
(1988) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4423, 4424, 4428 to 4434, 4436 to 4438, 4442, 4444, 4445, 4449, 4452, 4453, 4456, 4459, 4461, 4464, 4466, 4467, 4468, 4470 to 4477, 4480, 4489, 4492, 4493, 4495, 5814, 5815, 5952 to 6008, 6011, 6012, 6014 to 6023, 7631 to 7634, 9868,

Suresh Chand Sri Gopal

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 3, 4(1), 4(2), 4(3), 5
Andhra Pradesh Gram Panchayats Act, 1964 — Section 79(2)
Andhra Pradesh Municipalities Act, 1965 — Section 389
Constitution of India, 1950 — Article 132, 14, 246, 246(1), 246(3)
Government of India Act, 1915 — Section 80
Hyderabad Municipal Corporation Act, 1955 — Section 169
Local Area Tax Act, 1987 — Section 2, 2(2)

Citation : (1989) 72 STC 241

Hon'ble Judges : S.S. Mohammed Quadri, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, for the Appellant; S. Venkateswara Rao and Government Pleader for Commercial Taxes, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—A large number of traders and their associations are challenging the constitutional validity of the Andhra Pradesh Entry of Goods into Local Area Tax Act, 1987 (hereinafter referred to as "the Act") in this batch of writ petitions.

2. The Act was passed by the Andhra Pradesh Legislature in 1987 and received the assent of the President on June 22, 1987. It was published in the A.P. Gazette dated June 26, 1987 for general information, and brought into force on October 15, 1987. The Act is made "to provide for the levy and collection of tax on the entry of certain goods into local areas in the State of Andhra Pradesh for consumption, use or sale therein, and for matters connected therewith or incidental thereto". Section 2 defines certain expressions occurring in the Act.

Clause (e) defines "local area" to mean "the area within the limits of a city as declared under the Hyderabad Municipal Corporation Act, 1955, or the Visakhapatnam Municipal Corporation Act, 1979, or the Vijayawada Municipal Corporation Act, 1981, as the case may be, a municipality as constituted or deemed to have been constituted under the Andhra Pradesh Municipalities Act, 1965, or any notified area, as declared u/s 389-A of the Andhra Pradesh Municipalities Act, 1965 and includes such other area within the limits of one or more gram panchayats, as may be declared by the Government by notification to be a local area for the purposes of this Act".

3. The expression "scheduled goods" is defined in clause (f) to mean goods specified in the Schedule to the Act. Sub-section (2) of section 2 says that all words and expressions used in the Act and not defined herein but defined in the Andhra Pradesh General Sales Tax Act, 1957, shall have the meanings respectively assigned to them to that Act.

4. Section 3 in Chapter II specifies the authorities under the Act. Suffice it to say that section 3 contemplates authorising the Commissioner of Commercial Taxes and other officers of the Commercial Tax Department for the purpose of enforcing the provisions of this Act.

5. Section 4 in Chapter III is the charging section. Sub-section (1) says :

"(1) There shall be levied and collected, for the purpose of this Act, a tax on the entry of all or any of the scheduled goods into a local area, for consumption, use or sale therein, from any place outside that local area, at such rate, not exceeding four per cent of the purchase price of such goods, as may be specified by the Government, by notification in this behalf; and the Government may specify different rates for different scheduled goods and for different local areas :

Provided that no such tax shall be levied and collected on the entry of any scheduled goods into a local area, if such goods are brought or caused to be brought into that area by a person other than a dealer."

6. The explanation to sub-section (1) defines the expression "purchase price".

7. Sub-section (2) of section 4 specifies the person who is liable to pay the tax. According to it, the dealer who brings the goods into the local area, or takes deliver thereof on such entry, is liable to pay the said tax. Sub-section (3) says that the tax shall be collected in such manner, within such time, and through such agency as may be prescribed by the Rules.

8. Section 4-A, which was introduced by way of the Amendment Act 37 of 1987, provides an option to the dealer to pay a consolidated tax, specified in the Table therein, in lieu of the tax payable u/s 4. The dealer so option has to follow a certain procedure prescribed therein.

9. Section 5 obliges every dealer liable to tax under the Act to submit a return relating to his business in the scheduled goods to the prescribed authority, within

the prescribed period and in the prescribed manner, and containing the prescribed particulars.

10. Section 6 provides for the mode of assessment, while section 7 prescribes the mode of payment of tax. It is not necessary to note sections 8 to 10 for our purpose.

11. Section 10-A empowers the Government to grant exemption, or reduction in the rate of tax subject to such conditions or restrictions, as may be prescribed. Such exemption may extend to all local areas or any specified local area or areas in the State.

12. Sections 11 and 12 provide for appeal and revision respectively, while section 13 provides for an appeal to the Appellate Tribunal. Section 14 provides a revision to the High Court, while section 15 provides an appeal to the High Court in certain situations.

13. Section 20 provides for penalties for not paying the tax, or for acting wilfully in contravention of the provisions of the Act or the Rules made thereunder. Section 23 provides for refund. Section 27 bars the jurisdiction of courts from entertaining any suit or other proceedings in respect of matters provided by the Act. Section 31 confers upon the Government the power to make Rules, while section 32 confers upon the Government the power to amend the Schedule. Section 33 is, what may be called the "Henry VIII" clause.

14. The Schedule to the Act mentions three goods, namely :

"1. All varieties of textiles manufactured either in mills or power-looms other than those made wholly of cotton and hosiery cloth lengths other than those wholly made of cotton.

2. Sugar other than levy sugar.

3. All products of tobacco other than cigars/cheroots the value of which does not exceed ten paise per each cigar/cheroot and beedies."

Rules were also made published along with the Act.

15. The Act was made applicable in the first instance to the local areas comprised in municipal corporations and first grade municipalities. By a subsequent notification the Act was extended to second and third grade municipalities, notified areas declared u/s 389-A of the Andhra Pradesh Municipalities Act, 1965, and to all gram panchayats with effect from February 1, 1988.

16. Sri S. Ramachandra Rao, learned counsel for the petitioners, challenged the constitutional validity of the Act on the following grounds :

(i) Entry 52 of List II in the Seventh Schedule to the Constitution is meant exclusively for augmenting the income of the local authorities only. No law can be made under the said entry for raising revenues for the State Government. The enactment in question is made exclusively for raising revenues for the State

Government as is evident from the Statement of Objects and Reasons appended to the Bill. There is no provision in the Act which provides for making over the tax collected under the Act to local authorities. Thus, the tax is not warranted by, and cannot be justified with reference to the said entry. There is no other entry to which the said enactment can be related. Accordingly, the Act must be held to be beyond the legislative competence of the Andhra Pradesh State Legislature.

(ii) The tax levied by the impugned Act is nothing but a sales tax on sales tax, or what may be called, a tax on purchase, and not warranted by entry 52 of List II.

(iii) "Local area" in entry 52 means an area administered by a local authority. The entire State of Andhra Pradesh cannot be treated as one local area, or as number of local areas. The Act which seeks to encompass all the local areas in the State is, therefore, not warranted by entry 52 of List II.

(iv) A uniform rate of taxation without reference to population and volume of business conducted in a particular area, is violative of article 14 of the Constitution. In other words, treating unequals as equals is itself a negation of the guarantee enshrined in article 14. Inasmuch as all the State Governments had agreed with the Central Government not to levy similar taxes on the scheduled goods, in lieu whereof the Central Government levied additional excise duty on those goods and is making over the same to States, levy of this tax now is incompetent.

(v) The tax in question constitutes a restriction on the freedom of trade and movement guaranteed by article 301, and having not complied with the requirements of the proviso to article 304(b), is void.

(vi) The asset given by the President of India is not valid since it is contrary to the assurances given by the Prime Minister to the president of the petitioners' association; and

(vii) the Rules have not been laid on the floor of the Legislature, as required by sub-section (3) of section 31 of the Act, though more than three sessions have taken place since they were made. For this reason the Rules must be deemed to have never come into force.

17. Sri T. Anantha Babu, learned learned counsel appearing for the petitioners in one of the writ petitions, besides reiterating the above contentions, contended further that the absence of any indication in the Act that the tax collected is meant for the benefit of the local authorities - indeed giving a contrary indication by the Objects and Reasons appended to the Bill - makes the Act unconstitutional, inasmuch as the State Legislature has no power to levy the said tax for raising, or adding to its own revenues. Learned counsel also submitted that levying a uniform tax on entry of goods into all local areas, without making a distinction between the local area comprised within the Hyderabad Municipal Corporation and the local area comprised in a small gram panchayat in the corner of the State, amounts to treating local areas situated unequally, on an

equal footing, which is violative of the guarantee enshrined in article 14 of the Constitution.

18. On the other hand, the learned Government Pleader for Commercial Taxes supported the constitutional validity of the Act with reference to entry 52, read with clause (3) of article 246 of the Constitution. He submitted that it is not necessary that the Act should itself give an indication that the tax collected will be made over to the local authorities.

19. He submitted that it is for the State Government to decide when, and to what extent should these amounts be made over to the local authorities. Indeed, his contention was that the said aspect is irrelevant on the question of constitutionality of the Act. According to him, this Court cannot enquire into, nor can it direct the State Government to make over the tax collected under the Act to the local authorities.

20. Clause (1) of article 246 of the Constitution declares that notwithstanding anything in clauses (2) and (3) thereof, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Clause (2) declares that notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III. Clause (3) says, "subject to clauses (1) and (2), the Legislature of any State has exclusive power to make law for such State or any part thereof, with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")". Entry 52 in List II reads :

"Taxes on the entry of goods into a local area for consumption, use or sale therein."

21. This means that a State Legislature has the exclusive power to make a law imposing taxes on the entry of goods into a local area for consumption, use, or sale therein - and that is what the impugned Act provides for. The contention of the petitioners, however, is that while the State Legislature has got the undoubted jurisdiction to make a law under the said entry, the law must provide for levy of the said tax for the benefit of concerned local authorities, and that the said tax cannot be imposed for raising the State revenues. Reliance is placed upon the Statement of Objects and Reasons appended to the Bill, which says that the Act is meant for raising additional revenues for the State. The petitioners' further contention is that the Act must itself indicate that the tax collected thereunder will be made over to the local authorities, and that absence of such a provision in the Act is fatal. This contention necessitates an enquiry into the genesis and the nature of the tax contemplated by entry 52 of List II.

22. Section 80-A of the Government of India Act, 1915, dealt with the power of the local legislatures. Sub-section (3) provided that "the local Legislature of any Province may not, without the previous sanction of the Governor-General, make or take into consideration any law - (a) imposing or authorising the imposition of

any new tax unless the tax is a tax scheduled as exempted from this provision by Rules made under this Act". Under this provision the Governor-General in Council had framed Rules on December 18, 1920, known as "Scheduled-Tax Rules". Schedule II of these Rules dealt with taxes for the benefit of local authorities, which the Legislative Council of a Province may impose without the previous consent of the Governor-General. It was open to the Legislative Council of a Province either to impose such tax by itself, or to authorise a local authority to impose the same. They included, inter alia :

"7. Octroi.

8. A terminal tax on goods imported into a local area in which an octroi was levied on or before July 6, 1917."

(Entry 8 was substituted in 1924, and the substituted entry read :

"A terminal tax on goods imported into, or exported from a local area, save where such tax is first imposed in a local area in which octroi was not levied on or before July 6, 1917.")

The Rules, however, did not describe what was meant by "octroi". As stated in paragraph 14 of the judgment of the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, , "the word "octroi" comes from the word "octroyer" which means "to grant" and in its original use meant "an import" or "a toll" or "a town duty" on goods brought into a town. At first octrois were collected at ports but being highly productive, towns began to collect them by creating octroi limits. They came to be known as "town duties". These were collected not only on "imports" but also on "exports"..... they were known as "ingate tolls" because they were collected at toll-gates or barriers. Normally, they were levied on goods meant for consumption but in *Seligman's Encyclopaedia of Social Sciences*, Vol. IX, page 570, "octrois" are described without any reference to consumption or use"

23. In *Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, , this tax is described in the following words :

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

It is further stated :

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

24. Several Provincial Legislatures, accordingly, either levied or empowered the

local authorities to levy octroi and terminal taxes. These two taxes were, however, different in nature, though they resembled in one respect, namely, they were leviable in respect of goods brought into a local area. While terminal taxes were leviable on goods imported or exported from the municipal limits, denoting thereby that they were connected with the traffic of goods, octrois were leviable in respect of goods brought into a municipal area for consumption, or use, or sale. When the Government of India Act, 1935, was enacted, terminal taxes became a Central Subject (entry 58 in List I), while "octroi" became a Provincial subject. This Act, however, omitted the use of the word "octroi" and in its place used the word "cess". Entry 49 in List II of the Seventh Schedule to the Government of India Act, 1935, read :

"49. Cesses on the entry of goods into a local area for consumption, use or sale."

25. When it came to the Constitution, it used the word "taxes" in place of the word "cesses" in the corresponding entry i.e., entry 52 in List II.

26. It is thus clear that the taxes contemplated by entry 52 of List II refer to, and include, what was known as "octroi"; the basic feature of this tax is that it is levied on goods entering a local area for the purpose of consumption, use or sale therein. The contention of the learned counsel for the petitioners is premised upon the above material. It must, however, be seen that article 246(3) empowers the State Legislatures to levy this tax. There are no words in the entry, or anywhere else in the Constitution saying that this tax can be levied only by a local authority. It must, accordingly, be held that this tax has to be, and can be, imposed only by the State Legislature. It is, of course, open to a State Legislature either to levy this tax by itself, or to empower the local authorities to levy this tax. If the State Legislature makes a law levying a tax on entry of goods into a local area for consumption, use, or sale therein, it cannot said to be beyond its competence, or beyond its legislative power. It is very much within its legislative competence. Either for the sake of uniformity, or in the interest of administrative convenience a particular State Legislature may think it appropriate to levy the tax by itself, while another legislature may choose to follow the other course, viz., to empower the local authorities themselves to levy and collect this tax. It is true that the tax being on the entry of goods into a local area for consumption, use, or sale in such local area has always been understood and meant for the benefit of such local authority. The legislative history of this tax shows that at all times it was treated as one of the important sources of revenue of the local authorities - though viewed with certain distaste. But, it is not possible to say that unless the Act specifically provides for making over the entire tax collected, or the net tax, to the local authorities, the levy of such tax by the State Legislature is bad. The power to levy the said tax is vested in the State Legislature. There is no indication in the Act itself that the benefit of the tax will not be extended to the local authorities. The reliance upon the Objects and Reasons appended to the Bill cannot be given much credence. As pointed out by the Supreme Court in *Govind Saran Ganga Saran Vs. Commissioner of Sales*

Tax and Others, , the Objects and Reasons appended to a Bill cannot be resorted to in the absence of an ambiguity, or to modify its meaning. The legislative will and intent has to be gathered from the provisions of the Act itself. Nor can we attach much importance to the averments in the counter-affidavit in this behalf. The Act speaks for itself, and it is not for the Government to say what the legislature meant. The Act itself does not say that the tax is not meant for local authorities but meant exclusively for the benefit of the State Government revenues. In any event, it is not for the petitioners to plead the case of the local authorities. So far as the constitutionality of the levy is concerned, it is not affected by the absence of a provision in the Act itself that the tax collected shall be made over, either in full or in part, to the local authorities. Similar Acts have been enacted by Karnataka, Madhya Pradesh, and other States, and it is not brought to our notice that those Act contain such a provision, or that the absence of such a provision was found to invalidate the enactment. The local authorities in the State are there to safeguard their own interests, and it is not for the petitioners to espouse their cause.

27. Even if we go by the Statement of Objects and Reasons appended to the Bill, it only says that since "it has become necessary to mobilise additional resources for the State to enable the Government to proceed with their developmental activities", the Government have considered it expedient to levy the entry tax. This statement in no manner indicates that all the tax collected will be retained by the Government only and will not be made over to the local authorities. Be that as it may, we find it not possible to hold that because the Act itself does not provide for such making over of the tax collected, it must be said to be not warranted by entry 52, and therefore beyond the legislative power of the State Legislature. It is for the State Government to evolve an appropriate formula in that behalf. The local authorities in the State are municipal corporations, municipalities, and gram panchayats. Section 169(g) of the Hyderabad Municipal Corporation Act, and section 79(2)(xxi) of the Andhra Pradesh Gram Panchayats Act (which speak of "municipal fund" or "gram panchayat fund", as the case may be) contemplate grants being made by the State Government to the municipal fund/gram panchayat fund. Such grants constitute one of the sources of municipal fund/gram panchayat fund. Whether in the form of grants contemplated by these provisions or in some other manner, it is for the State Government to evolve, in consultation with the local authorities, the manner in which the benefit of the said tax be extended to the local authorities.

28. We may in this connection refer to articles 269 and 270 of the Constitution. Article 269 provides that duties and taxes mentioned in clauses (a) to (h) thereof shall be levied and collected by the Government of India, but shall be assigned to the States in the manner provided in clause (2). The duties and taxes mentioned in clauses (a) to (h) include duties in respect of succession to property other than agricultural lands, terminal taxes on goods or passengers carried by railway, sea or air, taxes on railway fares and freights, etc. Article 270 provides that taxes on income other than agricultural income shall be levied and collected by the

Government of India and distributed between the Union and the States in the manner provided in clause (2). Clause (2) provides that such percentage, as may be prescribed, of the net proceeds of Income Tax in any financial year, shall not form part of the Consolidated Fund of India but shall be assigned to the States in the manner prescribed. It is not brought to our notice that any of the Acts made under article 269, or the Income Tax Act, contain a provision specifically providing for such making over or sharing, or that the absence of such a provision was held to affect the competence of Parliament to levy the tax. How the tax collected will be utilised or apportioned is not a matter affecting the levy, nor is it a matter affecting the legislative power of the body enacting that law. As observed by the Supreme Court in *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, , "it is difficult to understand how the Act can be said to be invalid because the cesses recovered under it are not dealt with in the manner provided by the Constitution. The validity of the Act must be judged in the light of the legislative competence of the legislature which passes the Act and may have to be examined in certain cases by reference to the question as to whether fundamental rights of citizens have been improperly contravened, or other considerations which may be relevant in that behalf. Normally, it would be inappropriate and indeed illegitimate to hold an enquiry into the manner in which the funds raised an Act would be dealt with when the court is considering the question about the validity of the Act itself". In this case also the argument was that the Act impugned there was passed by the Parliament not for raising funds for the Union of India but for validating the illegal recovery of cesses made by the State Governments, and which funds had already gone into the Consolidated Funds of the respective States. Reliance was placed upon article 266 of the Constitution in that behalf. The aforesaid observations were made negating the said contention. The court further observed :

"..... if the taxes or cesses recovered under an Act are not dealt with in the manner prescribed by the Constitution, what remedy a citizen may have and how it can be enforced, are questions on which we express no opinion in this appeal."

29. It was then argued that according to article 266 of the Constitution, the revenue raised under the enactment and collected by the State Government will go into the Consolidated Fund of the State and will not be available for the local authorities. This argument ignores clause (3) of article 266, which says that moneys in the Consolidated Fund of a State shall be spent in accordance with the Appropriation Acts made by the legislature from time to time.

30. We find no substance in the argument that the impugned Act levies sales tax on sales tax. Sales tax and entry tax are provided by different entries in List II, i.e., entry 54 and entry 52, respectively. Just because the machinery created under the Sales Tax Act is employed for the purpose of implementing the provisions of this Act, it cannot be said to be a sales tax in substance, nor can it be called a sales tax on sales tax.

31. We are also unable to see any substance in the argument that the entire

State of Andhra Pradesh has been declared as one local area for purposes of the Act. As is made clear by the Supreme Court in its decision in *Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, , the expression "local area" in entry 52 means an area under the administration of a local authority, like a municipality or a gram panchayat. Section 4 of the Act expressly provides that the tax is leviable when the goods enter "a local area" for consumption, use, or sale therein, from any place outside the local area. Indeed, the definition of the expression "local area" in clause (e) of section 2 clearly shows that "local area" means either an area covered by the Hyderabad/Visakhapatnam/Vijayawada Municipal Corporation Act, or a municipality, notified area, or an area within the limits of a gram panchayat.

32. We are also unable to see any substance in the argument that the levy of a uniform tax violates the equality clause in article 14. The argument is that there must be a different rate of tax for goods entering a local area like the Hyderabad Municipal Corporation area, than the rate of tax levied on goods entering a local area covered by a gram panchayat. It is argued that these two local areas are differently situated, that the facilities provided by them vary, and that in all relevant aspects these two local areas are differently situated. This argument ignores the fact that what is levied by the impugned Act is a tax, and not a fee. The tax is unrelated to the services rendered or facilities provided by a particular local authority. Suppose the local authorities had been empowered by law to levy this tax. Had a gram panchayat and the Hyderabad Municipal Corporation imposed such tax at the same rate, it could hardly be said that there is discrimination. If so, the said argument is not available even where the said tax is levied directly by the legislature itself. Reliance is, however, placed by the learned counsel upon the decision of the Supreme Court in *State of Karnataka and Another Vs. Hansa Corporation*, . It is pointed out that the Karnataka Act levied entry tax only upon goods entering certain selected local areas, and when it was argued that singling out certain local areas for levy of such tax while leaving out other local areas is discriminatory, the Supreme Court justified the same observing that an area in a city governed by the Karnataka Municipalities Act or a municipal corporation area governed by the Karnataka Municipal Corporations Act cannot be said to be situated similarly with a small municipality having a population of 10,000 and that, therefore, the complaint of discrimination is untenable. The following observations in particular are relied upon :

"One has to keep in view a local area like Bangalore City, a highly industrially advanced capital city of Karnataka and a small municipality having a population of 10,000. Now, if the expression "a local area" in section 3 is interpreted to mean "every local area" as contended on behalf of the respondents, before any tax can be levied u/s 3 it would be obligatory on State Government to levy tax on entry of scheduled goods in every local area in Karnataka State for consumption, use or sale therein It would be unjust and inequitable to levy tax on entry of goods at the same rate for such local area as Bangalore

Municipal Corporation and a small municipal area, the two local areas being uncomparable with regard to area, population, industrial growth and consumption of such scheduled goods in the area. Now, if the impact of the tax is to be equitable keeping in view cost of its collection, a tax levied at such a small rate as one paisa for goods worth Rs. 100 ad valorem for a small local area and 2 per cent ad valorem for such industrially developed local area like Bangalore Corporation, it would make nonsense of the levy apart from the uneconomic outcome keeping in view the administrative cost of collection. If the Government is obliged on the construction canvassed on behalf of the respondents to encompass all local areas for the purpose of levying tax under the statute, the rates would have to be varied so much to avoid the evil of making the impost unjust and if the rates have to be varied from area to area the administrative cost in smaller areas with lower rates and negligible entry of scheduled goods in such areas would make the tax wholly uneconomic. It must, therefore, logically follow that choice to select local area is a necessary concomitant of a choice to select rates, which power is admittedly conferred on the State Government"

33. We do not think that the said observations can be read as meaning that the levy of a uniform rate of tax upon goods entering any local area - whether it be a municipal corporation area, or a gram panchayat area - is discriminatory or bad. Nor can the said passage be read as saying that there ought necessarily to be different rates of tax for different local areas, depending upon their importance. The observations made for sustaining the selection of certain municipal areas for levy of tax cannot be read as obligating such selection, or as prohibiting the levy of a uniform tax.

34. We are also unable to see any substance in the argument of the learned counsel for the petitioners that because the Central Government had levied additional duty of excise in lieu of the State Government agreeing not to levy similar taxes, the Legislature of the State is denuded of the power to levy the tax contemplated by entry 52 of List II. This argument is based upon certain observations in *State of Karnataka and Another Vs. Hansa Corporation*, . While stating that the State of Karnataka selected three goods, i.e., textiles, tobacco, and sugar for levying the said tax on their entry into local areas for consumption, use or sale therein, the court observed :

"Way back in 1957 there was a demand for abolition of sales tax on the scheduled goods and at the instance of the Union Government the State Governments agreed to forego their right to levy sales tax on the aforementioned scheduled goods on the condition that the Union Government would levy additional excise duty on them and distribute the net proceeds of such duty amongst the consenting States. Parliament accordingly has enacted the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Therefore, while raising rates of sales tax and levying surcharge in respect of some other items the State Government could not have levied sales tax on the

scheduled goods"

35. These observations, instead of supporting the petitioners go to justify the levy, because the said extract is immediately followed by the sentence "they were, therefore, selected for the levy of the tax under the impugned Act on their entry into a local area". The above passage shows that the agreement between the Union Government and the State Government is only with respect to sales tax, and has no relevance on the question of levy of entry tax.

36. We are equally unable to see any substance in the argument based on articles 301 and 304. No material has been placed before us to show that the impugned tax has the effect of impeding the free flow of trade, commerce, or intercourse, either within the State or with the State.

37. Even if it is assumed that the said tax does amount to a restriction, it cannot be said to be unreasonable, since the rate of tax is only 1 per cent on textiles, 2 per cent on sugar, and 4 per cent on tobacco. Reasonable restrictions on the freedom of trade, commerce, or intercourse can be placed by the State Legislature, provided the Bill is moved in the Legislature of the State with the previous sanction of the President. In this case, it is true, before moving the Bill in the Legislature, previous sanction of the President was not obtained; but, after the Act was passed by the Legislature, it was reserved for, and obtained the assent of the President. As held by the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, and *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, such an assent cures the defect, if any, in not obtaining the previous sanction of the President before introducing the Bill.

38. A good amount of debate took place before us whether the tax in question is a single point tax or a multi-point tax. In the counter-affidavit two contradictory statements are made on this score. In paragraph 9-A it is stated "if the goods from one local area enter into another local area, they are taxable again unless they are exempted specifically", while in paragraph 5 it is stated "once a tax is levied in any part of the State on any commodity as mentioned in the Schedule appended to this Act, the same commodity is not subjected to levy of entry tax once again" . In our opinion, there is no room for this tax to be a multi-point levy. The tax can be levied only at one stage. We proceed to explain : The tax is leviable when any of the scheduled goods enter a local area for consumption, use, or sale therein. The point of levy is the point of entry. But such levy cannot be made unless the goods are meant for consumption, use, or sale within that local area. If the goods are consumed or used within that local area, there is no question of the very same goods entering another local area. But the use of the word "sale" in association with the words "consumption, use" has given room for controversy. If the goods enter a local area for sale therein, they suffer tax; if the same goods are taken out of that local area by the purchaser and enter another local area for sale therein, the question is whether entry tax is leviable on the entry of the said goods into the second local area ? It

is quite possible to envisage a situation where the goods are taken for sale into a local area, and the purchaser of the said goods takes them into another local area for sale therein, and so on. The person selling the goods in the first local area may be a wholesaler, and the person selling the goods in the second local area may be a retailer. If the word "sale" is dissociated with the preceding words "consumption, use", such a course would become permissible. But the said word cannot be so dissociated - and that is the decision of the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, . In paragraph 21 of the judgment it is explained that these three words indeed constitute one phrase and cannot be dissociated from one another. This phrase denotes a particular concept associated with "octroi". It is explained, "so long as the goods are brought inside the area for sale within the area to an ultimate consumer, it makes no difference that the consumer does not consume them in the area but takes them out for consumption elsewhere The word "therein" does not mean that all the act of consumption must take place in the area of the municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being "use or consumption". The earlier stage, namely, the sale by him, does not save the person who brought the goods into the local area from liability to the tax if the goods were brought inside for consumption or use". It is thus clear that the word "sale" is not to be understood independently, but as a stage preliminary to consumption, or use within the local area levying the tax. Now, coming to the position obtaining under the impugned Act, it is important to remember that under the Act, the levy is upon the dealer alone. The proviso to section 4(1) - charging section - makes this position clear. If a dealer brings any of the scheduled goods into a local area for consumption, use or for sale to consumers/users, he is undoubtedly liable to pay the entry tax. But if he sells the said goods to a dealer, who takes them out of that local area, then in principle, no tax is leviable thereon. (Of course, if such purchasing dealer either consumes or uses them or sells to consumers/users within the same local area, the tax is leviable). Then, let us see how is this position dealt with by the impugned Act and Rules. Sub-rule (5) of rule 27 says :

"(5) Every dealer liable to tax under this Act shall on the sale of such scheduled goods to any other dealer registered under the Andhra Pradesh General Sales Tax Act, 1957 in any local area issue to him a bill/invoice/cash memo specifically stating that entry tax has been paid or is liable to be paid on such goods and he shall furnish a declaration in form D-1 on demand to the purchasing dealer."

39. Form D-1 prescribed by the Rules contains a declaration that on the goods sold by him to the purchasing dealer, he (selling dealer) has paid the entry tax. The purpose of this declaration, evidently, is that the purchasing dealer would not be liable to pay the entry tax on such goods over again, when he takes those goods to another local area for consumption, use, or sale therein. This is evident from the second paragraph of the declaration, which reads :

"I further declare that on the scheduled goods sold by me to the aforesaid dealer, I paid entry tax on the purchase price of the goods at the rate prescribed under the said Act or the tax has been paid or is liable to be paid by a dealerholding registration certificate No under the Andhra Pradesh General Sales Tax Act, 1957 in the local area of in the jurisdiction of the Commercial Tax Officer, from whom I have purchased and/or is eligible to be exempted at my hand by virtue of the declaration received by me from the above dealer."

40. The said paragraph clearly indicates that the dealer who produces such a declaration from his seller would not be liable to tax. In this sense, the tax becomes a single point tax. It is true that the selling dealer pays the tax, though the goods brought by him are not consumed or used within that local area but are taken out of that local area; but since such dealer passes on the said burden to the purchasing dealer who, in turn, passes it on to the ultimate consumer, the overall impact is the same. Strictly speaking, of course, what should happen is that, when the goods are taken out of a local area without being consumed or used therein by the purchasing dealer, the selling dealer who has already paid the entry tax must be refunded that tax, and the purchasing dealer has to pay the tax when he takes the goods into another local area for consumption, use or sale therein. But, as we have explained above, since this is an indirect tax intended to be passed on to the consumer, and also because the levy is not by each local area separately but by the State as such, it makes no difference in practical terms. As we have said above, the selling dealer would recover the said tax from the purchasing dealer who, in turn, will pass it on to the consumer. It is also made clear that where the goods merely pass through a local area, this tax is not leviable.

41. Lastly, it was argued by Mr. S. Ramachandra Rao, learned counsel for the petitioners, that inasmuch as the Rules have not been laid before the Legislative Assembly soon after they were made as contemplated by sub-section (3) of section 31 of the Act, it must be held that the Rules are not in force. Firstly, this contention has not been raised in the writ petitions and, therefore, we see no reason to allow the petitioners to raise this contention. Even otherwise, the learned Government Pleader has informed us that the Rules were indeed laid before the Legislative Assembly in the first session after the Rules were made, i.e., on December 11, 1987. It is also stated that the Subordinate Legislation Committee of the House has also approved the said Rules on July 6, 1988.

42. For the above reasons, the attack upon the constitutionality of the Act fails.

The writ petitions are, accordingly, dismissed; but, in the circumstances, without costs. Advocate's fee Rs. 75 in each.

43. Mr. S. Ramachandra Rao, learned counsel for the petitioners, makes oral request for grant of a certificate under article 132 of the Constitution on the ground that this case involves a substantial question as to the interpretation of entry 52 in List II of the Seventh Schedule to the Constitution. We do not think that this case involves any substantial question of law as to the interpretation of the Constitution within the meaning of article 132 of the Constitution. The oral request is accordingly rejected.

44. Writ petitions dismissed.