

(1975) 08 GUJ CK 0010
In the Gujarat High Court
Case No : Sales Tax Reference No. 7 of 1974

The Gaekwar Mills Ltd.

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 06-08-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 10A(1), 8, 8(1)

Citation : (1976) 37 STC 129

Hon'ble Judges : T.U. Mehta, J; J.B. Mehta, J

Bench : Division Bench

Advocate : S.L. Modi, for the Appellant; Girdharlal, Additional Government Pleader, G.N. Desai, Government Pleader and H.V. Chhatrapati, of Bhaishanker Kanga, for the Respondent

Judgement

T.U. Mehta, J.—This reference arises out of the assessment of sales tax for the calendar years 1965 and 1966. During the course of the said assessment, the sales tax authorities have imposed penalty u/s 10A of the Central Sales Tax Act, 1956, which is hereinafter referred to as "the Act", on the footing that the applicant-assessee has failed, without reasonable excuse, to make use of the goods for the purpose mentioned in clause (b) of sub-section (3) of section 8 of the Act. The Tribunal has, in this reference, referred the following two questions for our opinion :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no reasonable excuse on the part of the applicant within the meaning of section 10(d) of the Central Sales Tax Act, 1956, and thereby confirming the imposition of penalty u/s 10A of the Central Sales Tax Act, 1956, though the penalty was reduced to certain extent ?

(ii) Whether, on a true construction of section 10A of the Central Sales Tax Act, 1956, the Tribunal was justified in rejecting the contention of the applicant that the maximum penalty that could be levied u/s 10A of the Central Sales Tax Act, 1956, was 3 per cent up to 30th June, 1966, and 4.5 per cent since 1st July,

1966 ?"

2. These two questions arise in the background of the following facts :

The applicant-assessee is a limited concern, whose main business is to manufacture and sell textile goods. During the calendar years 1965 and 1966, the assessee purchased dyes and chemicals in the course of inter-State trade and commerce against C form declarations. A small part of the goods, (working out at 2 to 3 per cent) out of the goods purchased against C forms, was utilised by the assessee in processing cloth of outside parties. The main bulk of the goods so utilised for the outside parties was for a sister concern of the applicant-assessee, namely, the Navsari Cotton and Silk Mills Ltd. The remaining quantity was used in the processing of cloth of Messrs. High Fashion Printers, Bilimora, and Messrs. Star Trading Corporation. While making the assessment for the calendar years 1965 and 1966, the Sales Tax Officer, Navsari, held that the assessee was liable for contravention of declarations in form C in respect of that part of dyes and chemicals which was utilised by the assessee in processing the cloth of outside parties. The said officer, thereupon, assessed the value of such goods and imposed penalty for the breach of the undertaking given in the C form, u/s 10A read with section 10(d) of the Act, at the rate of 12 per cent of the estimated purchase value of the goods so utilised.

3. The contention which was raised by the assessee before the Sales Tax Officer was that a small portion of the goods purchased against C form was utilised for processing the goods of the outside parties for a "reasonable excuse" within the meaning of section 10(d) of the Act and, therefore, no penalty u/s 10A was leviable.

4. Another contention which was raised by the assessee was that even if it is believed that there is no reasonable excuse for utilising the goods in question for the purpose of processing cloth of outside parties, the imposition of penalty at the rate of 12 per cent was unwarranted. In this connection, the contention of the assessee was, and is, that the penalty which is contemplated by section 10A of the Act is one and half times the tax which would be leviable u/s 8(1) of the Act which contemplates the concessional rate of tax, and not of the normal tax which is leviable under sub-section (2) section 8 of the Act. It should be noted here that so far as sub-section (1) of section 8 of the Act is concerned, tax of 2 per cent was leviable before 1st July, 1966, while the tax of 3 per cent was leviable with effect from 1st July, 1966. Therefore, according to the assessee, the penalty leviable for the period prior to 1st July, 1966, u/s 10A of the Act, would be 3 per cent, while the penalty leviable under that section after 1st July, 1966, would be 4 1/2 per cent.

5. The Sales Tax Officer has rejected the above contentions of the assessee. He has come to the conclusion that the assessee has utilised the goods purchased against C form for the purpose of processing the goods of the other parties "without reasonable excuse" and has, therefore, committed the offence

contemplated by section 10(d) and had, therefore, attracted the penalty contemplated by section 10A of the Act. The Sales Tax Officer has further found that the penalty should be calculated at the rates contemplated by sub-section (2) of section 8 and not by sub-section (1) thereof. It is an admitted position that under sub-section (2) of section 8 of the Act, the rate of the tax was 10 per cent and, therefore, the maximum penalty, which could be levied u/s 10A of the Act, would be 15 per cent, if that sub-section is applied. The Sales Tax Officer has, however, imposed the penalty at the rate of 12 per cent.

6. The above view of the Sales Tax Officer was confirmed in appeal, but when the matter went to the Tribunal, the Tribunal held that though the assessee failed in proving that the goods in question were utilised for outside parties, under "reasonable excuse", the penalty should be reduced to 8 per cent for the period prior to 1st July, 1966, and to 7 per cent for the period after 1st July, 1966.

7. The assessee, feeling aggrieved by the above decision of the Tribunal, has moved this court by this reference in which the above-quoted two questions have been referred to us for our opinion.

8. So far as the first question is concerned, we find that the question whether the assessee had any reasonable excuse in utilising the goods for the purpose of processing the cloth of outside parties, is purely a question of fact. So far as this question is concerned, the Tribunal has recorded two important findings of fact. They are : (i) that the sister concern of the assessee is not proved to have received any urgent orders from the Government as contended and (ii) that even if it is assumed that the said sister concern had received some orders from the Government, it could have purchased the goods from the open market and the assessee was not obliged to use the dyes and chemicals, which were purchased against C forms, for the purpose of that sister concern which is altogether a separate concern. The Tribunal has also found that the assessee has failed in proving that on account of any business expediency, the assessee was required to utilise the goods in breach of the undertaking which it has given in C forms. All these findings are findings of facts and, therefore, we are of the opinion that the first question, which is referred by the Tribunal, does not involve any question of law.

9. With regard to this first question, Shri Modi, the learned Advocate of the assessee, contended that even if it is believed that the assessee had no justification in utilising the goods for the purpose of job-work done for its sister concern, the offence in question was purely of a technical nature and, therefore, this is the case covered by the ratio of the decision given by the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, . In this decision, the Supreme Court has held that the order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation.

10. In our opinion, the ratio of this decision does not apply to the facts of the present case. It is evident from the facts of the case that the offence committed by the assessee is not at all of a technical nature. The undertaking which is given by the assessee in form C, clearly mentions that the purchased materials shall be utilised by the assessee for manufacture of the goods for sale. This undertaking clearly stipulates the use of the purchased materials by the assessee, and for the assessee, for the purpose of manufacturing goods for sale. Therefore, the assessee was knowing that it was not open to it to use the materials for the purpose of other concerns. This is, therefore, a case wherein the assessee is found to have acted in conscious disregard of its obligation, which it had undertaken at the time of giving the declarations in C forms.

11. Shri Modi then contended that at any rate, considering the fact that the assessee has not committed the breach of the undertaking given by it in its declaration for any profit-motive, the Tribunal should have imposed only a token penalty. Now, what should be the quantum of penalty in a particular case is purely a question of discretion to be exercised having regard to the circumstances of each case. The Tribunal has exercised this discretion, after considering all the relevant facts of the case. If that is so, it is difficult to understand how the exercise of that discretion would involve any question of law which requires an opinion of this court in a reference.

12. Under the circumstances, we find that the first question which is referred to us by the Tribunal, does not involve any question of law. We, therefore, refuse to give any opinion on this question.

13. It is the second question, which is most important in this reference. This question involves the point about the quantum of penalty, which could be imposed on a defaulting party, u/s 10A of the Act. Before touching this question, it would be necessary to point out shortly, the relevant provisions of the Act with a view to understand the scheme which the Act envisages for the purpose of levying the penalty u/s 10A of the Act. It should be noted that the Central Sales Tax Act, 1956, is enacted with a view to formulate principles for determining when the sales of goods take place in the course of inter-State trade or commerce, and to provide for the levy, collection and distribution of taxes on the sales of the goods. section 8 of the Act provides for the rates of taxes on sales in the course of inter-State trade or commerce. Sub-section (1) thereof provides for a concessional rate of 3 per cent on transactions of sales which have taken place in the course of inter-State trade or commerce. This sub-section (1) is in the following terms :

"8. (1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be three per cent of this turnover."

Thus, in order to comply with the conditions of sub-section (1), the following requirements are necessary :

- (i) There should be a sale in the course of inter-State trade or commerce,
- (ii) The said sale should be either to the Government or to a registered dealer,
- (iii) The said sale should be of the goods which are of the description referred to in sub-section (3).

If these three conditions are satisfied, then the tax, which is leviable, is three per cent of the turnover. The sub-section makes a reference to sub-section (3), the relevant portion of which is in the following terms :

"(3) The goods referred to in clause (b) of sub-section (1)

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power."

14. Thus, in order to obtain the advantage of concessional tax contemplated by sub-section (1) of section 8, the goods concerned must have been specified in the certificate of registration and must be such as were intended for resale or for use manufacture or processing of the goods for sale.

15. The provisions of sub-section (1) of section 8 are also controlled by sub-section (4) thereof, which says that the provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner, a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. This declaration is to be given in form C. This form is prescribed by rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. Reference to the form shows that it, inter alia, stipulates a certificate which is required to be given by the purchasing dealer. This certificate is in the following form :

"Certified that the goods purchased from you as per bill/cash memo stated below supplied under your chalan No. dated are for resale/use in manufacture/processing of goods for sale/use in mining/use in generation/distribution of power/packing of goods for sale/resale and are covered by my/our Registration Certificate No. dated issued under the Central Sales Tax Act, 1956."

16. Thus, this certificate contemplates an undertaking that the goods are either

for "resale" or for "use in manufacture or processing of goods for sale", etc., and that the said goods are covered by the registration certificate, which is obtained by the purchaser.

17. It is only after such an undertaking as envisaged by the above-referred certificate is given, that the matter would fall under sub-section (1) of section 8 of the Act.

18. If a particular matter does not fall within sub-section (1) of section 8 of the Act, then the tax becomes leviable under sub-section (2) of that section, which is in the following terms;

"(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) -

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent, or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law."

19. Thus, this sub-section makes it clear that if a particular sale is not covered by sub-section (1) of section 8, then the sales tax which would be recoverable on the sale of goods in the course of inter-State trade or commerce, shall be at the normal rate prescribed for such goods in the local Act. So far as this case is concerned, it is not in dispute that this rate is 10 per cent.

20. The above provisions of section 8 are the only provisions relevant for our purpose in this reference. The case of the taxing authorities in this reference is that the assessee has not used the goods purchased by it against C form, in manufacture or processing the goods for sale inasmuch as he has utilised a portion of these goods in doing job-work for others. Thus, according to the taxing authorities, the assessee has committed breach of the undertaking given by it in its declaration made in form C. It is, therefore, now necessary to consider the provisions of the Act, which deal with such purchases.

21. Section 10 of the Act provides for various penalties. Clause (d) thereof provides for the penalty in case where the assessee fails, without reasonable excuse, to make use of the goods purchased against C forms, in breach of the undertaking given by him. This clause (d) is in the following terms :

"10. If any person

(d) after purchasing any goods for any of the purposes specified in clause (b) of sub-section (3) of section 8 fails, without reasonable excuse, to make use of the goods for any such purpose

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both"

22. The legislature has inserted section 10A, which contemplates imposition of penalty in lieu of prosecution. It is this section 10A, which is the bone of contention between the parties in this matter. The relevant portion of this section is sub-section (1), which is in the following terms :

"10A. (1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under this Act in respect of the sale to him of the goods, if the offence had not been committed;

Provided that no prosecution for an offence u/s 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

23. In this case, we are concerned with the offence contemplated by clause (d) of section 10. Section 10A contemplates that in case of such offence, a penalty of a sum not exceeding one-and-a-half times the tax which would have been levied under the Act, can be imposed.

24. Now, the contention of the assessee is that sub-section (1) of section 10A contains the phrase, "if the offence had not been committed" and the effect of the use of this phrase is that the penalty should be levied on the basis of the rate which would have been leviable "as if" no offence contemplated by clause (d) of section 10 was committed. It was pointed out on behalf of the assessee, by Shri Modi, that the use of the above-referred phrase in section 10A of the Act shows very conclusively that the rate which could govern the question of penalty is the rate, which could be fixed on the footing that the assessee had made no default and had utilised all the goods purchased by him against C form only for the purpose for which they were purchased. According to Shri Modi, therefore, the basic rate on which the penalty should be calculated, is the one contemplated by sub-section (1) of section 8. It is not in dispute that if this contention of Shri Modi is accepted, then the penalty cannot exceed three per cent for the period before 1st July, 1966, and 4.5 per cent so far as the period subsequent to 1st July, 1966, is concerned. In that case, the view taken by the Tribunal and the taxing authorities in this case should be set aside and the second question should be answered in the negative, but if this view of Shri Modi is not accepted, then the Tribunal's view should prevail and the second question should be answered in the affirmative. For the reasons which follow, we are of the opinion that the view taken by the Tribunal on the second question is correct and, therefore, our

answer to the second question should be in the affirmative.

25. It is apparent from what is stated above, that the real controversy between the parties is about the effect of the phrase, "if the offence had not been committed", which is found at the end of sub-section (1) of section 10A. The plain reading of sub-section (1) of section 10A makes it clear that the penalty should be worked out on the rate of tax which would have been levied, if the offence had not been committed. In other words, the question is : what tax would have been levied under the Act, "if the offence had not been committed". Therefore, the pertinent point which should be first considered is, under what circumstances the offence contemplated by section 10(d) of the Act, can be said to have "not been committed". The assessee in this case would not have committed any offence only if (i) it had carried out the undertaking given by it in its declaration in form C or (ii) if it had purchased the goods without giving any declaration, thereby incurring liability to pay normal rates of tax contemplated by sub-section (2) of section 8.

26. The first of these two alternatives is not available to the assessee because it has obviously not carried out the undertaking given by it. It was contended on behalf of the assessee that the true effect of the words, "if the offence had not been committed", is to presume a situation in which the undertaking given by the declaration is carried out even though, in fact, the same is not carried out. In our opinion, there is absolutely no scope for raising any such presumption because if such a presumption is raised, it makes the whole situation highly absurd. The absurdity in question is patent because, for the purpose of penalising the defaulter, a presumption is made that the defaulter is not one who has committed any default. The legislature cannot be attributed with any such absurd intention. It is pertinent to note that while framing section 10A, the legislature has not used the expression, "as if", at the time of using the words, "if the offence had not been committed". The choice of the word "if", instead of the expression "as if", indicates a conditional phrase, and not a phrase prescribing a deeming fiction. The interpretation canvassed by the assessee obviously introduces the concept of a deeming fiction which treats the offender as one who has not offended. It should be noted that section 10A is a penal provision which stipulates penalty in lieu of prosecution. One has yet to come across a penal provision, which creates a fiction that an offender is not an offender, and should, therefore, be treated as a non-offender. Obviously, by such a fiction, the very object of the penal provision in question is frustrated and, therefore, the legislature could never have contemplated that by the creation of the above-referred fiction, the very object of introducing the penal clause contained in section 10A of the Act should be destroyed.

27. The truth of the matter is that the use of the word, "if" simpliciter, was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability falls

within the provisions of sub-section (2) of section 8 of the Act.

28. The scheme of section 8 shows that concessional rates contemplated by sub-section (1) thereof would be available only with reference to those goods which are covered by the declarations in form C. This is very clear by reference to sub-section (4) of this section. In view of this position, the question which arises for our consideration is whether the goods regarding which the undertaking contemplated by the declaration is not carried out, can be treated as the goods covered by the said declaration or not. In our opinion, the moment it is found that with regard to a particular quantity of goods, the undertaking given by an assessee in form C declaration is not carried out, the said goods assume the character of the goods regarding which no declaration ever existed. Therefore, such goods would have been liable to the normal tax contemplated by sub-section (2) of section 8, when they were purchased. It, therefore, stands to reason that since they were purchased under a false declaration, they should bear the penalty which could be worked out only on the basis of the normal rates prescribed by sub-section (2).

29. It is further interesting to know that if the interpretation which is canvassed on behalf of the assessee is accepted, the result would be that a person who commits default in carrying out his solemn undertaking contemplated by form C, would be in a better position than the assessee, who honestly pays the tax under sub-section (2) of section 8 of the Act, without giving any undertaking contemplated by form C. This would be evident if the contention which is canvassed on behalf of the assessee is closely scrutinised. If this contention is accepted, the result would be that if a purchaser in inter-State trade does not give any declaration contemplated by form C, then the transaction would be charged with the tax at the rate of ten per cent under sub-section (2) of section 8, but if the same person prefers to give a declaration, which is subsequently found false, he would be required to pay the tax at the rate of three per cent and the penalty at the rate of $4\frac{1}{2}$ per cent. Thus, an honest dealer, who does not give the declaration, would be required to bear the tax burden at the rate of 10 per cent, while the dishonest dealer, who gives a false declaration, would be required to bear the tax burden of only $3 + 4\frac{1}{2} = 7\frac{1}{2}$ per cent. It is, thus, evident that the acceptance of the contention canvassed on behalf of the assessee would result in encouraging dishonesty and discouraging honesty. Such a situation would never have been contemplated by the legislature.

30. Shri Modi drew our attention to the two decisions of the Madras High Court in support of his contention. They are : (i) *State of Madras v. Prem Industrial Corporation* [[1969] 24 S.T.C. 507] and (ii) *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Kodaikanal Motor Union Private Limited* [[1973] 31 S.T.C. 1]. In both these cases, the High Court of Madras has taken a view that the words, "if the offence had not been committed", which are used in sub-section (1) of section 10A of the Act, clearly point to the result that the tax for the purposes of assessing one-and-a-half times thereof is not that which

would have been levied on the basis that the C forms had not been complied with or have been misused, but, as if they have been used in a proper way. It is further observed by the said High Court that if that were not the case, there would be no meaning to the above-referred last words of the section. While giving this decision, the said High Court has referred to the decision of the Mysore High Court in *M. Pais and Sons v. State of Mysore* [[1966] 17 S.T.C. 161], and has observed that this decision does not take into account the concluding words, "if the offence had not been committed", in section 10A. We find it difficult to agree with the Madras decisions as they are based on the assumption that the words, "if the offence had not been committed", have the effect of creating a deeming fiction. Such an assumption of a deeming fiction is apparent from the use of the expression, "as if" which we have underlined above. We have already given reasons why there is no scope for such a deeming fiction in a penal clause. With utmost respect to the learned Judges of the Madras High Court, therefore, we find that the two decisions on which reliance is placed on behalf of the assessee, do not lay down a correct proposition of law.

31. On the contrary, we find good deal of support from the other High Courts, which have taken a view similar to the one which we are taking in this reference. These decisions of the other High Courts are : the above-referred Mysore decision in *M. Pais and Sons v. State of Mysore* [[1966] 17 S.T.C. 161], the decision given by the Orissa High Court in *Bisra Limestone Company Limited v. Sales Tax Officer, Rourkela* [[1971] 27 S.T.C. 531], the one given by the Kerala High Court in *Kottayam Electricals Private Limited v. State of Kerala* [[1973] 32 S.T.C. 535], and the decision given by the Full Bench of the High Court of Jammu and Kashmir in *Assessing Authority v. J.M.R. Mills* [1971 Tax L.R. 1861].

32. Even if it is found that section 10A is liable to be construed in two possible ways, it cannot be disputed that out of the two possible constructions, only that construction should be accepted which does not lead to absurdity. As observed by the Supreme Court in *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, , if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. In this connection, it is very much pertinent to take note of the following observations of Denning, L.J., in *Seaford Court Estate v. Asher* [[1949] 2 All E.R. 155] :

"..... When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and then he must supplement the written word so as to give "force and life" to the intention of the legislature A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

33. The Supreme Court has taken clue from these observations as found from

the reported decision in *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, . These observations of Denning, L.J., are quite pertinent to the facts of the present case and, therefore, instead of putting a literal meaning to the words, "if the offence had not been committed", leading to an obvious absurdity, what we seek to do is to iron out the creases which appear on account of bad drafting.

34. Shri Modi drew our attention to the fact that section 10A is subsequently amended by the Central Sales Tax (Amendment) Act, 1971, and as a result of this amendment, it has been made clear that the penalty contemplated by section 10A should be calculated on the basis of the tax contemplated by sub-section (2) of section 8 of the Act. According to Shri Modi, therefore, this subsequent amendment of section 10A indicates a parliamentary exposition of the amended legislation. We are of the opinion that the principle of parliamentary exposition by the subsequent legislation has no relevance to the facts of the present case. Even in the absence of the subsequent amendment, the legal position with regard to the penalty contemplated by section 10A of the Act would have remained the same. It seems that the Parliament wanted to avoid the possibility of section 10A, being construed in the manner canvassed by the assessee in this case, and the necessity to avoid such a possibility seems to have been apparent in view of the interpretation put by the Madras High Court in its above-referred cases. This is, therefore, one of those cases, which our Supreme Court has contemplated in its judgment in *Hariprasad v. A. D. Divelkar* [A.I.R. 1957 S.C. 121]. At page 131 of the Reports, their Lordships have observed, in this connection, as under :

"That history shows indubitably the aim and purpose of the enactment of section 25-FF. As Lord Atkinson pointed out in his speech in *Ormond Investment Co. Ltd. v. Betts* [[1928] A.C. 143],

"an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it".

Legislation founded on a mistake or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so. In the cases before us, the legislature proceeded on the basis of the judicial decisions then available to it, and on that basis enacted section 25-FF. We do not think that the general principle of parliamentary exposition or subsequent legislation as an aid to construction of prior Acts can be called in aid for construing the definition clause and section 25-F of the Act."

35. It is for these reasons that we answer the second question referred to us by the Tribunal in the affirmative. This reference is accordingly disposed of. The applicant-company shall bear its own costs and the costs of the opponents in this reference.

36. Reference answered accordingly.