts which would have been valid if the amended section had existed when they were done but would have been invalid in its absence. If the notification would have been valid if the amended section had existed in fact on 8-6-1948 it must be held to be valid because it is deemed to have existed then. Of course if it would have been invalid even if it had existed in fact then it is not rendered valid by the legal fiction because the effect of the legal fiction cannot be greater than what it would have been had the fiction been a fact. If on 8-6-1948 Section 3A used the words "as the State Government may specify" instead of the words "as may be prescribed" the notification would have been fully in order because, as I said earlier, the particular single point could be specified in it. It follows, therefore, that the effect to the legal fiction is to validate the notification even if it had been invalid because of the particular single point not being prescribed by a rule.

8. It is, true, as pointed out by Mootham, C. J. in the case of *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, that "the possession of a power must ... be distinguished from its exercise and that "an authority may possess a power but may not exercise it for some time or at all and therefore, the actual or presumed existence of power at a particular point of time does not give rise to the inference that it was in fact exercised at that time" but In the instant case the power was exercised As a result of the legal fiction the State Government became empowered to specify the particular single point in a notification and it had already specified it in notification No. S. T. 117/X. It is useless to argue that it cannot be assumed that a power that exists has been exercised when it has been exercised; when it has been exercised the only question that can arise is whether it was validly exercised or not and it has to be answered on the basis of the law actually existing or deemed to exist at the time of the exercise. A legal fiction is designed to obviate the necessity of repeating an act which would have been valid if what is to be deemed to exist had existed when it was done. I put a specific question to Sri S. C. Khare what could have been the object behind the legal fiction enacted to Section 4 of Act No. 40 of 1952 other than that of validating the notification if it would have been valid had Section 3A existed in the amended form at the time of its issue and he could not give any answer. If the act had to be repeated nothing was gained by enacting the legal fiction. The words "shall be and be deemed always to have been substituted" in Section 4 were not without content and full effect could be given to them only by holding that they obviate the necessity of reissue of the notification. If anything which could have been validly done only if the amended section had existed from the beginning had to be done again after the creation of the legal fiction. It would have failed to achieve the object.

A construction which will lead to a failure to achieve the object of the Act must be avoided as far as possible and this rule applies not only in respect of an object expressed in the preamble, is held in *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, but also in respect of an implied object. A power must be exercised after it is created but it is open to the Legislature to declare that a power that has been exercised was created before it was exercised. If the power is declared to be deemed to exist before it was exercised it validates the exercise. Here the Legislature through the legal fiction contained in Section 4 of Act 40 of 1952 created the power to specify the particular single point by notification with effect from 1-4-1948, i.e. the date on which the Sales Tax Act came into force. There is no occasion for applying the principle that a power which purports to have been exercised under a particular provision under which it could not legally be exercised cannot be sustained on the ground that it could be exercised under another provision. If a power purports to have been exercised under an authority under which it could not be validly exercised, a legal fiction creating another power with retrospective effect may not validate the exercise of the power merely because it could have been exercised under it but the specification of the particular single point in the notification does not fall within

this principle because it was contained in a notification expressly issued under the authority of Section 3A. The legal fiction contained in Section 4 of Act 40 of 1952 would not have been of any avail to the State Government only if the notification containing the specification had been issued under a provision other than Section 3A. Moreover, an exercise of a power is not rendered invalid by the mere fact that the authority under which it is exercised is not stated; even if the authority under which it purports to have been exercised is not stated if there is an authority under which it can be validly exercised, the exercise will be sustained on its basis.

9. The sheet-anchor of the argument of Sri S. C. Khare was that Act 40 of 1952 did not contain any provision validating the notification. This was the argument that appealed to the learned judges deciding the case of *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, When a statute grants a power it is not only not usual but also unnecessary for it to contain another provision laying down that an act done in exercise of the power is valid. Any act done in exercise of a power granted by a statute is valid without any express provision declaring it to be valid; that it is done in exercise of the power is all the proof of the validity that is required. When, therefore, Act 40 of 1952 granted power through Section 4 for the Issue of the notification it did not in addition have to enact a provision to the effect that the notification was valid. A provision validating an act would be necessary when other wise there is no authority for it With great respect I am unable to agree with the observation of Mootham, C. J. in the case of *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, that "the conferment of the necessary power from a back date can not have the effect of validating a notification which was not issued in exercise of that power.

10. On behalf of the respondent reliance was placed upon Section 8 of Act 40 of 1952 but I do not think it helps him. It applies in only those circumstances in which a declaration or assessment made a tax levied, an action or proceeding taken or jurisdiction exercised would be valid under the amended Section 3A but not valid under the original Section 3A though purporting to be made, levied, taken or exercised under it. If the effect of Section 4 is not to render the notification valid Section 8 will not be of any assistance because no assessment made or tax levied or action or proceeding taken for realisation of tax can be valid unless the notification is valid. I am not sure that the notification itself is within the scope of Section 8. Issuing it is certainly not exercising a jurisdiction. The word "jurisdiction" is not used in regard to exercise of an administrative power. It might be said that issuing a notification containing the declaration referred to in Section 3A is taking an action u/s 3A Sri Khare contended that "action" within the meaning of Section 8 is a legal action and that it is used as a synonym of "proceeding". Issuing a notification as permitted by Section 3A may not be said to be taking an action under it and in that case there would be nothing in Section 8 to apply to a notification. It is, however, not necessary for me to decide definitely that it is or is not action taken u/s 3A because even if it is not action taken u/s 3A the legal fiction incorporated in Section 4 is sufficient to

render the notification valid. Moreover, Section 8 does not apply to action not taken in accordance with the provisions of the unamended Section 3A. If the word "prescribed" in Section 3A meant "prescribed by a rule" the notification was not issued in accordance with it and cannot be deemed to be valid.

11. The facts in the case of *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, essentially different. There the State Government issued a notification on 31-3-1956 in exercise of the power conferred by a provision which came into force on 1-4-1956. Because the power was exercised on a day on which it did not exist the notification was held in *Adarsh Bhandar Vs. Sales Tax Officer*, to be invalid. Thereupon U. P. Sales Tax (Amendment) Act No 24 of 1957 was passed and the provision was given retrospective effect from 31-3-1956. Mootham, C. J. and R. Dayal and Srivastava, J., held that this retrospective effect was insufficient to validate the notification. The notification No. S. T. 117/X which was issued u/s 3A cannot be compared with the notification issued in *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, without any authority whatsoever. When it was issued there was no authority for it and after the authority was conferred through Amendment Act No. 24 of 1957 no notification was issued and it was in this context that the learned Judges observed that there was a power but no exercise of it. The power was created for the first time by the Amendment Act and no notification was issued in exercise of it. The legal fiction enacted by the Amendment Act was simply that the power was deemed to exist on the date on which the notification was issued. The learned Judges observed that the legal fiction went only to the extent that the power existed on 31-3-1958 but not to the further extent that it was exercised. Though the facts in that case were different the decision contains propositions of law which would apply in the instant case but I regret I cannot assent to them.

When the power to issue the notification was deemed to exist on 31-3-1956 the necessary consequences must follow that the notification, which could have been issued in exercise of it and was in existence then, was so issued and, therefore, was valid. If when an act is done, an authority exists under which it could be done, it must be held to be valid even if it does not profess to have been done under it. The learned Judges conceded that the object behind the retrospective effect was to validate the notification and I do not agree with their observation that it was not achieved by merely giving retrospective effect to it and could not be achieved without express words. The notification was issued in exercise of a supposed power which did not exist on 31-3-1956 and the defect of the non-existence of the power was removed by the legal fiction. The Supreme Court noticed this decision in the case of *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, but did not overrule it because it was not called upon to do so. It is enough for our purpose that it did not approve of it. The observation of Venkatarama Ayyar, J., at p. 1537 with respect to Amendment Act No. 24 of 1957 that "it the State thought that this legislation would give a quietus to the controversy, they were sadly mistaken" suggests that the decision did not find

full favour with the Supreme Court.

12. We were referred to Maxwell on Interpretation of Statutes, 11th Edition, pp. 205 and 213, and Caies on Statute Law, p. 389. Maxwell deals with construction of statutes at pp. 205 and 213. There is no question of construction when a statute expressly provides that a certain provision shall be deemed to be in force from a certain date; the question that would arise then is not of construing it one way or another but of obeying it or not. Craies says at page 389 that a court ought not to give a larger retrospective power to a section than it can plainly see the legislature meant; this does not militate against giving to Act No. 40 of 1952 retrospective effect from 1-4-1948, the date on which the U. P Sales Tax Act came into force; this much retrospective effect is ordained by the legislature itself. On the other hand what he says at page 394 on the basis of R. v. Duniey (sic) 3 B. Ad. 465 at p. 469 and Attorney General v. Pougatt (1816) 2 Price 381 at p. 392 supports our view that the U. P. Sales Tax Act and Act No. 40 of 1952 "must be taken together as if they were one and the same Act."

13. Article (sic) of the Constitution, as it stood in 1952, prohibited a State law imposing, or authorising the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be essential for the life of the community unless it had been reserved for the consideration of the President and received his assent. The Parliament enacted on 9-8-1952 The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, (No. 58 of 1952). Section 2 of it declares certain goods, including cotton yarn and coarse and medium cotton doth made in mills or woven on power-looms, to be essential for the life of the community. Section 3 deprives a law, made after 9-8-1952 by a State Legislature imposing or authorizing the imposition of a tax on the sale of any goods declared by it to be essential for the life of the community, of its effect unless it had been reserved for the consideration of the President and received his assent. The U. P. Amendment Act No. 40 of 1952, which received the Governor's assent on 21-11-1952 and came into force on 15-1-1953, admittedly was not reserved for the President's consideration and did not receive his assent. It would have been deprived of its effect by Section 3 of the Essential Goods Act No. 52 of 1952 if it could be said to be a law imposing or authorising the imposition of tax on the sale of cotton yarn and cotton cloth. What it did through Section 4 of it was simply to substitute the words "as the State Government may specify" for the words "as may be prescribed" in Section 3-A which had been added in the Sales Tax Act by Act No. 15 of 1948 and was, therefore, not hit by Section 3 of the Essential Goods Act No. 52 of 1952.

Act No. 40 of 1952 did not proprio vigore impose or authorize the imposition of any tax; it simply altered the method by which the State Government could publish the single point selected for taxability. Even Section 3-A itself does not impose or authorize the imposition of a tax. on the other hand it exempts the turnover of certain goods at certain points from taxability. Section 3-A(2) authorizes the State Government to vary the rate at which tax may be assessed,

in respect of the notified goods but it was not affected by any provision of Act No. 40 of 1952. In *Firm of A. Gowrishankar Vs. Sales Tax Officer, Secunderabad and Another*, the Supreme Court held that a State Sales Tax Act enacted before the Essential Goods Act No. 52 of 1952 is not affected by Art 286(3) Validity of a State law imposing sales tax cannot be challenged on the ground that it was not reserved for the consideration of the President and had not received his assent if it came into force prior to 9-8-1952; see *Indore Iron and The Indore Iron and Steel Registered Stock-holders' Association Vs. The State of Madhya Pradesh and Others*, In *Firm Thakur Das Sunder Das Vs. Sales Tax Officer*, the power conferred by Section 3-A was slated to be only an accessory or sub-ordinate power conferred upon the State Government to select certain commodities for exempting them from taxability u/s 3. It must, therefore be held that Article 286(3) of the Constitution read with the Essential Goods Act No. 52 of 1952 did not affect the validity of Act No. 40 of 1952.

14. It was not contended before us that the appellants' partnership stood dissolved on 31-3-1954 and that consequently it could not be assessed for the years 1950-51, 1953-54, 1954-55 and 1955-56 No such plea was raised before Brijlal Gupta, J.

15. In the result this appeal should be dismissed with costs.

Jagdish Sahai J.

16. I agree.

D.P. Uniyal, J.

17. I have had the benefit of reading the judgment of My Lord the Chief Justice and I agree with him that this appeal must be dismissed.

18. The matter has come before us on a reference by our brothers Mukerji and Jagdish Sahai who doubted the correctness of the Full Bench decision in *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, and were of the view that it required re-consideration by another Full Bench

19. The appellants are manufacturers and dealers in cotton cloth and yarn. They were assessed to sales tax under the provisions of the U P. Sales Tax Act (XV of 1948), hereinafter referred to as the principal Act. They sought to challenge the assessment orders and the demand notices issued pursuant thereto on two principal grounds:

1. That the State Government had no power to prescribe the levy of tax at the point of sale by the manufacturer by means of Notification No. S. T. 117/X-923-1948, dated 8-6-1948; and

2. That the U P. Sales Tax (Amendment) Act XI of 1952, hereinafter called the 1952 Act, contravened Article 286(3) of the Constitution inasmuch as it imposed or authorised the imposition of tax on the sale of cotton cloth and yarn which have been declared by Parliament to be essential for the life of the community

under the provisions of the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act, 1952.

20. On the first point the contention was that under the terms of Sub-section (1) of Section 3-A of the principal Act the notification aforesaid could not have been validly issued unless the State Government had first framed a rule prescribing the single point in the series of sales by successive dealers at which tax was to be levied; and that Sub-section (2) of Section 3-A by which the rate of tax was to be specified would come into operation only after action had been taken under Sub-section (1) of that section Section 3-A, so far as material, runs as follows:

"3-A. Single point taxation-

1. Notwithstanding anything contained in S. (sic) the State Government may by notification in the official gazette declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as may be prescribed.

2. If the State Government makes a declaration under Sub-section (1) it may further declare that the turnover in respect of such goods shall be liable to tax at such rate not exceeding 7 np per rupee as may be specified.

3."

21. Section 2(f) of the principal Act defines "prescribed" as meaning prescribed by rules. Section 24 of the Act empowers the State Government to make rules to carry out the purposes of the Act. By Sub-section (2)(a) of Section 24 such rules may provide for all matters expressly required or allowed by this Act to be "prescribed". The words "as may be prescribed" in Sub-section (1) of Section 3-A should therefore be read to mean as required or determined by rules. This becomes clear from the words "as may be specified" in Sub-section (2) of that section where it was intended that the rate of tax may be fixed by declaration contained in a notification. The fact that the Legislature deliberately used two different expressions in the same section indicates that the intention was that the levy of single point tax was to be made by making a rule. I am, therefore, unable to subscribe to the view that the words "prescribed" and "specified" were used by the legislature in the same sense in Section 3A. The word "prescribed" has a definite legal signification and implies a direction by some authority.

22. It was conceded that the point at which tax was to be levied had not been determined by a rule. By issuing the impugned notification the Government had declared the rate of tax as also the single point at which it was to be levied. In so far as the State Government sought to prescribe the levy of tax at the point of sale by the manufacturer without framing a rule it had acted beyond its power and to this extent the notification aforesaid was invalid. Had matters rested there the notification would have been liable to be struck down. However, the U P. Legislature passed the 1952 Act and by Section 4 of that Act it introduced an amendment to Section 3A of the principal Act whereby the amending Act was

made retrospective in its operation Section 4 of the amendment Act was as follows :

"Section 4--Amendment of Section 3-A of the U. P. Act (Act XV of 1948):

"In sub-section (1) of Section 3-A of the principal Act for the words "as may be prescribed" the words "as the State Government may specify" shall be, and be deemed always to have been substituted."

By this amendment the words "as the State Government may specify" were substituted for the words "as may be prescribed" and it was declared that the substituted words shall be deemed always to have existed in Section 3-A of the principal Act. The legal fiction created by the Legislature dispensed with the requirement of framing a rule for prescribing the point at which tax was to be levied. By making the amendment retrospective in its operation the object of the legislature was to import a fiction that there never existed the necessity of prescribing the single point by making a rule.

23. The question which was debated and which needs consideration is: when the Legislature creates or constructs a legal fiction by virtue of such words as "deemed to be" how far is that fiction to be operative?

24. In *R. v. Norfolk County Council* (1891) 60 LJ QB 379 Cave, J. observed:

"Generally speaking, when you talk of a thing being deemed to be something, you do not mean to say that it to that which it is to be deemed to be. It is rather an admission that it is not what it to deemed to be and that notwithstanding it is not that particular thing, nevertheless.....it is deemed to be that thing."

25. The same principle has been enunciated in (1881) 17 Ch. D. 746 where Tames. Lord Justice said:

"When a statute creates that something should be deemed to have been done, which in Fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

26. The effect and import of a legal fiction were also considered in 1952 AC 109. In that case what had happened was that a rule was framed by which a certain valuation of property was directed to be recorded as that which it would have been if the entire damage had been made good before a certain date. The point was whether the rule was to operate retrospectively by virtue of the legal fiction created therein. Lord Asquith delivering the judgment laid down:

"If you are bidden to treat an imaginary state of affairs as real you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit

your Imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

27. The above quotation was adopted and accepted by the Supreme Court in Commissioner of Income Tax, Delhi Vs. S. Teja Singh,

28. Applying the principles enunciated in the cases cited above to the instant case it appears to me clear that the State Government was empowered to specify the point at which tax was to be levied by issuing a notification in that behalf, and that this power became vested in the State Government with effect from the 8th June, 1948 when the impugned notification was issued.

29. Another argument of the learned counsel for the appellants was that although Section 4 of the 1952 Act was retrospective in operation it had not the effect of validating the impugned notification retrospectively. In support of his contention he strongly relied on the following observations made by the Full Bench in Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra,

"The fact that in view of the retrospective operation of the 1957 Act the State Government must be deemed to have requisite power under the new Section 3-A (2) on 31-3-1956 will not convert a notification issued under the old Section 3-A(2) into one issued under the new section The conferment of the necessary power from a back date cannot. In other words, have the effect of validating a notification which was not issued in exercise of that power.

30. In the case of Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra, the power to issue a notification did not exist before the Amendment Act came into force. The State Government had not issued the notification in that case in exercise of any power conferred under the Act and, therefore, it could be said that the act done by the State Government was not authorised by law. In the instant case the power to issue a notification was always there and all that had happened was that the declaration as to the point at which tax was to be assessed was made without framing a rule By virtue of the Amendment Act the State Government was empowered to issue a notification specifying the point at which tax was to be levied. Such notification had already been issued in 1948 and the Amendment Act provided that all acts done under the principal Act shall be deemed to have been done in exercise of the power conferred under the new Act. Thus the action taken by the State Government in issuing the notification was competent and within its jurisdiction by virtue of the retrospective operation of the Amendment Act.

31. The point, however, remains whether the observations made in Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra, that "the conferment of the necessary power from a back date cannot have the effect of validating a notification which was not issued in exercise of that power" are sound. In State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, their Lordships were considering whether the retrospective operation of the Bihar Land Reforms (Amendment) Act XVI of 1959 had the effect of creating rights which had ceased

to exist on the date when the parent Act was passed. It was pointed out that on the date the Amending Act was passed the ex-intermediaries had ceased to exist as intermediaries and had become occupancy ryots u/s 6 of the parent Act. By the amending Act certain provisions including Section 6, were given retrospective effect and the question arose whether the rights which had been created by the Amendment Act should operate from the date on which the parent Act was passed. The Supreme Court held :

"It has to be noticed that the impugned provisions, amending Section 4, Section 6 and Section 7(b) have been given retrospective effect so that the parent Act of 1950 has to be read as containing on the very date of its enactment provisions in these sections not as originally enacted but as they stood after the amendment of 1959. In deciding whether the rights of ryots were being acquired or not we have got to forget what happened in consequence of the unamended Section 6 Projecting ourselves to the date September 25, 1950 when the President's assent to the Bihar Land Reforms Act, 1950 was published in the Gazette and reading the Act as containing Sections 4 and 6 as amended, and also Section 7(b), it cannot but be held that what were being acquired by means of these provisions of the amending legislation giving retrospective effect were certain rights of the intermediaries."

32. When a statute says that an act shall be deemed to have been done it must be understood as saying that it was validly done In construing an enactment which has a retrospective operation the object of the legislation has to be borne in mind and a construction which will advance the object of the legislation must be given effect to Those who framed the U. P. Sales Tax (Amendment) Act (XL of 1952) must have been well aware that a notification had already been issued specifying the point at which tax was to be assessed. The purpose behind the amendment was to express the manifest intention of the Legislature so as to validate all acts done under the principal Act as though they had been done under the Amending Act. I am, therefore, of opinion that the State Government had power to issue the impugned notification and by virtue of the legal fiction contained in Section 4 of the 1952 Act the specification of the single point by the impugned notification was valid and binding with effect from the 8th June, 1948. In *L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt.*, Hidayatullah, J. delivering the judgment of the Court pointed out that:

"The exercise of power will be referable to jurisdiction which confers validity upon it and not to jurisdiction under which it will be nugatory."

The necessary corollaries of the legal fiction introduced by Section 4 of the Amending Act were that even if the impugned notification had not been validly issued under the principal Act it would be deemed to have been issued in exercise of a valid power with effect from the date of its issue and, therefore, the levy of tax at the point of sale by the manufacturer was made in exercise of a legal power vested in the State Government. I am, therefore, unable, with utmost respect, to accede to the view expressed in *Firm Bangali Mal Satish*

Chandra Jain Vs. Sales Tax Officer, Agra,

33. As regards the second point, it was contended that the U. P. Amendment Act XL of 1952 which received the Governor's assent on 21-11-1952 and came into force on 15-1-1953, had not been reserved for the President's consideration and did not receive his assent and that the said Act in so far as it imposed or authorised the imposition of a tax on the sale of any goods declared by the Parliament to be essential for the life of the community was hit by Article 286(3) of the Constitution. The argument assumes that the U. P. Amendment Act of 1952 was a law imposing or authorising the imposition of tax on the sale of cotton cloth and yarn. Section 4 of the U. P. Amendment Act, 1952 did not impose any tax. It merely prescribed the mode in which the imposition of tax and the exemption of certain class of goods from tax u/s 3-A of the principal Act was to be notified for the benefit of the assesseees. Section 4 merely validated certain provisions of Section 3-A of the principal Act with retrospective effect and was not a law imposing or authorising the imposition of tax on the sale or purchase of goods covered by the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act (52 of 1952).

34. In *Firm of A. Gowrishankar Vs. Sales Tax Officer, Secunderabad and Another*, the Supreme Court held that law which was in force before the Essential Goods Act (52 of 1952) was enacted was not hit by Article 286(3). The above view has been reaffirmed by the Supreme Court in *The Indore Iron and Steel Registered Stock-holders' Association Vs. The State of Madhya Pradesh and Others*, . The objection raised by the learned counsel as to the constitutional validity of the Amendment Act must, therefore, fail.

35. I, therefore, hold that there is no force in this appeal and it must be dismissed

R.S. Pathak, J.

36. I am of the same opinion, and agree that the effect of the legal fiction introduced by Section 4 of the U R Sales Tax (Amendment) Act, 1952 (sic) that you must deem that the Notification of June 8, 1948 was valid when issued.

37. I should like, however, to add a few words respecting the contention that the amendment brought about in Section 3A(1) of the principal Act contravenes the provisions of Article 286(3) of the Constitution. In my opinion, Article 286(3) does not come into play at all as the amendment did not impose, or authorise the imposition of tax but it merely altered the method by which the State Government could indicate the single point selected for taxability. The power to determine the single point continued to vest in the State Government. That was in no way altered. The exercise of that power, resulting in the determination of the single point, would precede or be simultaneous with the publication of that determination. But the two processes are distinct in quality and nature, and it is only the mode of publicly expressing that determination which has been altered by the amendment.

38. The question may also be looked at from another aspect. Section 3A(1) is not a provision which creates liability to tax. That liability is created by Section 3. By virtue of Section 3 every dealer in the series of sales by successive dealers is liable to tax on his turnover at the rate mentioned therein. But the State Government may decide that in respect of any goods or class of goods, instead of the turnover of all the dealers being so liable, the turnover of only one of them shall be liable. Excepting the turnover of that one dealer, the turnover of the dealers at all other points of taxation in the series of sales is exempted from tax liability. This is what is known as "single point taxation", and this is what is provided for by Section 3A(1). Section 3A(1), in effect, operates to provide for the grant of immunity from tax liability in respect of the turnover of all the dealers otherwise liable u/s 3, except the turnover of one of them. The turnover of that single dealer continues to be liable to tax, the liability being that imposed by Section 3. It is apparent, therefore, that Section 3A(1) does not create liability to tax. If that be so, as it appears to me, then having regard to the provision of Section 3A(1) and the nature of the impugned amendment it cannot be said that Article 286(3) has been contravened.

39. It is true that the rate of tax may be enhanced by a notification u/s 3A(2), but it has not been contended that such enhancement falls within the prohibition of Article 286(3).

40. For all these reasons, therefore, in my judgment the appeal should be dismissed.

Gangeswar Prasad, J.

41. I agree that these appeals should be dismissed.

42. The result brought about by Section 4 of the U. P. Sales Tax (Amendment) Act 1952 (hereinafter called the amending Act) is that Section 3-A of the U. P. Sales Tax Act, 1948 (hereinafter called the Act) must be regarded as having existed in the amended form ever since it came to occupy a place on the statute book and at no point of time can it be considered as having existed in the form in which it was originally enacted. Therefore to demand from the impugned notification support from and conformity with Section 3-A of the Act as originally framed is not merely to ignore but to act contrary to the provisions of Section 4 of the amending Act. The notification has to justify itself as having been issued in exercise of the power conferred by Section 3-A as modified by the amending Act and not of the power mentioned, if I may say so, in a "non-existent" provision. It is certainly true, as observed in the case of *Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra*, that there is a difference between a power and the exercise of that power; but it seems to me to be equally true that it is only when a power can manifest itself in effective acts done in exercise of it that it can be said to be real power, and that a power devoid of that capacity is no power at all in the reckoning of law. If, therefore, by a legal fiction a power is deemed to have retrospectively existed, all such acts done during its "fictional" existence as ma

be supported by that power will stand retrospectively validated.

Indeed validation of acts of the above description can be the only object of giving retrospectively to the power, for otherwise, it is not possible to comprehend the purpose and utility of a provision that the power will always be deemed to have existed. I. therefore., find myself unable to accept the correctness of the view taken in the cause of Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra, that the conferment of the necessary power from a back date cannot have the effect of validating a notification which was not issued in exercise of that power. It also appears to me that the line of reasoning adopted in the case of Firm Bangali Mal Satish Chandra Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra, did not receive the approval of the Supreme Court in J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another, and, further, that the following observations of the Supreme Court in the above decision apply with equal force to the amendment introduced by Section 4 of the amending Act and to the notification in question :

"The result of this amendment was that Section 3-A was given retrospective operation from March 31, 1956, instead of April 1, 1956, as originally enacted. The intention behind the legislation is obvious. If the impugned notification was, as held in Adarsh Bhandar Vs. Sales Tax Officer, invalid because it was issued before Section 3-A was in operation that objection could no longer hold good as that section would now operate from a point of time anterior to the issue of the notification."

Since the notification involved in the present appeals was one which conformed to the requirements of Section 3-A of the Act as it will be deemed to have existed from its inception and was thus traceable to a statutory power, it was always valid and effective.

43. Although Section 4 of the amending Act is itself quite sufficient to legalise the notification, Section 8 of the amending Act, enacted in my opinion, by way of abundant caution, also furnishes a complete answer to the argument against the validity of the notification. It may certainly be said that the issue of a notification cannot properly be regarded as a jurisdiction exercised within the meaning of Section 8 of the amending Act. but it seems to me indisputable that the expression "action" used in that section includes a notification. It is inconceivable that in enacting Section 8 of the amending Act the legislature gave validity to every thing done pursuant to a notification u/s 3-A of the Act but not to the notification itself, cured of their legal defect all steps taken under it but left uncured the first step which made others possible. In my view there is no reason why the word "action" should be interpreted in any narrow or limited sense. The word is itself one of widest import and having regard to the object intended to be achieved by the provision in which it finds place, it must be held to include the issue of a notification.

As to the question whether, in order to attract the operation of Section 8 of the

amending Act, it is necessary that the notification should have been issued under and in accordance with the provisions of Section 3-A of the Act as originally enacted, I think that at no point of time can the legality of the provision be tested with reference to Section 3-A in its original form because at no point of time Section 3-A can be regarded as having been in any form other than the one given to it by the amending Act. I feel driven to this conclusion by the force of the statutory fiction embodied in Section 4 of the amending Act. It had the effect of wiping off the old shape of Section 3-A and giving it a new one retrospectively, As such, the requirements of Section 3-A as originally framed are not there at any point of time for being fulfilled by the notification and it could only conform to the requirements of Section 3-A as modified. The contrary view would, in my opinion, curtail the full retrospectivity of Section 4 of the Act and nullify to some extent its "deeming" provision. Further. Section 8 of the amending Act is not intended merely to be a provision for relating things done under and in accordance with Section 3-A as originally framed to the section as modified but also for validating and making them good.

If the former were the only object to be attained it would have been sufficient to provide that things done under and in accordance with Principal Act as originally enacted will be deemed to have been done under and in accordance with the Principal Act as amended. But the legislature in enacting Section 8 of the amending Act went further and made the things mentioned therein good and valid as if the Principal Act as amended by Section 4 had been in force on all material dates. For judging the validity of the notification, therefore we have to read Section 3-A of the Act as if the Principal Act as amended by Section 4 had been in force on all material dates it cannot be urged that a notification in order to be valid must have been issued under and in accordance with Section 3-A both as originally enacted and as retrospectively amended. This would lead to obvious inconsistency and to the introduction of a double standard of validity which the legal fiction positively rules out. In my view, therefore. Section 8 of the amending Act also has the effect of validating the notification in question although Section 4 of the amending Act is by its own force quite adequate for that purpose.

44. Regarding the argument that the amendment introduced in Section 3-A(1) partook of the nature of a law imposing or authorising the imposition of a tax within the meaning of Article 286(3) of the Constitution I may say in the words of (sic) of the High Court of Australia in *Osborn v. The Commonwealth* 12 CLR 321 that it involves the "tacit assumption that a law dealing with taxation is necessarily a law imposing taxation". This assumption is erroneous. It is true that every law imposing or authorising the imposition of a tax is a law dealing with taxation but the converse, that every law dealing with taxation is a law imposing or authorising the imposition of a tax, is not true. These legislative categories are not identical and must be distinguished. The distinction has been emphasised and explained in the above-mentioned decision and in later decisions of the same court in *Federal Commr. of Taxation v. Munro* 38 CLR 153 (Aus.);

Resch v. Federal Commr. of Taxation 66 CLR 198 and Cadbury Fry Pascall Proprietary Ltd. v. Federal Commr. of Taxation 70 CLR 362.

In all these cases the matter for consideration was the meaning and scope of the expression "imposing taxation" and "imposition of taxation" used respectively in Sections 53 and 55 of the Commonwealth of Australia Act 1900 and they appear to me, therefore, of great instructive value in the interpretation of the words "imposing or authorising the imposition of a tax" in Art. 286(3) of our Constitution. The principle deducible from the above cases is that imposition is the levy as distinguished from the management, assessment, collection and control of the tax, the latter being "only the legal machinery by which the obligation declared by the imposition is effectuated". The imposition of sales tax had been done by Section 3 of the Act and Section 3-A is really in the nature of an exception empowering conversion of multiple point taxation into single point taxation in regard to the goods and under the conditions mentioned therein. The amendment in question therefore did not obviously amount to a law imposing or authorising the imposition of tax and is not rendered ineffective by Article 286(3) of the Constitution.