(FULL BENCH)

Before : *A. P. Chowdhri, Jawahar Lal Gupta and N. K. Sodhi, JJ.*

M/S EAST INDIA COTTON MANUFACTURING COMPANY LTD., FARIDABAD,—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 10277 of 1989.

22nd January, 1993.

Central Sales-tax Act, 1956—*S.* 3—*Haryana General Sales-tax Act*, 1973 *as amended by Act*, 1989—*Ss.* 2(*pa*), 2(1) *Note* 3, 2(*j*), 12 *Entry* 14 *and* 52 *of Schedule 'B'—Constitution of India*, 1950 *Arts.* 269, 286 *and* 366 *Cl.* 29-*A of the Constitution (forty sixth amendment) Act*, 1982—*Works contract—Amended definition of sale and purchase—Such sale is confined to intra State Sale—Note* 3 *of sub section* 1 *is* intravires *the State Legislature—Wide definition of 'Works contract' will not render it* ultra vires *of powers of State Legislature—S.* 2 *of amending Act is constitutionally valid—Cl.* 29-*A of Art.* 366 *is an enabling provision—In absence of suitable amendment in local Acts taxing authorities cannot levy tax under Central Act on transactions which do not amount to sale as defined S.* 2(*g*) *of Central Act.*

Held, that Note 3 is not *ultra vires* the powers of the State Legislature. In view of the conceded position that the word 'sale' in Note 3 is confined only to intra-State sale we would read down Note 3 to be confined only to intra-State sales. The definition of 'works contract' is not rendered *ultra vires* the Constitution or powers of the State Legislature simply because it is in wide terms.

(Paras 24, 25 & 27)

Held, that if lottery tickets are to be sold as lottery tickets, there is no question of levy of sales-tax as long as the present provisions continue. Same is true of textiles. The question arises whether what is sought to be taxed is the lottery tickets as a lottery ticket or the textile as textile. In our view, it is not so. What is sought to be taxed is the transfer of property in goods in the execution of the works contract in terms of clause (ii) of clause (1) of S. 2. That would include paper etc. which is used to print lottery tickets. Similarly, in the case of textiles, what is sought to be taxed is the goods which would fall within the purview of said sub-clause (ii) of clause (1) of S. 2 and nothing else. We are not

advisedly going into the question as to in respect of which goods the property passes in favour of the contractee in terms of clause (ii) and in which it does not. In the nature of things, it must be left to the Taxing authorities to determine whether goods in question are covered under clause (ii) for purposes of levying of sales tax or not.

(Paras 27 & 29)

Held, that the provisions of Section 2 as amended by Haryana Amending Act No. 1 of 1989 must be upheld as constitutionally valid.

(Para 30)

Held, that the movement of cloth, therefore, is occasioned by the contract of sale within the meaning of sub-clause (ii) of clause (1) of S. 2 of the HGST Act, 1973. We are, therefore, of the view that the said transaction amounts to an *inter-State* sale within the meaning of S. 3 of the Central Sales-tax Act, 1956.

(Para 32)

Held further, that if tax is to be imposed under the Central Sales-tax Act, the Taxing authorities cannot travel beyond the provisions of the Central Sales-tax Act, 1956. Insertion of clause (29-A) in Art. 366 contains only the expanded definition of the expression "tax on sales and purchases for purposes of the various provisions of the Constitution. This may furnish an enabling provision to the Parliament to suitable amend the definition of the relevant expressions used in the Central Sales-tax Act including the word 'sale' if it is intended to levy sales-tax in respect of various transactions in clauses (a) to (j) of clause (29-A) of Article 366, broadly on the lines on which the various States have amended the local General Sales-Tax Acts. Since this has not been done, it is not open to the Taxing Authorities to proceed to levy sales-tax under the Central Sales-tax Act, 1956, on transactions which do not amount to sale as defined in S. 2 (g) of the Central Sales-tax Act, 1956.

(Para 33)

Held further, that (1) clauses (j) and (1) of S. 2 of the HGST Act, 1973, including proviso to Note 2, Note 3 of the HGST Act, 1973 are *intra vires* the Constitution and the principles formulated in the Central Sales-tax Act, 1956 in pursuance of Articles 269(3) and 286(2) of the Constitution. To that extent constitutional validity of Act No. 1 of 1989 is upheld.

(2) The value of goods falling within the purview of various sub-clauses of clauses (j) and (1) of S. 2 of the HGST Act, 1973 is exigible to tax.

(3) Inter State sale is outside the scope of the HGST Act, 1973 for purposes of levying of tax.

(4) The particular activity of processing of grey cloth into finished cloth by East India Cotton Manufacturing Company Limited in the facts and circumstances amount to inter-State sale.

(5) It is open to the Taxing authorities to split up a composite works contract and levy tax on that component of the contract which is covered by one or the other sub-clauses of clause (j) or clause (1) of S. 2 of the HGST Act, 1973.

(6) In spite of wider definition of expression tax on sale or purchase in clause (29-A) of Article 366 by the Constitution (Forty-Sixth) Amendment Act, 1982, tax can be levied only on the basis of the existing provisions of the Central Sales-tax Act, 1956, and not on the basis of various sub-clauses of clause (29-A) of Article 366 as far central sales-tax is concerned.

(7) The Taxing Authorities shall determine in respect of which goods, the property passes to the contractee in terms of sub-clause (ii) of clause (j) or clause (1) of S. 2 of the HGST Act, 1973 in the facts and circumstances of each case.

(8) When the question is raised, the Taxing authorities have to determine in the facts and circumstances of each case whether the transaction is an intra-State sale or an inter-State sale.

(9) Exemption from sales-tax (subject to the conditions, if any, mentioned therein) under Ss. 6 and 15 read with Schedule 'B' to HGST Act, 1973 is with reference to goods as such goods. The exemption does not apply if any case falls in any of the sub-clauses of clause (ii).

(Para 34)

Petition under Articles 226 & 227 *of the Constitution of India praying that* :—

(*a*) *that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction so as to declare that the amendments in Section* 2 *carried out in the Haryana Act No.* 1 *of* 1989 *called The Haryana General Sales Tax (Amendment) Act,* 1989, *are* ultra vires *the Constitution of India and the same may be directed to be deleted from the statute book;*

(*b*) *that respondent No.* 2 *may be directed by way of an appropriate writ, order or direction not to proceed against the petitioner for reviewing the assessments and levying the tax on the purchases made by the petitioner from* 18*th April,* 1984 *till date or raw material in connection with execution of works contract for inter-state sale and/or for purchases made by the petitioner for manufacture of fabric for the use of the petitioner Company:*

(c) *the proceedings initiated by respondent No. 2 may be quashed;*

(d) *that in view of the urgency of the matter and in view of the urgent nature of relief prayed for in the accompanying miscellaneous application, the requirement of causing notice to the respondents in advance before filing of the petition may kindly be dispensed with;*

(e) *The petitioner may be awarded such other appropriate relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and the petition may be accepted with costs. It is prayed accordingly.*

A. S. Chadha, Advocate and S. S. Walia, Advocate, *for the petitioner.*

H. L. Sibal, AG (Haryana) and R. C. Setia, Addl. AG (Haryana) and S. S. Khetrapal, D.A. (Haryana), *for the respondents.*

ORDER

A. P. Chowdhri, J.

In these writ petitions (Nos. 5691, 7317, 9565, 9564, 10277, 13602 and 13842 of 1989, 5393 and 9022 of 1990 and 337, 1331, 1501, 3764, 3984, 4696 to 4698, 9455 of 1992 and 16812 and 16813 of 1991) the main surviving challenge is to certain amendments made in Section 2 of the Haryana General Sales-tax Act, 1973 (for short, the HGST Act) by the Haryana General Sales-tax (Amendment) Act (Haryana Act No. 1 of 1989) (for short, the Amending Act is 1989). These petitions came up for hearing before a Division Bench of this Court. The learned Judges observed that the question relating to the constitutional validity of the Amending Act of 1989 was one of great public importance and accordingly referred the same to the Full Bench by order dated June 3, 1992. This is how these petitions are before us.

(2) For giving the factual background, it would be convenient to group these petitions in different sets.

(3) In the first set of CWP Nos. 5691, 9565, 9564, 10277, 13602 and 13812 of 1989, 5393 and 9022 of 1990 and 1331, 1501 of 1992 and 16812 and 16813 of 1991, the facts in CWP No. 10277 of 1989 are fairly representative and may be briefly stated as follows :—

(4) The petitioner has its factory and works at Faridabad in the State of Haryana. It is a registered dealer both under the

HGST Act as well as the Central Sales-tax Act, 1956. It is engaged in the manufacture and processing of various types of textiles. This includes processing of what is called grey cloth into finished cloth. The grey cloth is subjected to various treatments and processes involving use of bleaching agents and a number of chemicals. Thereafter the cloth is dyed, sized and printed as per the order of the contractee. The material used in processing any dyeing/printing etc. is purchased by the petitioner from outside the State on furnishing declaration in 'C' Form. The petitioner had been submitting the returns and had been paying the amount of sales-tax assessed to be due. The Deputy Excise and Taxation Commission. (Inspection) Faridabad issued notices Annexures P-4 and P-5 to the petitioner under Section 40(2) of the HGST Act in exercise of revisional jurisdiction. These notices relate to the assessment years 1984-85 and 1985-86 respectively. In annexure P-4, it was, *inter alia*, stated that as per balance sheet for the period ending 30th June, 1985, the petitioner had charged processing and sizing charges amounting to Rs. 4,31,87,383.37 paise. It was further stated that in execution of the said works contract, the petitioner had consumed material worth Rs. 4,27,06,216.79 after purchasing the same under the HGST Act as well as under the Central Sales-tax Act, 1956. The petitioner was called upon to show cause why the assessment for the said year be not reopened and sales tax be not levied on the price of goods involved in the execution of works contract. Notice Annexure P-5 is in the same terms, as notice annexure P-4 except that it relates to the assessment year 1985-86 and the amount involved is also different. As the notices in question were based on the amended provisions of clause (1) (ii) of section 2 of the HGST Act as amended by the Haryana Amending Act of 1989 the petitioner has challenged the notices as well as the constitutional validity of certain provisions of the Haryana Amending Act of 1989.

(5) In the second set of CWP (Nos. 337, 3764, 3984, 4696, 4697 and 4698 of 1992) we may state the facts from CWP No. 4697 of 1992.

(6) The petitioner is engaged in printing of books, multi-coloured periodicals, diplomatic magazines, annual reports of the companies, brochures, folders etc. and lottery tickets. The work undertaken by the petitioner involves highly advanced technology, sophisticated machinery and highly qualified and technically trained persons. An important part is the high degree of confidentiality

which the petitioner is required to maintain to the satisfaction of the various parties placing their orders, especially in the matter of printing of lottery tickets. The parties placing the order sometimes supply their own paper for printing. On other occasions the petitioner uses paper from its own stock in order to carry out the order. The petitioner is a registered dealer both under the HGST Act as well as under the Central Sales-tax Act, 1956. Lottery tickets are exempt from payment of sales-tax under the Haryana Act. The petitioner had been regularly filing sales tax returns and paying the tax as assessed from time to time. The petitioner claimed deduction of a certain amount on account of lottery tickets being exempt from sales-tax. The same was allowed and assessment was framed,—*vide* Annexure P-2 dated January 30, 1990. The Revisional Authority-cum-Deputy Excise and Taxation Commissioner (Inspector) Faridabad (East) issued notice Annexure P-1 dated April 24, 1992, to the petitioner under section 40(2) of the HGST Act/Central Sales-tax Act on the basis of the inspection record for the assessment year 1984-85. It was pointed out that in the said assessment order sale of printed material for use as lottery tickets valuing Rs. 6,15,41,998 had been assessed by the Assessing Authority as sales of tax free goods by treating the same as lottery tickets. It was further stated in the notice that the sale of the printed material did not amount to sale of lottery tickets as what was sold was printed slips of paper and not lottery tickets as lottery tickets. Reference was made to decision of the Supreme Court *H. Anraj* v. *Government of Tamil Nadu* (1), in which it was explained that lottery ticket conferred on the purchaser thereof two rights, namely, a right to participate in the draw, and secondly, a right to claim a prize contingent upon being declared the winner. Since the sale of the printed material did not confer any of those rights on the purchaser, the sale could not be considered to be sale of the lottery tickets. The petitioner was, therefore, called upon to show cause why the assessment order be not revised and the item referred to above be not included in the taxable turnover. The petitioner has filed separate writ petitions for different assessment years challenging the validity of similar notices as also certain provisions of the Haryana Amending Act of 1989.

(7) In the third set of CWP Nos. 7317 of 1989 and 9544 of 1992, the facts in CWP No. 7317 of 1989 may be stated.

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(1) (1986) 61 Sales-tax Cases 165.

(8) The petitioner is carrying on the business of contractors. The petitioner carried out construction work as contractors in the State of Haryana. The material including steel and cement was supplied by the contractee Government departments. The petitioner was served with a notice under section 29 of the HGST Act by the Assessing Authority that the petitioner was liable to pay sales-tax under the HGST Act in respect of the period from 1st April, 1988 to 23rd January, 1989. The petitioner having failed to apply for registration had rendered itself liable to assessment of tax, besides penalty. The petitioner was, therefore, called upon to show cause why best judgment assessment be not made against it, besides taking action for imposition of penalty. In reply, the petitioner denied its liability to pay any sales-tax on the ground that what the petitioner had was purely a job work. The main material, namely, 'steel' and 'cement' having been supplied by the contractee, the remaining job work was not exigible to sales-tax.

9. In CWP No. 13602 of 1989 the petitioner is engaged in processing/manufacturing of goods on job work basis. The Revisional Authority-cum-Deputy Excise and Taxation Commissioner (Inspection) Faridabad issued notice Annexure P-2 to the petitioner for the assessment year 1986-87, on the basis of inspection of record. This notice is also based on the balance sheet for the relevant period and the basis for reopening the assessment mentioned therein is that the petitioner had executed works contract in which property in goods had been passed to the extent of the amount mentioned in the notice in favour of the contractee. The said amount being covered under the amended definition of "sales", the petitioner was called upon to show cause why assessment be not revised, besides initiating action for imposition of penalty.

(10) It will be seen from the above brief statement of facts that the main controversy between the parties to these writ petitions centres round certain amendments made by Haryana Amending Act of 1989 in section 2 of the principal Act.

(11) It may be stated at the outset that in some of the writ petitions, the vires of the Constitution (Forty-Sixth Amendment) Act, 1982, have been challenged. The challenge must be repelled in view of the decision of the Supreme Court in *Builders Association of India* v. *Union of India, etc.* (2).

(2) A.I.R. 1989 S.C. 1371.

(12) The contentions raised on behalf of the petitioner may be summarised as under :—

(i) In Note 3 under the definition of the words 'purchase' and 'sale' inserted by the Haryana Amending Act of 1989, in clauses (2) (j) and 2(l) respectively a legal faction has been introduced that "sale" falling under sub-clause (ii) of the respective clause shall be deemed to have taken place within the State if the goods involved in the execution of the works contract are within the State at the time of their use in execution of the works contract. In the absence of any words limiting the word 'sale' to intra-State sale, the word 'sale' would include even inter-State sale. If the Note is so construed. it will bring inter-State sale within the purview of the HGST, Act, 1973. This would render the Act *ultra vires* the Constitution and powers of the State Legislature.

(ii) The expression "works contract" (which is not defined in Article 366 of the Constitution) has been defined in Section 2(pa) of the Haryana Amending Act of 1989, in such wide terms that it would include :

(a) Transactions which are purely job work as distinguished from works contract involving use of goods in respect of which property in goods passes to the contractee.

(b) Such goods which are wholly or nearly wholly consumed or spent are also included in the definition.

The emphasis laid is that goods must remain goods whether in that form or in some other form in order to fall within the mischief of clause (ii).

(iii) Textiles and lotteries are exempted from sales-tax,—*vide* Entry 14 and Entry 52 of Sechedule 'B' to the Haryana General Sales-tax Act, 1973. The petitioners are, therefore, not liable to pay any sales-tax on those goods. It was argued that it would be anomalous if deemed sale is subjected to sales-tax while the sale properly so-called is exempt from the levy of sales-tax.

(iv) It is not open to the State Legislature to give retrospective effect to sub-clause (ii) and certain parts of sub-clause (iv) which had the effect of making the assessee liable to pay sales-tax retrospectively for the period 18th April, 1984 to 31st March, 1987.

(v) The work undertaken by the petitioners in various sets of these petitions involve sophisticated processes and technology as distinguished from mere passing of property in goods. In case of printing of lottery tickets a high degree of confidentiality was required. These were job works and were not exigible to sales-tax.

(vi) In the case of printing of lottery tickets the supply of paper by the petitioner printing press was only incidental and the same was not exigible to sales-tax.

(vii) In the first set of CWPs including CWP No. 10277 of 1989 from which the facts were set out in paragraph 4 supra, the further contention is that assuming that the assessee's activity amounted to execution of works contract and further assuming that transfer of property in goods takes place in execution of such works contract within the meaning of sub-clause (ii) of clause (1) of section 2, the transaction was an inter-State sale and, therefore, was not exigible to State sales-tax.

(13) The reply made by Mr. H. L. Sibal, learned Advocate-General, Haryana, to the various contentions may be summarised seriatum as under :—

(i) The word "sale" used in Note 3 is confined to only intra-State sale. It cannot be construed to include an inter-State sale. Even from out of the intra-State sales, the sale referred to in Note 3 is restricted to only a sale falling under sub-clause (ii) of clause (1). It was pointed out that express provision had been made in section 12 declaring that nothing in the HGST Act, 1973, would empower the levying of tax on sale or purchase taking place in the course of inter-State trade or commerce.

(ii) The taxing event is the transfer, delivery or supply of any goods within the meaning of sub-clauses (i) to (v) of clause (1) and not the wide definition of the expression "works contract". It was, therefore, of no consequence that the expression "works contract" had been defined in the widest possible terms.

(iii) The exemption of textiles and lottery from sales-tax,—*vide* Entry 52 of Schedule 'B' of the HGST Act is only in

respect of their sale or purchase. In other words, if in the course of execution of works contract falling within the purview of sub-clause (ii) of clause (1) a transfer of goods takes place in favour of the contractee, the transaction cannot be deemed to have been exempted.

(iv) It is well settled law that legislature can given retrospective effect. In the present case, it was pointed out, the Government received reports that the dealers concerned had, in fact, charged sales-tax falling within the purview of the proviso to Note-2 of sub-clause (1) during the period 18th April, 1984 to 1st April, 1987. There was no justification to permit the dealers to retain the amount already collected as sales-tax and to prevent unjust enrichment, retrospective effect had been given by inserting the proviso under Note 2 to clause (1) and a similar proviso under Note 2 to clause (j). Care had been taken to fix a limit on the claim to the extent of the tax actually charged by the dealer.

(v) & (vi) Prior to the Constitution Forty-Sixth Amendment certain works contracts were held to be entire and indivisible one. *In Builders Association of India's case* (supra) it was held by the apex Court that after the Forty-Sixth Amendment, the works contract, which was an indivisible one, is by legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services,—(*vide* paragraph 36 at page 1390 *ibid*).

(vii) Mr. Sibal further contended that it must be left to the Taxing authorities under the HGST Act to determine in the facts and circumstances of each case :

(a) Whether property in goods passed in respect of certain goods within the meaning of sub-clause (ii) of clause (1); and

(b) whether the transaction was an intra-State sale or an inter-State sale.

Mr. Sibal laid great emphasis that what is open to the Court is to lay down the principles deduced from the relevant provisions of the Constitution, the Central Sales-tax Act,

1956 and the HGST Act and not to undertake an examination of certain goods or transactions with a view to determining whether the property in respect of those goods passed to the contractee in terms of sub-clause (ii) and whether a particular transaction was an inter-State sale. Doing so was a sheer impossibility owing to the great variety of goods involved in various stages of the execution of works contract. Mr. Sibal, therefore, urged that in the first set of writ petitions including CWP No. 10277 of 1989 it should be left to the Taxing authorities under the Act to determine whether the transaction amounted to an inter-State sale."

(14) In order to appreciate the contentions of the learned counsel, it is necessary to refer to the relevant provisions of the Constitution and the various Acts concerned.

(15) The Parliament passed the Constitution (Forty-Sixth Amendment) Act, 1982, with effect from 2nd February, 1983, A Constitution Bench of the Supreme Court took pains to trace the history leading to the said Amendment Act in what may be called locus classicus in *Builders Association of India's case* (supra). In brief, it may be stated that prior to the commencement of the Constitution, the power to levy sales-tax had been conferred on the provincial legislatures by Entry 48 of List-II of the Seventh Schedule to the Government of India Act, 1935. The provincial legislatures exercised power to levy sales-tax acting on the principles of the territorial nexus, that is to say, they picked out one or more of the ingredients constituting a sale and made them the basis of the levy of sales-tax under the legislation. This led to multiple taxation of the same transaction by different provinces. Under the Constitution of India, Article 286 contained an Explanation fixing the situs of the sale. The Explanation was in the following terms :

"For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State."

Interpretation of the Explanation gave rise to difference of opinion in the Supreme Court itself (*See State of Bombay* v. *United Motors* (3), and *Bengal Immuhity Co.* v. *State of Bihar* (4). By the Constitution (Sixth Amendment) Act, 1956, the Explanation in clause (1) of Article 286 was omitted and clauses (2) and (3) of the said Article were substituted by new clauses, giving the Parliament power to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1) Article 286 of the Constitution. Entry 92-A in List-I was also inserted giving power to the Union to levy tax on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce. The State's power to levy sales-tax under Entry 54 of List-II was made subject to the provisions of Entry 92-A of List-I of the Seventh Schedule to the Constitution. In pursuance of the power given by Entry 92-A of List-I and clause (2) of Article 286 as amended by the Constitution (Sixth Amendment) Act, 1956, the Parliament enacted the Central Sales-tax Act, 1956. The long title of the said Act, in so far as relevant for the present purposes, reads :—

> "An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade of commerce or outside a State or in the course of import into or export from India."

(16) There arose a conflict of judicial opinion amongst the various High Courts in the country whether the cost of the goods supplied by a building contractor in the course of the construction of a building could be subjected to payment of sales-tax. The said conflict was finally resolved by the Supreme Court in *The State of Madras* v. *M/s Gannon Bunkerley and Co. (Madras) Ltd.* (5). Therein it was held that there was neither a contract to sell the materials used in the construction nor the property passed therein as moveables. It was further held that in a building contract, which was one, entire and indivisible, there was no sale of goods and the materials used in such a contract was not exigible to sales-tax treating the same as as sale. By virtue of the above decision, no sales-tax could be levied on the amounts received under a works contract by a building contractor even though he had supplied goods

(3) A.I.R. 1953 S.C. 252.

(4) A.I.R. 1955 S.C. 661.

(5) A.I.R. 1958 S.C. 560.

for the construction of the buildings. Certain other kinds of transactions were also held not to amount to sale so as to be liable to pay sales-tax. In certain other cases, the apex Court laid down that certain other transactions did not amount to sale for purposes of levy of sales-tax. These judgments are noted in the *Builders Association of India's case* (supra). There were also reports from the State Governments to whom revenues from the sales-tax had been assigned under Article 269 of the Constitution as to a large scale avoidance of Central Sales-tax leviable on inter-State sales of goods through the device of consignment of goods from one State to another and to the leakage of local Sales-tax in works contract, hire purchase transactions, lease of films etc. The Law Commission of India in its 61st Report favoured amendment of the Constitution. As a result the Constitution (Forty-Sixth) Amendment Act, 1982, was passed. A definition of the expression "sale or purchase of goods" for purposes of levy of sales-tax was inserted by clause (29-A) in Article 366 of the Constitution. The main features of the Forty-Sixth Amendment, which are relevant for the present discussion, are as under :—

(i) A new clause (29-A) was inserted in Article 366, which reads as under :—

(29A) "tax on the sale or purchase of goods" includes :—

(a) a tax on the transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment of instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

(ii) Clause (3) of Article 286 was substituted with the following clause :—

"(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29-A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, and other incidents of the tax as Parliament may by law specify."

(17) Following the Constitution Forty-Sixth Amendment, the HGST Act was amended by the Haryana General Sales-tax (Amendment and Validation) Act, 1984 (Haryana Act No. 11 of 1984), which was published in the Haryana Gaxette (Extra) dated April 18, 1984. The amended definition of the expression "sale or purchase of goods" in clause (29-A) of Article 366 of the Constitution was split up into two parts, nemely, 'purchase' and 'sale'. The word 'purchase' was defined in clause (j) and the word 'sale' was defined in clause (1) of section 2 of the HGST Act. The relevant sub-clauses were to say bodily lifted from the provisions of clause (29-A) of Article 366 and in corporated in the HGST Act. It may further be noted that the language used in both the definitions of 'purchase' and 'sale' in clauses (j) and (1) respectively are *mutatis mutandis* the same. In the discussion which follows, therefore, reference to sale as defined in clause (1) of the Haryana Act would include reference to purchase as defined in clause (j).

(18) The next relevant Amending Act is the Haryana General Sales-tax (Amendment) Act, 1987 (Haryana Act No. 9 of 1987), which was published in the Haryana Government Gazette dated April 2, 1987. *Inter alia*, the following Note No. 2 was inserted in clause (1) :—

> "Note 2—Sub-clause (ii) and sub-clause (iv) so far as it relates to the goods, namely, shuttering material (used in construction of buildings), tents, kanatas, chholdari, crockery, utensils, furniture, and all other goods dealt with by the tent dealer as also other allied dealers for decoration and lighting purposes, electricity meters and water meters shall come into force with effect from the 1st day of April, 1987."

This was followed by the Haryana General Sales-tax (Amendment) Act, 1989 (Haryana Act No. 1 of 1989) published in the Haryana Gazette dated March 17, 1989. Reference is being made only to those amendments which are relevant for the present purposes.

(i) The word 'contractor' was defined in the newly added clause (ba) as follows :—

> "contractor" means any person who executes either himself or through a sub-contractor a works contract."

(ii) The word "contractee" was defined by clause (bb) as under :—

> "contractee" means any person for whom or for whose benefit a work as contract is executed."

(iii) After Note-2 in clause (j) as well as clause (1), the following proviso was added :—

> "Provided that a dealer, who was charged tax or has made use of authority of his registration certificate under this Act or the Central Sales-tax Act, 1956 during the period from 18th day of April, 1984 to 31st day of March, 1987 shall be liable to pay tax to the extent of charging of tax or tax on the goods purchased on the authority of his registration certificates and used in the execution of the works contract, as the case may be, and for this purpose

sub-clause (ii) and sub-clause (iv) shall be deemed to have come into force with effect from the 18th day of April, 1984.

(iv) The following Note 3 was also added :

"Note 3. A purchase falling under sub-clause (ii) shall be deemed to have taken place within the State if the goods involved in the execution of a works contract are within the State at the time of their use in the execution of the works contract."

(v) The expression "works contract" was defined in clause (pa) in these words :—

"works contract" means any agreement for executing for cash, deferred payment or other valuable consideration—

(i) the construction, fitting, improvement or repair of any building, road, wall, bridge, embankment, dam or other immovable property; or

(ii) the assembling, fabrication, installation, repair, fitting out, altering, ornamenting, blending, finishing, improving, processing, treating or adapting any moveable property, whether attached to any immoveable property or not;

and lighting purposes, electricity meters and water meters part of such work."

(19) A reading of the relevant provisions of the Constitution and the Parliamentary legislation made in pursuance of Article 269(3) and 286(2) i.e. the Central Sales-tax Act, 1956 the State Legislature is not competent to levy tax on the following sales or purchases :—

(i) Where sale or purchase takes place in the course of inter-State trade or commerce, such a sale is beyond the legislative competence of the State Legislature for purposes of levy of sales-tax Article 269(3).

(This is so because Entry 54 of List-II is itself subject to Entry 92-A of List-I. Entry 92-A of List-I gives exclusive power to the Parliament to levy tax on sales taking place in the course of inter-State trade or commerce).

(ii) Where sale takes place outside the State,—(*vide* Article 286(1) (a) of the Constitution).

(iii) Where sale takes place in course of import into and export from the country,—(*vide* Article 286(1) (b)).

(iv) Such other limitations, if any, as the Parliament may impose in respect of :

(a) Sale of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; and

(b) Sale or purchase of goods being a tax in the nature referred to in sub-clause (b), sub-clause (d) or sub-clause (d) of Clause (29-A) of Article 366 of the Constitution, in regard to *system* of *levy*, rates or other incidents as may be specified by the Parliament. (*Vide* Article 286(3)).

(20) Section 4(2) of the Central Sales-tax Act, 1956, makes a deeming provisions when a sale or purchase shall take place inside a State. It reads as under :—

"(2) A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State—

(a) in the case of specific or ascertained goods, at the time of contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other, party is prior or subsequent to such appropriation."

When the sale takes place inside a State, it shall be deemed to take place outside all other States (Section 4(1)) Inter State sale as defined by Section 3 of the said Act is as under :—

"3. WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE IN THE COURSE OF INTER-STATE TRADE OR COMMERCE : A Sale or purchase of goods shall be deemed to take place in the

course of inter-state trade or commerce if the sale or purchase—

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. xx xx xx

Explanation 2. xx xx xx

Section 4 of the Central Sales-tax Act, 1956, is expressely made subject to Section 3 of the Act.

(21) Sections 14 and 15 of the Central Sales-tax Act, 1956, impose the restrictions and conditions specified therein, in regard to tax on sale or purchase of declared goods within a State in so far as sales-tax law of the State is concerned.

(22) Even at the risk of repetition, the propositions which emerge may be stated thus.

(i) The State Legislature is not competent to levy tax on sales taking place—

(a) in the course of inter-State trade or commerce.

(b) sales taking place outside the State.

(c) sales in the course of import into or export from the country.

(ii) The State legislature shall be subject to restrictions and conditions, if any, as the Parliament may by law impose in regard to sale or purchase falling under sub-clause (b), (c) or (d) of clause (29-A) of Article 366 of the Constitution.

(iii) The Parliament has the exclusive power to formulate principles for determining when a sale or purchase takes place—

(i) in the course of inter-State trade or commerce.

(ii) in the course of import into or export from the country.

(iii) outside the State.

(23) The constitutional validity or Note-3 under clause (1) of section 2 of the HGST Act, 1973, has been challenged on the ground that in the absence of any words confining the scope of the word "sale" used therein to inter-State sale, it was possible to construe the note to mean that the word "sale" included even inter-State sale. If that were done, even inter-State sale would be brought within the purview of the HGST Act, 1973, which is beyond the powers of the State Legislature. This would be contravention of propositions formulated in paragraph 22 above. Mr. A. S. Chadha, Mr. Raje Ram Aggarwal and Mr. R. C. Dogra, learned counsel appearing for the petitioners in different sets of writ petitions stated that they would be satisfied if Note-3 is read down to mean that it was confined to only inter-State sale and did not cover within its purview inter-State sale. If follows that the constitutional validity of Note 3 is not challenged by the learned counsel for the petitioners on any other ground.

(24) We are of the view that Note 3 is not *ultra vires* the powers of the State Legislature. Our reasons in support of this conclusion follow.

(25) In pursuance of powers conferred on the Parliament under Articles 269(3) and 286(2), the Parliament has enacted the Central Sales-tax Act, 1956. The said Act deals with (i) sale or purchase taking place outside the State; (ii) sale or purchase taking place in the course of import into or export of goods out of the territory of India; and (iii) sale or purchase taking place in the course of inter-trade or commerce. All these three types of sales have been expressly excluded from the purview of the HGST Act, 1973, by section 12 of the HGST Act, 1973. Furthermore, section 12 has been given an overriding effect by incorporating a non-obstante clause. Section 27 makes a specific provision excluding goods falling under section 12 from taxable turnover. As laid down in *Assessing Authority* v *M/s East India Cotton Mfg. Co. Ltd* (6) it is a well settled rule of interpretation that no one section should be construed in isolation but that the statute should be read as a whole; each part throwing light on the meaning of the other,—(*vide* paragraph 5 at page 1613) in view of the conceded position that the word sale" in Note 3 is confined only to intra-State sale, would read down Note 3 to be confined only to intra-State sales.

(6) A.I.R. 1981 S.C. 1610.

(26) Coming to the second contention, in our view, Mr. Sibal is clearly right in pointing out that it is not the wide definition of the expression "works contract" which is of any significance for the present purposes but it is the taxable event. The main test for determining the taxable event is that on the occurrence of which liability to tax is attracted (see *M/s Goodyear India Limited* v. *State of Haryana*[1] (7). It is not disputed that in the present case, the taxable event is the transfer, delivery or supply of goods within the meaning of the relevant sub-clause of clause (1) of section 2 of the HGST Act, 1973. In other words, the taxable event is the transfer of the property in goods (whether as goods or in some other form) involved in the execution of a works contract. The definition of "works contract" is not rendered *ultra vires* the Constitution or powers of the State Legislature simply because it is in wide terms. We have, therefore, no difficulty in rejecting this contention.

(27) This brings us to the third contention. Entry 14 of Schedule 'B' of the HGST Act refers to "All varieties of cotton, wollen or silken textiles including rayon, artifical silk or nylon but not including such carpets, druggets, woollen durees, cotton floor durrees, blankets, rugs and all varieties of dryer felts on which additional excise duty in lieu of sales-tax is not levied". Entry 32 refers to lottery tickets. In the third column meant for "Conditions and Exceptions", nothing is stated in respect of both the said Entries. Section 6 of the HGST Act, 1973, while laying down incidence of taxation, contains a proviso that nothing contained in the said section shall apply to a dealer who deals exclusively in goods specified in Schedule 'B'. These provisions apply for the assessment of sales-tax under the Central Sales-tax Act, 1956, by virtue of section 8(2A). It requires no big argument to show that the various goods mentioned in Schedule 'B' are in the context of sale or purchase of such goods as such goods. In other words, if lottery tickets are to be sold as lottery tickets, there is no question of levy of sales-tax as long as the present provisions continue. Same is true of textiles. The question arises whether what is sought to be taxed is the lottery tickets as a lottery ticket or the textile as textile. In our view, it is not so. What is sought to be taxed is the transfer of property in goods in the execution of the works contract in terms of clause (ii) of, clause (1) of section 2. That would include paper etc. which is used to print lottery tickets. Similarly,

(7) A.I.R. 1990 S.C. 781.

in the case of textiles, what is sought to be taxed is the goods which would fall within the purview of said sub-clause (ii) of clause (1) of section 2 and nothing else. We are advisedly undertaking an examination of the question as to which of the goods would fall within the purview of sub-clause (ii) and which would not be so covered. It must be left to the Taxing authorities to decide the question as and when the same is raised in the facts and circumstances of each case. For these reasons, we find no substance in this contention.

(28) With regard to the next contention, it may be stated that sub-clauses (ii) and (iv) to clause (j) and (1) of section 2 of the HGST Act, 1973, were first inserted by Haryana Act No. 11 of 1984. By Haryana Act No. 11 of 1987, sub-clause (ii) and certain specified items relating to sub-clause (iv) were to take effect from a later date, namely, 1st day of April 1987 i.e. the date immediately before the publication of the Amending Act in the State Gazette. Later on, however, it came to notice of the Government that some dealers had, in fact, charged sales-tax on transactions covered by sub-clause (ii) and in so far as goods mentioned in clause (iv). By Haryana Act No. 1 of 1989, therefore, sub-clause (ii) and goods specified in sub-clause (iv) referred to in Note 2 was given effect from 18th April, 1984, the date when following the Forty-Sixth Amendment the Haryana General Sales-tax Act, 1973, was amended instead of 1st April, 1987, by inserting a proviso to Note 2 to clauses (j) and (1). The effect of the impugned amendment is as if the date fixed by the earlier Act, namely, 1st of April, 1987 had been rubbed off and 18th April, 1984, had been written. The apex Court explained the doctrine in *Shamrao* v. *D. M. Thana* (8), in these words :—

> "The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistence or absurdity) as the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England : see Crawford on Statutory Construction, page 110; and it is the law which the Privy

(8) A.I.R. 1952 S.C. 324.

Council applied to India in *Keshoram Poddar* v. *Nandulal Mallick*, (AIR 1927 PC 97).

It is not disputed that the Legislature has ample powers to give retrospective effect to a legislation.

(29) The thrust of the argument is that the job work undertaken by the petitioners involves advanced technology, expertise and in the case of printing, especially lottery tickets a high degree of confidence reposed by the contractee in the petitioner Printing Press. The supply of paper in the case of printing and the use of dyes and colour in the case of dyeing and printing of textiles, pass to the contractee only incidentally and, therefore, they are not exigible to sales-tax. Reliance has been placed by the petitioners on *State of Tamil Nadu* v. *Anandam Vishwanatham* (9). The question involved in that case was whether the taxable turnover would include the printing and block making charges or not. The High Court, relying on a decision of the Supreme Court in Government of *Andhra Pradesh* v. *Guntur Tobacco Ltd.* (10), took the view that cost of paper shown separately in the contract would be liable to tax and except for that cost of paper and the material supplied in other respect, the contract was a contract for work and labour and there could not be any liability for sales-tax. According to the High Court, this would cover the printing charge. Blocks, it was found, were destroyed after the question papers had been printed. It was, therefore, held by the High Court that there was no question of sale of blocks or passing of the property therein. The appeals against the judgment of the High Court were dismissed by the Supreme Court. In the aforesaid case thus the cost of paper was held exible to sales-tax. Their Lordships approved the tests laid down earlier in *Guntur Tobacco Ltd's case* (supra) in Anandam *Vishwanathan's case* (supra), In *Guntur Tobacco Ltd's case* (supra) it was laid down that contract for work may take any of the three forms :—

(i) For work done for remuneration and supply of materials used in execution of works for a price.	It was held to be a composite contract for work and sale of goods.

(9) A.I.R. 1989 S.C. 962.

(10) A.I.R. 1965 S.C. 1396.

(ii) For work in which use of material is accessory or incidental.	It was held to be a contract for execution of work not involving sale of goods.
(iii) For work and use or supply of materials not accessory to the execution of the contract but is voluntary or gratitous.	There was no sale because though property in goods passed, it did not pass for a price.

Anandam Vishwanathan's case (supra) was held to fall in category (ii) above. The other authorities relied on by Mr. R. C. Dogra and Mr. Randir Chawla are :

(1) *The Asstt. Sales-tax Officer and others* v. B. C. Kame, (177) 39 S.T.C. 237;

(2) *Hindustan Aeronautics Ltd.* v. *State of Orissa,* (1984) 55 S.T.C. 327;

(3) *Commission of Sales-tax, M.P.* v. *Ratna Fine Arts Printing Press,* (1984) 56 S.T.C. 77; and

(4) *Agra University Press Paliwal Park* v. *Commissioner of Sales-tax,* (1984) 56 S.T.C. 317.

These authorities do not advance the case of the petitioners in view of the Constitution Forty-Sixth Amendment and decision of a Constitution Bench of the Supreme Court in *Builders Association of India's case* (supra) in which it was laid down in para 36 at page 1390 as follows :—

> "After the 46th Amendment the works contract which was an indivisible one is by a legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services. After the 46th Amendment it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above."

It cannot, therefore, be contended that the passing of property in the paper etc. was only incidental and the contract was a composite one. We are not advisedly going into the question as to in respect of which goods the property passes in favour of the contractee in terms of clause (ii) and in which it does not. In the nature of things, it must be left to the Taxing authorities to determine whether goods in question are covered under clause (ii) for purposes of levying of sales tax or not.

(30) In support of his contentions, Mr. Sibal placed reliance on *Padmana Commercial Corporation* v. *Commercial Tax Officer* (11), *Ranjit Kumar* v. *Commercial Tax Officer, Naidupeta and another* (12), *20th Century Finance Corporation Ltd. and another* v. *State of Maharashtra* (13), *Builders Association of India* v. *State of Karnataka and others* (14), as well as a decision of a Division Bench of this Court in CWP No. 15583 of 1989 dated February 11, 1992, in which constitutional validity of substantially similar provisions made in the concerned State Acts was upheld. Mr. Sibal sought to distinguish *Pest Control India Ltd.* v. *Union of India and others* (15), cited by learned counsel for the petitioners on the ground that the case related to service contract as distinguished from a works contract or sale contract. The authorities relied on by Mr. Sibal undoubtedly support the stand taken by him. In our view, therefore. the provisions of section 2, as amended by Haryana Amending Act No. 1 of 1989 must be upheld as constitutionally valid.

(31) The next question arising for consideration is whether the particular process of finishing and sizing etc. of grey cloth by M/s East India Cotton Manufacturing Company Limited, petitioner in CWP No. 10227 of 1989, and some other connected petitions, is an inter-State sale. The said activity has been described by the petitioner in paragraph 6 of the writ petition No. 10227 of 1989 in these words :—

> "6. That the petitioner manufactures and processes the textiles by using grey cloth. The petitioner for that

(11) (1987) 66 S.T.C. 26.

(12) (1988) 71 S.T.C. 502.

(13) (1989) 75 S.T.C. 217.

(14) (1990) 79 S.T.C. 442.

(15) (1989) 75 S.T.C. 188 (Patna).

purpose of processing of grey cloth into fabric brings into the factory of the petitioner grey cloth belonging to the their parties from outside the State of Haryana. The title to property in goods whether as grey cloth or pocessed fabric vests with its original owner and not with the petitioner. All that the petitioner does is to process the grey cloth by using colour and chemicals and receives labour charges from the owner of the cloth and re-export the fabric outside the State of Haryana. In short, it is a pure inter-State transaction."

There is no express denial of the facts stated in the corresponding paragraph of the written statement. Instead it is stated therein that contents of paragraph 6 are admitted only to the extent that the petitioner is engaged in the business of processing of clothes. The material facts averred in paragraph 6 of the writ petition have not been controverted anywhere else in the written statement. In the absence of a specific denial, we accept the averments of fact made in paragraph 6 as uncontroverted and proceed to examine whether the activity amounts to inter-State sale.

(32) Section 3 of the Central Sales-tax Act, 1956, lays down that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another. We need not refer to the remaining part of that section as it is not relevant for the present purpose. In other words, the test laid down in section 3 for a sale to be considered as an inter-State sale is whether it occasions the movement of goods from one state to another. This section was interpretted by the apex Court in a number of decisions and it was held that if the movement of goods from one State to another is the result of a covenant or an incident of contract of sale, then the sale is an inter-State sale. If the contract of sale itself contains a stipulation for movement of goods from one State to another, no difficulty arises in concluding that the sale is an inter-State sale. Even where it is not so provided by the contract but such movement is the result of a covenant or is an incident of the contract, it will be an inter-State sale. It is not relevant to see in which State the property in goods passes in order to determine whether the sale is an inter-State sale. It is also not necessary that the sale may be

deemed to have occassioned such movement. (See *Union of India* v. *K. G. Khosla and Company* (16), *Oil India Ltd.* v. *The Superintendent of Taxes and others* (17), *M/s Sahney Steel and Press Works Ltd. and another* v. *Commercial Tax Officer and others* (18), and *Projects and Services Centre and another* v. *State of Tripura and others* (19). Processing of cloth in the manner already described is deemed sale for purposes of sub-clause (ii) of clause (1) of section 2 of the HGST Act, 1973. It has been laid down in *Builders Association of India's case* (supra) that when the law creates a legal fiction, such fiction should be carried to its logical end. There should not be any hesitation in giving full effect to it. For all practical purposes, therefore, the deemed sale is to be considered as a sale properly so called. There can be no doubt that it is that sale which occasions the movement of goods from one State to another, in that grey cloth is sent by the contractees from outside the State of Haryana; it is processed at Faridabad in the State of Haryana and thereafter it is sent back to the contractees. The movement of cloth, therefore, is occasioned by the contract of sale within the meaning of sub-clause (ii) of clause (1) of section 2 of the HGST Act, 1973. We are, therefore, of the view that the said transaction amounts to an inter-State sale within the meaning of section 3 of the Central Sales-tax Act, 1956.

(33) Mr. Randhir Chawla, appearing for M/s Thompson Press (India) Pvt. Limited submitted that the petitioner is assessed both under the HGST Act as well as under the Central Sales-Tax Act. He further submitted that following Constitution Forty Sixth Amendment, no amendment had been made in the various provisions of the Central Sales-tax Act. Under the Central Sales-tax Act therefore, no sales-tax could be imposed on the petitioner simply on the ground that as a result of the Forty-Sixth Amendment clause (29-A) had been added in Article 366. We entertain no doubt that if tax is to be imposed under the Central Sales-tax Act, the Taxing authorities cannot travel beyond the provisions of the Central Sales-tax Act, 1956. Insertion of clause (29-A) in Article 366 contains only the expended definition of the expression

(16) (1979) 43 S.T.C. 457.

(17) (1975) 35 S.T.C. 445.

(18) A.I.R. 1985 S.C. 1754.

(19) (1991) 82 S.T.C. 89.

"tax on sales and purchases" for purposes of the various provisions of the Constitution. This may furnish an enabling provision to the Parliament to suitably amend the definition of the relevant expressions used in the Central Sales-tax Act including the word "sale" if it is intended to levy sales-tax in respect of various transactions in clauses (a) to (j) of clause (29-A) of Article 366, broadly on the lines on which the various States have amended the local General Sales-tax Acts. Since this has not been done, it is not open to the Taxing Authorities to proceed to levy sales-tax under the Central Sales-Tax Act, 1956, on transactions which do not amount to sale as defined in section 2(g) of the Central Sales-tax Act, 1956.

(34) In *Deputy Commissioner of Agricultural Income-tax and Sales-tax (Law), Ernakulam* v. *P. K. Biriumma* (20), the assessee was engaged in the business of retreading of tyres. He was registered dealer under the Central Sales-tax Act, 1956. After the constitution Forty Sixth Amendment, his certificate of registration was amended to include certain items of equipment used in the tyre retreading business. Subsequently, the times so included were cancelled on the ground that retreading does not amount to sales as defined in section 2(g) of the Central Sales-tax Act, 1956, but was only a works contract. The Tribunal held that by virtue of the Constitution Forty-Sixth Amendment sale included works contract as well. On a revision petition, it was held by the High Court of Kerala that although by the Constitution (Forty-Sixth Amendment) Act, 1982, clause (29-A) had been inserted in Article 366, it only gave appropriate authority to the Legislature to make provision for taxation of property in goods involved in the execution of works contract. In the absence of amendment having been carried out to the Central Sales-tax Act, 1956, the order of the Tribunal could not be sustained. We are in respectful agreement with the reasoning and conclusion of the learned Judges.

We sum up our conclusions as under :—

(1) Clauses (j) and (l) of section 2 of the HGST Act, 1973 including proviso to Note 2, Note 3 of the HGST Act, 1973, are *intra vires* the Constitution and the

(20) (1991) 83 S.T.C. 276.

principles formulated in the Central Sales-tax Act, 1956, in pursuance of Articles 269(3) and 286(2) of the Constitution. To that extent constitutional validity of Act No. 1 of 1989 is upheld.

(2) The value of goods falling within the purview of various sub-clauses of clauses (j) and (l) of section 2 of the HGST Act, 1973, is exigible to tax.

(3) Inter-State sale is outside the scope of the HGST Act, 1973, for purposes of levying of tax.

(4) The particular activity of processing of grey cloth into finished cloth by East India Cotton Manufacturing Company Limited in the facts and circumstances amount to inter-State sale.

(5) It is open to the Taxing authorities to split up a composite works contract and levy tax on that component of the contract which is covered by one or the other sub-clauses of clause (j) or clause (l) of section 2 of the HGST ACT, 1973.

(6) In spite of wider definition of expression tax on sale or purchase in clause (29-A) of Article 366 by the Constitution (Forty-sixth) Amendment Act, 1982, tax can be levied only on the basis of the existing provisions of the Central Sales-tax Act, 1956, and not on the basis of various sub-clauses of clause (29-A) of Article 366 as far as central sales-tax is concerned.

(7) The Taxing Authorities shall determine in respect of which goods, the property passes to the contractee in terms of sub-clause (ii) of clause (j) or clause (l) of section 2 of the HGST Act, 1973, in the facts and circumstances of each case.

(8) When the question is raised, the Taxing authorities have to determine in the facts and circumstances of each case whether the transaction is an intra-State sale or an inter-State sale.

(9) Exemption from sales-tax (subject to the conditions, if any, mentioned therein) under section 6 and 15 read with Schedule 'B' to HGST Act, 1973, is with reference to goods as such goods. The exemption does not apply if any case falls in any of the sub-clauses of clause (ii).

We accordingly dispose of these petitions in the aforesaid terms, leaving the parties to bear their own costs.

R.N.R.

(FULL BENCH)

Before A. L. Bahri, N. C. Jain & N. K. Sodhi, JJ.

BIRLA CEMENT WORKS, KOTKAPURA,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4582 *of* 1980.

2nd February, 1993.

Punjab Municipal Act, 1911—*S.* 232—*Constitution of India*, 1950—*7th Schedule List II, Item* 52—*Punjab Municipal Code*, 1930—*Rls.* 13, 14, 15, 15(1-*A*)), (2), (b) & (c)—*Chapter II—Levy of Octroi by Municipal Committee—Goods brought within Municipal limits for export to places outside—Goods not meant for consumption, use or sale within Municipal limits cannot be subjected to octroi duty—Charge of Octroi duty—Municipal Committee cannot withhold issuance of transit passes for goods intended to be exported within a specified time—It is inmaterial that sale takes place before or after such goods are brought within limits of Municipality—Octroi illegally collected—Direction given for refund after determination of quantum of duty.*

Held, that it is immaterial whether transaction of sale in fact had earlier taken place or yet to take place. Such goods are intended not to be consumed, used or sold within such Municipal limits. As such goods are to be exported out of the Municipal limits, they are not to be subjected to charge of octroi A declaration is required to be made at the entry barrier and a transit pass is required to be obtained. At the entry barrier on such transit pass reasonable time is mentioned during which such goods are expected to be exported