
(1994) 03 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 28 of 1990

Shankar Mahadeo Traders

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 10, 10(1), 12, 2, 4
Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 —
Section 3, 3(1)

Citation : (1994) 95 STC 105

Hon'ble Judges : V.D. Gyani, J; R.D. Shukla, J

Bench : Division Bench

Advocate : Chafekar and Choudhary, for the Appellant; Rawat, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners who are registered as "dealers" u/s 15 of the M.P. General Sales Tax Act, 1958 and dealing in either cloth, sugar and/or tobacco, challenge imposition of entry tax u/s 3 of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam. The petitioners have prayed for issuance of writ of certiorari quashing imposition of entry tax on these goods and quashing notices issued by the respondents restraining them from further proceeding or continuing with the assessment proceedings levying entry tax.
2. As the points involved in all those petitions are common and they have been heard together these petitions are being disposed of by a common order.
3. Before proceeding any further it would not be out of place to make it clear that in deciding these petitions we are not dealing with the question of "vires" which forms subject-matter of another bunch of petitions pending at the main seat, the hearing of these petitions was strictly confined to provisions of law and Sales Tax Act and Entry Tax Act as it is without challenging or going into the question of "vires".

4. Madhya Pradesh General Sales Tax Act, 1958 (Act No. 2 of 1959) (for short "the Sales Tax Act") came into force on April 1, 1959, vide notification dated March 21, 1959, published in the Madhya Pradesh Government Gazette on March 27, 1959.

5. Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (for short "the Entry Tax Act") came into force on September 1, 1976.

6. Shri Chafekar, Senior Advocate with other learned counsel for the petitioners, led arguments raising the following points :

(1) Since cloth, sugar and tobacco are tax-free goods u/s 10 of the Sales Tax Act, the taxability of the commodity itself is not in existence, the petitioners are not liable to pay entry tax.

(2) The charging Section 3 of the Entry Tax Act provides that a dealer who is liable to pay sales tax is liable to pay entry tax and since the petitioners are not liable to pay sales tax, are not liable to pay entry tax.

(3) Section 6 of the Sales Tax Act being the charging section, is not to be confused or mixed up with Section 4 thereof which deals with incidence of taxation. It was urged that it would be erroneous to mix up concept of "goods liable to tax with transactions liable to tax".

(4) It is not a case of exemption from sales tax, but a case of non-levy and non-leviability of sales tax on cloth, sugar and tobacco being goods specified in Schedule I of the Sales Tax Act. The State of Madhya Pradesh being a participating State in the integrated scheme as formulated by the Parliament regarding additional excise duty in respect of cloth, sugar and tobacco, is prevented from imposing additional duty or tax such as entry tax.

7. Shri Rawat, learned Additional Advocate-General appearing for the State-respondents, contended as under :

(a) A dealer who is liable to pay tax under the Sales Tax Act is also liable to pay entry tax u/s 3 of the Entry Tax Act, irrespective of the fact whether such dealer is dealing in goods on which sales tax is not levied u/s 10 of the Sales Tax Act.

(b) In order to attract the applicability of Section 3 of the Entry Tax Act, what is required is a dealer should be liable to tax under the Sales Tax Act irrespective of the fact that the goods in which the dealer concerned is dealing are exempted from payment of sales tax, in the instant case--cloth, sugar and tobacco. Once the limits of turnover prescribed under Clause (a) of Sub-section (5) of Section 4 of the Sales Tax Act exceeds the limits, he is liable to pay tax u/s 4 of the Sales Tax Act and therefore also liable to pay the entry tax.

(c) The Additional Duty of the Excise Act, 1957, is based on entry No. 84 of List I of the Seventh Schedule of the Constitution ; while the Entry Tax Act is authorised as per provisions as contained in entry No. 52 of List II of the Seventh Schedule of the Constitution. These two Acts are independent and do not

preclude the State from imposing the entry tax.

8. Section 3 of the Entry Tax Act reads as follows :

"Section 3. Incidence of taxation.--(1) There shall be levied an entry tax--

(a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein ; and

(b) on the entry in the course of business of a dealer of goods specified in Schedule III, into each local area for consumption or use of such goods as raw material or incidental goods or as packing material or in the execution of works contracts but not for sale therein,

and such tax shall be paid by every dealer liable to tax under the Sales Tax Act who has effected entry of such goods."

9. Section 10 of the Sales tax Act provides :

"10. Tax-free goods.--(1) No tax shall be payable on the sales or purchases of goods specified in the second column of Schedule I subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof.

(2) The State Government may in respect of any goods, by notification amend Schedule I so as to include therein any goods not already specified or may relax or omit any of the conditions and exceptions set out in the corresponding entry in the third column thereof."

10. It is not in dispute that item No. 6, all varieties of cloth manufactured in mills or on powerlooms or handlooms including processed cloth (but excluding hessian cloth), item No. 41, sugar including khandsari, and palmyra, but excluding mishri, batasha and chironji, and item No. 42, tobacco, manufactured or unmanufactured, cured or uncured and tobacco products including cigarettes, cigars, cheroots and bidis of Schedule I, u/s 10(1) of the Sales Tax Act are free from sales tax under the State Sales Tax Act.

11. Section 6 of the Sales Tax Act relates to levy of tax and Sub-section (1) thereof which is reproduced below, makes it clear that a dealer, subject to provisions of Sub-sections (2) and (3) of the Sales Tax Act is liable to pay tax on goods specified in Schedule II on prescribed turnover, at the rate mentioned therein.

"Section 6. Levy of tax.--(1) Subject to the provisions of Sub-section (2) and Sub-section (3), the tax payable by a dealer under this Act shall be levied on the taxable turnover relating to goods specified in Schedule II at the rate mentioned in the corresponding entry in column (3) of the said Schedule."

12. Since the term "entry tax, turnover and the taxable turnover" have often been referred to, it would not be out of place at this stage to reproduce their definitions for ready reference. The term "entry tax" has been defined u/s 2(b) of the Entry Tax Act which reads as follows :

"Section 2. Definitions.-

In this Act, unless the context otherwise requires,

(b) "entry tax" means a tax on entry of goods into a local area for consumption, use or sale therein levied and payable in accordance with the provisions of this Act, and includes composition money payable u/s 7-A."

13. Definitions of "turnover" and "taxable turnover" u/s 2(r) and 2(t) of the Sales Tax Act are also reproduced below to the extent they are material for the controversy involved in these petitions :

"2(r) "taxable turnover" in relation to any period means that part of a dealer's turnover for such period which remains after deducting therefrom--

(i) the sale price of goods declared tax-free u/s 10 or Section 12 ;

(ii).....

(iii).....

(2)(t) "turnover" used in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period."

14. Learned counsel for the petitioners at the very outset submitted that a taxing statute is to be strictly construed and in construing such fiscal statutes and in determining the liability of a subject to tax one must have regard to strict letter of the law. It is only when the Revenue satisfies the court that the goods falls strictly within the provisions of the law the subject can be taxed. In this connection learned counsel cited Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., which holds as follows :

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed ; it cannot imply anything which is not expressed, it cannot import provisions in the statutes so as to supply any assumed deficiency."

As already noted above sugar, cloth and tobacco included in Schedule I are not liable to tax.

15. Learned counsel for the petitioners, in view of the plain language of Sub-section (1) of Section 10 of the Sales Tax Act, submitted that the heading "goods exempted from tax" in Schedule I is misleading. It is a case of non-liability rather than exemption ; Schedule I is u/s 10(1) of the Sales Tax Act ; as for "exemption" it is Section 12 thereof, which empowers the State Government to

exempt any class of dealer of goods from payment of tax under the Act by issuing a notification in that behalf.

16. In this connection, it was argued on behalf of the petitioners that under charging Section 3 of the Entry Tax Act, a dealer who is liable to pay sales tax under the State Sales Tax Act is alone liable to pay entry tax. Under the provisions of the State Sales Tax Act read with entries 6, 41 and 43 of the First Schedule, it is clear that no tax is leviable on the sale or purchase of cloth, sugar and tobacco under the State Sales Tax Act. Similarly there is no liability to pay tax under the Central Sales Tax Act because of a relevant notification issued by the Government in that behalf. Thus it is claimed petitioners are wholly exempt from the levy of sales tax and, therefore, is not dealer liable to pay tax under the provisions of the State Act or the Central Sales Tax Act qua commodities cloth, sugar and tobacco.

17. It was contended that since he is not a dealer liable to pay sales tax, he is not liable to entry tax under the provisions of the Entry Tax Act.

18. Placing reliance on a decision of the Supreme Court as reported in *The State of Tamil Nadu Vs. M.K. Kandaswami and Others*, ; it was contended that for want of a taxable commodity the petitioners could not be taxed, under the Entry Tax Act as the taxability of the commodity itself is not in existence.

19. Dealing with Section 7-A(1) of the Tamil Nadu General Sales Tax Act as amended, the Supreme Court while rejecting the High Court's interpretation mixing up the concept of goods liable to tax with the transactions liable to tax under the Act, held as follows :

".....The scheme of the Act involves three inter-related but distinct concepts which may conveniently be described as "taxable person", "taxable goods" and "taxable event". All the three must be satisfied before a person can be saddled with liability under the Act."

20. Learned Additional Advocate-General appearing for the respondents while not disputing both the above propositions as regards strict interpretation of taxing statutes and the essential conditions required to be fulfilled before a subject could be made to pay tax submitted that Section 4 of the Sales Tax Act casts a liability to pay tax on every dealer whose turnover exceeds the limits prescribed by this section and the operation of this section is not restricted to the turnover of taxable commodities only. A strong reliance has been placed by the learned counsel on a Full Bench decision of this Court reported in *Hukumchand Mills Ltd. v. Commissioner of Sales Tax* [1988] 71 STC 101 ; (1987) MPLJ 570.

21. Section 3 of the Entry Tax Act enjoins that such tax shall be paid by every dealer liable to pay tax under the Sales Tax Act ; while the respondents placed reliance on Section 4 of the State Sales Tax Act dealing with incidence of taxation, the petitioners relied on Section 10 and charging Section 6 which speaks of taxable turnover relating to goods specified in Schedule II. It is about

the fact that cloth, sugar and tobacco are tax-free goods in Schedule I.

22. The question which therefore arises for consideration is whether transaction relating to such tax-free goods be included in the gross, turnover of the dealer ? A similar point arose before the Supreme Court in A.V. Fernandez Vs. The State of Kerala, ; in which it has been held as follows :

"There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."

23. It was argued for the petitioners that the respondents ignoring charging Section 6 of the Sales Tax Act have over magnified Section 4.

24. Shri Rawat, learned Additional Advocate-General, in reply pointed out that even Section 6 of the Sales Tax Act also refers to taxable turnover and placing strong reliance on a Full Bench decision of this Court reported in Hukumchand Mills Ltd. v. Commissioner of Sales Tax [1988] 71 STC 101 ; (1987) MPLJ 570 submitted that a dealer manufacturing cloth, a tax-free goods u/s 10 of the Sales Tax Act with entry 6 of Schedule I was exigible to tax under the Sales Tax Act and the only effect of the cloth being declared tax-free u/s 10 was that while determining the amount of taxable turnover the price of cloth shall be deducted from the turnover, A few basic facts of this case need to be noted for appreciating the contention advanced by the learned counsel which are as under :

"Before dealing with the submissions made by learned counsel for the parties, it would be useful to give in a nutshell the necessary facts. The assessee carries on the business of manufacture of cloth and yarn and was assessed to sales tax by the Assistant Commissioner of Sales Tax. The assessing authority found as a fact that the assessee had made sales of miscellaneous items such as discarded machineries, colours, chemicals, iron hoops and other materials. The case of the assessee in respect of sale of these materials was that these sales had not been made in the course of business of the assessee and consequently it could not be treated as a dealer in respect of sale of the said goods. According to it, these sales were casual sales and consequently were not liable to tax. The case set up

by the assessee, however, did not find favour with the assessing authority and the transactions in question were held to be liable to tax. At this stage, it may be mentioned that cloth manufactured by the assessee, falls under the category of tax-free goods as contemplated by Section 10 of the Act, read with entry 6 of Schedule I to the Act."

What was contended before the Full Bench was that cloth being tax-free goods u/s 10 of the Act, the assessee could not be treated as a dealer, within the meaning of Section 2(d) of the Sales Tax Act so as to include the sale proceeds of unserviceable items of stores comprising discarded machineries, chemicals, cloth, broken iron hoops, colours, etc.

25. Sales tax is a tax on specified goods and not a general tax. Schedule I of the Sales Tax Act is not a case of exemption but of non-liability to tax. Section 6 of the Sales Tax Act which is charging section in relation to goods specified in Schedule II ; Section 3 of the Entry Tax Act is composite of Section 4 of the Sales Tax Act and the liability under this provision of Section 3 of the Entry Tax Act is dependent on liability to pay sales tax. The extract of Section 3 of the Entry Tax Act is reproduced as under :

".....such tax shall be paid by every dealer liable to tax under the Sales Tax Act who has effected entry of such goods."

and this liability to tax is created by the charging section and ultimately liability has to be determined in accordance with the charging section ; as has been held by a Division Bench of this Court in Brijlal and Manilal v. State of M.P. (1972) J.L.J. 539, Similarly in State of M.P. v. Bengal Nagpur Cotton Mills Ltd. [1961] 12 STC 333 (MP) : (1961) MPLJ 129 a Division Bench of this Court dealing with the C.P. and Berar Sales Tax Act, 1947 has held as under :

".....For the imposition of tax under the Act on the sale transaction of a commodity, it is not sufficient that the sale is by a dealer carrying on the business of selling or supply some commodity. The business of the dealer must be of selling or supplying the particular commodity sought to be taxed. Otherwise he cannot be regarded as a dealer in relation to that commodity, and if he is not so regarded, he is not liable to be taxed under the Act for any sale of the commodity effected by him."

26. If Section 6 of the Sales Tax Act is not there, Section 4 of the Sales Tax Act would be rendered idle. It cannot therefore be treated as a charging section under the Sales Tax Act. The contention as advanced by the respondents' counsel that Section 4 of the Sales Tax Act casts liability to pay tax on every dealer whose turnover exceeds the prescribed limit under this section, and it is not restricted to the turnover of taxable commodities only, cannot be ignored. Hukumchand Mills Ltd. Vs. Commissioner of Sales Tax, deals with the question of business and turnover under the Sales Tax Act.

27. What we are presently concerned with is the charging Section 3 of the Entry

Tax Act. Reliance has been placed by the learned counsel following the observation of the Supreme Court as reported in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*,

"Now under all sales tax laws including the statute with which we are concerned, the moment a dealer makes either purchases or sales which are subject to taxation, the obligation to pay the tax arises and taxability is attracted."

The other case is that of *State of Madhya Pradesh and Others Vs. Shyama Charan Shukla*, relied upon by the respondents. This case also holds that under general scheme of sales tax laws taxes become due, the moment a dealer makes purchase or sales which are subject to taxation.

28. We are concerned with the applicability of Section 3 of the Entry Tax Act. The taxing event under this provision under the Sub-section (1) occurs on entry of goods specified in Schedules II and III under conditions into local area by a dealer as provided under Clauses (a) and (b) of Sub-section (1) of Section 3 of the Entry Tax Act and such tax is payable by every dealer under the Sales Tax Act who has effected the entry of such goods.

29. The key question is whom does the expression liable to tax under the Sales Tax Act qualify ? Whether the dealer or the goods ? To pay entry tax is on every dealer liable to tax under the Sales Tax Act. While the petitioners argued that in respect of goods declared free from sales tax, no dealer is liable under charging Section 6 of the Sales Tax Act and imposing of any such liability would render Schedule I u/s 10(1) of the Sales Tax Act meaningless.

30. Section 6(1) of the Sales Tax Act itself provides that subject to provisions of Sub-sections (2) and (3) the tax payable by a dealer under this Act shall be levied on the taxable turnover, relating to goods specified in Schedule II. Even for a while the explanation to Sub-section (5) of Section 4 of the Sales Tax Act as sought to be introduced by the respondents' counsel and objected to by the petitioners, is kept aside, the definition of "taxable turnover" as quoted above provides for 2(r) deduction from the sales tax price of goods declared tax-free u/s 10 or Section 12 of the Sales Tax Act. Thus for the purpose of taxable turnover a deduction is provided in respect of goods declared tax-free u/s 10 of the Sales Tax Act, But the fact that the cloth, sugar and tobacco are goods declared tax-free u/s 10(1) of the Sales Tax Act does not ipso facto obliterate a dealer's liability to tax under the Sales Tax Act.

31. The provisions of Section 4 of the Sales Tax Act dealing with incidence of taxation though not a charging section and the definition of "taxable turnover" as occurring in Sub-section (1) of Section 6 of the Sales Tax Act, cannot be completely overlooked while searching for an answer to the above question.

32. A Full Bench of this Court in *Hukumchand Mills Ltd.* 's case [1988] 71 STC 101 : 1987 MPLJ 570 while considering the effect of declaration of tax-free goods u/s 10 of the Sales Tax Act has held as follows :

".....The only effect of the cloth being declared tax-free u/s 10 of the Act would be that while determining the amount of "taxable turnover" as defined in Section 2(r) of the Act, the sale price of cloth shall be deducted from the turnover."

33. The word liable means subject to or exposed to. It is normally interpreted to mean exposed to a certain contingency and this word occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty, but merely importing a possibility of attracting such obligation. [See Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity,

34. The expression liable to tax viewed in this perspective would mean, amenable to tax, exposed to tax. The petitioners have placed strong reliance on Kandaswami's case [1975] 36 STC 191 (SC) ; The State of Tamil Nadu Vs. M.K. Kandaswami and Others, which lays down taxability of goods as an essential condition for imposition of tax. This case has also been considered by the Full Bench of this Court in Hukumchand Mills Ltd.'s case [1988] 71 STC 101 : (1987) MPLJ 570, and dealing with the case the Full Bench has said :

"Learned counsel for the assessee then placed reliance on The State of Tamil Nadu Vs. M.K. Kandaswami and Others, where dealing with the definition of "taxable goods" in the Madras General Sales Tax Act, 1959 in connection with such goods being brought to charge u/s 7-A of that Act, it was held by the Supreme Court that the words "the sale or purchase of which is liable to tax under the Act" qualify the term "goods" and exclude by necessary implication goods, the sale or purchase of which is totally exempted from tax at all points u/s 8 or Section 17(1) of the Act. The goods so exempted--not being taxable goods--cannot be brought to charge u/s 7-A. In our opinion, this decision too, like the decision in the case of Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, does not advance the submission made by learned counsel for the assessee."

Similarly a case of Bengal Nagpur Cotton Mills Ltd. [1961] 12 STC 333 (MP) has been distinguished by the Full Bench in view of the amended definition of "business".

35. The term "dealer" is defined u/s 2(d) of the Sales Tax Act and is wide and comprehensive. A dealer means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration.

36. The definition of "taxable turnover" u/s 2(r) of the Act provides for goods declared tax-free u/s 10 of the Sales Tax Act and the definition of "turnover" u/s 2(t) makes provision for whether or not the whole or any such portion is liable to tax.

37. Viewed in the light of the foregoing discussion, the mere fact that

commodities like cloth, sugar and tobacco are declared tax-free goods u/s 10(1) of the Sales Tax Act, does not render the petitioners immune from being "liable to tax" under the Sales Tax Act, for the purposes of Section 3(1) of the Entry Tax Act. The question posed above is answered accordingly.

38. A.V. Fernandez Vs. The State of Kerala, ;as relied upon by the petitioners, was considered by the Supreme Court in Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, and considering the case the Supreme Court has laid down the ratio deducible in A.V. Fernandez Vs. The State of Kerala,

"To understand the ratio deducible in A.V. Fernandez Vs. The State of Kerala, a few facts have to be stated. The business of the assessee in that case consisted in the purchase of copra, manufacture of coconut oil and cake therefrom and sale of oil and cake to parties inside the State and sale of oil to parties outside the State. In 1951, the Travancore-Cochin General Sales Tax Act, 1125, was amended by addition of Section 26 which incorporated the ban of Article 286 of the Constitution and was in part materia with Section 7 of the Act. For the year 1951-52, the Sales Tax Officer assessed the assessee to sales tax on a net assessable turnover by taking the value of the whole of the copra purchased by him, adding thereto the respective values of the oil and cake sold inside the State and deducting only the value of the copra relating to the oil sold inside the State. It was contended by the assessee that in the calculation of the net turnover, he was entitled to include the total value of the oil sold by him, both inside and outside the State, and deduct therefrom the total value of the copra purchased by him and further, under the overriding provisions of Section 26 of the Act, he was entitled to have the value of the oil sold outside the State deducted. The main controversy between the parties centred round the method of computation of the net turnover. The contention advanced by the assessee was rejected by the High Court, which limited the deduction to purchase of copra relating to the sales inside the State. In affirming that decision, this Court observed that so far as sales of coconut oil outside the State were concerned, they were, as it were, by reason of Section 26 of the Act read in conjunction with Article 286, taken out of the purview of the Act, and that they had the effect of setting at naught and obliterating in regard thereto the provisions contained in the Act relating to the imposition of tax on the sale or purchase of such goods and in particular the provision contained in the charging section, Section 3, and the provisions contained in Rule 20(2) and other provisions which were incidental to the process of levying such tax. The aforementioned passage relied upon cannot be read out of context in which it appears and if so read, it is hardly of any assistance to the appellants."

"The decision in A.V. Fernandez Vs. The State of Kerala, is therefore clearly an authority for the proposition that the State Legislature notwithstanding Article 286 of the Constitution while making a law under entry 54 of List II of the Seventh Schedule can, for purposes of the registration of a dealer and submission of returns of sales tax, include the transactions covered by Article

286 of the Constitution. That being so, the constitutional validity of Sub-section (1) of Section 5 of the Act which provides for the classification of dealers whose gross turnover during a year exceeds Rs. 5 lakhs for the purpose of levy of surcharge, in addition to the tax payable by him, is not assailable. So long as sales in the course of inter-State trade and commerce or sales outside the State and sales in the course of import into, or export out of the territory of India are not taxed, there is nothing to prevent the State Legislature while making a law for the levy of a surcharge under entry 54 of List II of the Seventh Schedule to take into account the total turnover of the dealer within the State and provide, as has been done by Sub-section (1) of Section 5 of the Act, that if the gross turnover of such dealer exceeds Rs. 5 lakhs in a year, he shall, in addition to the tax, also pay a surcharge at such rate not exceeding 10 per centum of the tax as may be provided. The liability to pay a surcharge is not on the gross turnover including the transactions covered by Article 286 but is only on inside sales and the surcharge is sought to be levied on dealers who have a position of economic superiority. The definition of "gross turnover" in Section 2(j) of the Act is adopted not for the purpose of bringing to surcharge inter-State sales or outside sales or sales in the course of import into, or export of goods out of the territory of India, but is only for the purpose of classifying dealers within the State and to identify the class of dealers liable to pay such surcharge. The underlying object is to classify dealers into those who are economically superior and those who are not. That is to say, the imposition of surcharge is on those who have the capacity to bear the burden of additional tax. There is sufficient territorial nexus between the persons sought to be charged and the State seeking to tax. them. Sufficiency of territorial nexus involves a consideration of two elements, viz., (a) the connection must be real and not illusory, and (b) the liability sought to be imposed must be pertinent to that territorial connection : *The State of Bombay Vs. R.M.D. Chamarbaugwala*, ; *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, and *International Tourist Corporation and Others Vs. State of Haryana and Others*, ; The gross turnover of a dealer is taken into account in Sub-section (1) of Section 5 of the Act for the purpose of identifying the class of dealers liable to pay a surcharge not on the gross turnover but on the tax payable by them."

39. Referring to Article 286 of the Constitution and the Additional Duties of Excise (Goods of Special Importance) Act, 1957, it was contended by the learned counsel for the petitioners that the State of Madhya Pradesh being a participating State under the integrated scheme as formulated by the Parliament which provides for levying, collecting and distributing the additional excise duty to be distributed amongst the other participating States including the State of Madhya Pradesh and the condition for such participation in the scheme in question being non-levying of sales tax on those items of goods, namely, cloth, sugar and tobacco, the respondents could not levy sales tax on these goods.

40. Suffice it to note that the power to make laws with respect to taxes on sale or purchase of goods vests both in the Union Parliament and State Legislatures, the Constitution makers thought it expedient in the interest of national economy

to place certain restrictions on the plenary powers of the State Legislature to make laws with respect to sales tax. Article 286 expressly provides that sales tax imposed by the States ; is not to interfere with imports and inter-State trade and commerce which are matters of national concern, and taxation of which is beyond the competence of the State. As noted earlier, this question virtually relates to the vires of the matter which as already made clear is not being dealt with by us.

41. In view of the foregoing discussions, this petition fails and is accordingly dismissed along with other connected petitions. There shall be no order as to costs.