FULL BENCH

Before D. K. Mahajan, Gopal Singh and Bal Raj Tuli, JJ.

M/S TEK CHAND DAULAT RAI —*Petitioner.*

versus

THE EXCISE AND TAXATION OFFICER AND OTHERS,—*Respondents.*

Civil Writ No. 3838 of 1968.

April 29, 1971.

Central Sales Tax Act (LXXIV of 1956)—Sections 2(c), 2(j), 3, 4, 6, 8 and 14—Central Sales Tax (Amendment) Act (XXVIII of 1969)—Sections 9 and 10—Punjab General Sales Tax Act (XLVI of 1948)—Section 5—Constitution of India (1950)—Articles 14 and 258—Section 8(1) and (2) of the Central Act adopting rates of tax provided in section 5 of the State Act—Such adoption—Whether renders section 8(1) and (2) constitutionally invalid—Section 9(2) of the Central Act providing for adoption of procedure devised by the State Act and availing of the authorities appointed under that Act—Whether suffers from excessive delegation of legislative power—Sections 9 and 10 of the Amendment Act, giving retrospective effect to the principal Central Act—Whether contravenes Article 14 of the Constitution—Amended Act discriminating between dealers who had collected tax under the Central Act and those who had not done so—Such discrimination—Whether valid—Tax on hession and bardana of the baled cotton—Whether has to be the same as prescribed for cotton.

Held, that sections 2(c), 2(j), 3, 4 and 6 of Central Sales Tax Act incorporate the basic principles of legislative policy and carry into effect the underlying object of that Act. On the subjects covered by them, no inspiration is to be derived from the corresponding provisions of the State Act much less their being adopted under any of these provisions of the Central Act. Adoption of rates of State Act under section 8(2) of the Central Act in no way influences their material content or detracts from them. This section only provides for the mode of determination of rates of tax applicable by the adoption of rates of tax fixed by State legislatures. Such an adoption is not an indispensable part of legislative obligation or policy. Adoption of rates cannot result in either abdication of legislative power or amount to its excessive delegation. Hence the adoption of the rates of sales tax in force under section 5 of Punjab General Sales Tax Act in pursuance of the provisions of section 8(2) of the Central Act does not amount to abdication of legislative power on the part of Parliament and does not render section 8(1) and (2) as constitutionally invalid.

(Paras 26 and 35)

Held, that by virtue of sub-section (2) of section 9 of Central Sales Tax Act, the functionaries under the State Law have been utilised for administering the law as provided in the Central Act. The procedural provisions

for assessment of tax and imposition of penalties under the Central Act, to be followed are the same as given in the State law and the same course of remedies by way of appeals, revisions, references, reviews, etc. are available to parties aggrieved of the orders passed in relation to the provisions of the Central Act. There exists power in the Parliament in respect of law exclusively legislable by it and in force in a State to confer powers and impose duties by that law upon that State and its authorities as may be necessary for administration of that law. That power is embodied in clause (2) of Article 258 of the Constitution. It is in exercise of that power that section 9(2) of the Central Act has been enacted. Availing of the services of the hierarchy of the functionaries functioning under the State Act and conferment of powers on them, providing for procedure to be followed by them and imposition of duties upon them in terms of the procedural, remedial and other provisions devised thereunder to enable them to administer various provisions of the Central Act falls squarely within the scope of clause (2). Article 258 is not an unauthorised or excessive delegation on the part of the Parliament in favour of the State or its authorities administering the State Act. (Paras 38 and 39)

Held, that Parliament has power as much to make a law prospectively as it has to give the law a retrospective effect or operation. By virtue of section 9 of the Amendment Act, retrospective effect has been given as if the Central Act as amended by the Amendment Act was in force on the date when an order was passed or an action was taken. This section *per se* does not reflect any element of discrimination in its retrospective operation or applicability. Section 10 has, however, for the purpose of the application of the Amendment Act, created two classes of dealers registered under the Central Act. One class is of those, who had not collected any tax at all during the relevant period. The other is of those, who had collected tax in the course of the said period. The two classes stand on a different footing. Under section 10, exemption has been granted only to those, who had not collected tax at all whereas others, who had collected tax and constitute second class have by virtue of section 10 read in conjunction with section 9 of the Amendment Act been denied exemption from liability to pay tax because of their having actually collected the tax. There is rationale about this classification. The class of dealers, who had collected the tax have reasonably been placed on a different footing from those, who had not collected any tax. Thus the differentiation between the two classes of dealers is founded on a justifiable ground and has been devised to achieve one of the objects of the Act. There does exist nexus between the object of the Amendment Act and the classification engendered by section 10 of the Act. Hence sections 9 and 10 of the Amendment Act do not contravene Article 14 of the Constitution. (Paras 42 and 43)

Held, that baled cotton is cotton as defined in item (ii) of section 14 of the Central Act. The baled cotton is covered and packed in hessian and tightened by *bardana*. The assessee is, therefore, liable to be charged on hessian and *bardana* at the rate at which cotton is charged. (Para 46)

M/S Tek Chand Daulat Rai *v.* The Excise and Taxation Officer and others (Gopal Singh, J.)

Case referred by the Hon'ble Mr. Justice Bal Raj Tuli on 25th March, 1970 to a Division Bench consisting of the Hon'ble Mr. Justice Prem Chand Pandit and the Hon'ble Mr. Justice S. S. Sandhawalia as another case i.e. C.W. *No.* 3321 *of* 1969 *in which identical points with regard to the validity of the Central Sales Tax (Amendment) Act* (28 *of* 1969), *are involved was admitted by the Motion Bench. Then Division Bench consisting of the Hon'ble Mr. Justice Prem Chand Pandit and the Hon'ble Mr. Justice S. S. Sandhawalia referred the case to another Division Bench to which none of their Lordship be a party. If this is not possible then the case may be laid before the larger Bench. The larger Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Gopal Singh and the Hon'ble Mr. Justice Bal Raj Tuli, finally decided the case on 29th April,* 1971.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order passed by respondent No.* 1, *dated 8th November,* 1968 *and for declaring Sections* 8(2)(*a*), 8(2)(*b*) *and* 9(2) *of the Central Sales Tax Act as* ultra vires *and Sections* 8(2)(*a*) *and* 8(2)(*b*) *of the Central Sales Tax as* unenforcible *in the State of Punjab on account of invalidity of Section* 5(1) *of the Punjab General Sales Tax Act.*

C. D. Garg and R. N. Narula, Advocates, for the petitioner.

M. R. Sharma, Senior Deputy Advocate-General, Punjab, for the respondents.

JUDGMENT

Gopal Singh, J.—The following writ petitions with identical facts and involving common questions of law have been referred to the Full Bench:—

(1) Civil Writ No. 3838 of 1968.

(2) Civil Writ No. 317 of 1969.

(3) Civil Writ No. 651 of 1969.

(4) Civil Writ No. 2092 of 1969.

(5) Civil Writ No. 2093 of 1969.

(6) Civil Writ No. 2300 of 1969.

(7) Civil Writ No. 2500 of 1969.

(8) Civil Writ No. 2918 of 1969.

(9) Civil Writ No. 68 of 1970.

(10) Civil Writ No. 543 of 1970.

(11) Civil Writ No. 1058 of 1970.

(12) Civil Writ No. 2466 of 1970.

(13) Civil Writ No. 2467 of 1970.

(14) Civil Writ No. 2468 of 1970.

(15) Civil Writ No. 2469 of 1970.

(2) The points raised were argued with reference to the facts given in Civil Writ No. 3838 of 1968. This petition has been filed by the firm, Messrs Tek Chand Daulat Rai, against the Assessing Authority, the State of Punjab and the Union of India, respectively impleaded as respondents Nos. 1, 2 and 3. The facts relating to the points raised are as under:—

(3) The petitioner carries on business, *inter alia*, of purchase and sale of cotton. The petitioner is registered as a 'dealer' under section 7 of the Punjab General Sales Tax Act, 1948, hereinafter called 'the State Act' and under section 7 of the Central Sales Tax Act, 1956, hereinafter mentioned as 'the Central Act'. During the assessment year 1967-68, the petitioner sold cotton valued at Rs. 1,93,47,324.61 in course of inter-State trade or commerce. By assessment order, dated November 8, 1968, the petitioner was held liable to sales-tax of Rs. 5,71,562.00. At the time of assessment, an objection was taken on behalf of the petitioner that baled cotton is cotton and is to be taxed at the rate applicable to the sale of cotton and that it was not open to the respondent No. 1 to bifurcate this single commodity into its component parts of cotton and packing material of hessian and *bardana* for purpose of taxation as there was no separate contract for sale of that packing material. Respondent No. 1 assessed the petitioner to tax at 3 per cent for the hessian and *bardana* used for bales, in respect of which 'C' forms had been produced while he charged tax at 10 per cent for hessian and *bardana* in respect of bales, for which 'C' forms had not been submitted.

(4) By judgment, dated November 10, 1964 in ***State of Mysore*** v. *Yaddalaw Lakshminarasimhian Setty and sons* (1), their Lordships of the Supreme Court, on construction of sections 8 and 9 of the Central Act, held that sales of goods, which are not 'first sales' within the meaning of section 5(3)(a) of the Mysore Sales Tax Act, 1957 and are not liable to tax under that State Act, would also not be liable to tax when such sales are effected in the course of inter-State trade or

(1) (1965) 16 S.T.C. 231.

commerce. It is also contended on behalf of the petitioner that on the basis of that decision of the Supreme Court, the inter-State sales of cotton made by the petitioner were not liable to tax under the Central Act.

(5) The writ petition was filed on December 19, 1968. During the pendency of the petition, there came into force on June, 1969, the Central Sales Tax (Amendment) Ordinance No. IV of 1969 amending certain provisions of the Central Act. This Ordinance was replaced on August 13, 1969, by the Central Sales Tax (Amendment) Act, No. XXVIII of 1969, hereinafter called the 'Amendment Act'. It is the above judgment of the Supreme Court, which necessitated the enactment of the Ordinance and the Act. The petitioner amended the writ petition with reference to those amendments challenging the constitutional validity of sections 8(2) and 9(2) of the Central Act as amended and of sections 9 and 10 of the Amendment Act.

(6) The above writ petitions came up for disposal before a Division Bench consisting of P. C. Pandit and Sandhawalia JJ. One of the points raised before the Bench was that adoption by Parliament under section 9(3) which in fact is section 9(2) of the Central Act certain provisions of the State Act was invalid as that section suffered from excessive delegation. On behalf of the respondents, there were cited the following two decided cases to repel that contention:—

Messrs. Auto Pins (India) v. *State of Haryana and others* (2), and *Messrs Rattan Lal and Co.* v. *State of Punjab and Haryana* (3).

(7) The correctness of these two judgments was assailed on behalf of the petitioners. Considering the importance of that question and others involved in the cases, the cases have been set down for hearing before the Full Bench.

(8) Reference to the relevant provisions of the Central Act and the State Act is necessary before the points raised on behalf of the

(2) A.I.R. 1970 Pb. & Hr. 333.

(3) C.W. 759 of 1969 decided on 11th December, 1970.

petitioner can be appreciated. The following provisions of the Central Act need reference:—

Section 2(c) defines 'declared goods' as goods declared under section 14 to be of special importance in inter-State trade or commerce.

'Turnover' has been defined in Section 2(j) as under:—

" 'turnover' used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the rules made thereunder."

Section 3 formulates the principles to determine as to when a sale or purchase of goods takes place in the course of inter-State trade or commerce. That Section runs as follows:—

"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."

Section 6 provides for liability to tax on inter-State sales of goods. Its relevant provisions run as follows :—

"(1) Subject to the other provisions contained in this Act every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales effected by him in the course of inter-State trade or commerce during any year on and from the date so notified.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(9) Section 8 of the Central Act devises mode for fixation of rates of tax on sales in the course of inter-State trade or commerce. The relevant portion of that section runs as follows:—

"(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 his turnover.

(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;

(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."

(10) Section 9 of the Central Act deals with the subject of levy and collection of tax and penalties. The relevant portion of that section as amended by the Amendment Act runs as follows:—

"(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods.

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the General Sales Tax Law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable under the General Sales Tax Law of the State; and for this purpose they may exercise all or any of the powers they have under the General Sales Tax Law of the State; and the provision of such law including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no General Sales Tax Law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

(11) With reference to the provisions of the Central Act, there are two other provisions, which need mention. They are incorporated in the Amendment Act, but do not find place in the principal Central

Act. They are sections 9 and 10 of the Amendment Act. These two sections run as follows:—

"Section 9. (1) Notwithstanding anything contained in any judgment, decree or order of any Court or other authority to the contrary, any assessment, reassessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, reassessment, levy or collection under the provisions of the principal Act before the 9th day of June, 1969 shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly—

(a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment, levy or collection of such tax, shall for all purposes, be deemed to be, and to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any Court or before any authority for the refund of any such tax; and

(c) no Court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person—

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, reassessment, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act."

"Section 10. (1) Where any sale of goods in the course of inter-State trade or commerce has been effected during the period between the 10th day of November, 1964 and the 9th day

of June, 1969 and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale.

(2) For the purposes of sub-section (1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in sub-section (1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale."

(12) Thus, according to the definitions of the words 'dealer' and turnover' and the provisions of section 6 given in the Central Act, sales tax is leviable under that Act only on sales effected in the course of inter-State trade or commerce. Now I refer to the relevant provisions of the State Act.

(13) Section 2(d) defines 'dealer'. The definition runs as follows:—

" 'Dealer' means any person including a Department of Government, who, in the normal course of trade, sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Punjab, irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, 'dealer' includes the local manager or agent of such person in Punjab in respeet of such business."

(14) Section 2(dd) of the State Act, which defines 'declared goods', runs as under:—

" 'declared goods' means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce."

(15) Section 4 of the State Act deals with the incidence of taxation and determines the persons, who are liable to pay sales tax.

(16) Section 5 of the State Act relates to the rate of tax. Its relevant provisions run as follows:—

"(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding six naye paise in a rupee as the State Government may by notification direct:

Provided that a tax at such rate not exceeding ten naye paise in a rupee, as may be so notified may be levied on the sale of luxury goods as specified in Schedule 'A' appended to this Act from such date as the State Government may by notification direct.

Provided further that the rate of tax shall not exceed two naye paise in a rupee in respect of any declared goods.

Provided further that with effect from the date of commencement of the Punjab General Sales Tax (Amendment and Validation) Ordinance, 1967, the rate of tax shall not exceed three paise in a rupee in respect of any declared goods.

(1-A) The State Government may by notification direct that in respect of such goods other than declared goods and with effect from such date as may be specified in the notification, tax under sub-section (1) shall be levied at the first stage of sale thereof; and on the issue of such notification the tax on such goods shall be levied accordingly:

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner a certificate duly filed in and signed by the registered dealer from whom the goods were purchased."

(17) Section 6 of the State Act provides for exemption from payment of tax on sale of goods specified in Schedule 'B' appended to the Act. Section 7 makes obligatory the registration of a dealer. Section 10 deals with the filing of quarterly returns accompanied by

proof of deposit of the tax payable. Section 11 deals with the assessment to tax and the procedure to be followed.

(18) With the background of the above provisions of the Central Act and of the State Act, the following points have been urged on behalf of the petitioner:—

(1) Parliament has abdicated its legislative function by not independently providing for the rates of tax in the body of the Central Act and by virtue of section 8(1) and (2) of the Central Act adopting the rates of tax provided in section 5 of the State Act and thereby rendering constitutionally invalid section 8(1) and (2) of the Central Act.

(2) Section 9(2) of the Central Act providing for adoption of the procedure devised by the State Act and availing of the authorities appointed under that Act suffers from excessive delegation of legislative power on the part of the Parliament.

(3) Sections 9 and 10 of the Central Sales Tax (Amendment) Act, 1969, giving retrospective effect to the amendments introduced in the principal Central Act contravene article 14 of the Constitution by discriminating in the applicability of the law so amended between dealers, who had collected tax under the Central Act and those, who had not done so.

(4) Baled cotton is cotton and tax on hessian and *bardana* has to be the same as prescribed for cotton.

Point No. 1.

(19) Two-fold attack has been made upon section 8(2) of the Central Act. Firstly, it has been contended that the Parliament has shirked its responsibility to provide for the rate of tax in that Act and hence has completely abdicated its legislative power in favour of the State legislature. Secondly, it is urged that in any case, the provision of section 8(2) of the Act suffers from excessive delegation. The power to making law both by the Parliament as well as by the State legislature is provided in article 246 of the Constitution, which runs as follows:—

"(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule in the Constitution referred to as the Union List.

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule in this Constitution referred to as the Concurrent List.

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule in this Constitution referred to as the State List.

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

(20) Power to legislate in respect of taxes on sale or purchase of goods other than newspapers effected in course of inter-State trade or commerce has been conferred upon Parliament by entry 92-A in List I of Schedule VII of the Constitution. The subject of that entry is exclusively legislable by Parliament under clause (1) of article 246. By virtue of clause (3) of article 246, the subject of entry 54 in Lits II of Schedule VII of the Constitution providing for taxes on sale or purchase of goods other than newspapers subject to the provision of entry 92-A of List I is exclusively legislable by a State legislature. The definition of the term 'turnover' given in Section 2(j) and the provisions of Sections 3 and 6 of the Central Act as reproduced above show that the Central Act deals with sales effected in the course of inter-State trade or commerce. As against this, the definition of the word 'dealer' given in Section 2(d) as set out above and the provision of Section 4 of the State Act deal with the levy and collection of tax on sale or purchase of goods taking place within the territory of the State and does not touch the subject of impost of tax on sales made in the course of inter-State trade or commerce. The suggestion made in the course of arguments that the Parliament has abdicated its power in favour of the State legislature has no force in so far as the subject of legislation entry-wise is concerned. It was, however, contended that the adoption of the rates of tax applicable under the State Act with the amendments of those rates made from time to time through the device of the provisions of Section 8(2) of the Central Act amounts to delegation of legislative power to the State legislature and State authorities.

(21) Section 8(1) of the Central Act provides that every dealer, who in the course of inter-State trade or commerce sells any goods to Government or sells to a registered dealer other than the Government, the goods of the description referred to in sub-section (3) of that Section shall be liable to pay tax under the Central Act at the rate of 3 per cent of his turnover. Thus, sub-section (1) of Section 8 of the Central Act having itself specifically prescribed a fixed rate of tax payable on sales effected in the course inter-State or commerce in respect of goods referred to therein, the question of adoption of any rate of a State Act by virute of sub-section (1) of that Section does not arise. The rate has been fixed by the Central Act itself. Thus, there could be no grouse or complaint on the part of the petitioner on the footing of legislative delegation by process of adoption of the rates of the State Act in so far as the goods covered by sub-section (1) read with sub-section (3) of Section 8 are concerned. Thus the point of delegation of legislative power in respect of sub-section (1) of Section 8 of the Central Act has no substance.

(22) The petitioner has mainly directed his arguments on the same ground against the validity of clauses (1) and (b) of sub-section (2) of Section 8 of the Central Act. According to clause (a) of that sub-section, tax payable by a dealer registered under the Central Act on his turnover, if the goods are not covered by sub-section (1) of Section 8 of the Act and are 'declared goods', which have been defined in clause (c) of Section 2 of the Central Act as goods declared under Section 14 of that Act to be of special importance in inter-State trade or commerce, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State. Cotton, in which the petitioner deals, is mentioned as item No. (ii) in Section 14 of the Central Act as an item of declared goods because of its special importance in the course of inter-State trade or commerce. As provided in clause (a) of sub-section (2) of Section 8 of the Central Act, the rate of tax chargeable in respect of the sales of declared goods effected in the course of inter-State trade or commerce shall be the same as is chargeable in respect of those goods under the State Act. As given in the third proviso to sub-section (1) of section 5 of the State Act, the rate of tax applicable to the sale or purchase of the declared goods is not to exceed three paise in a rupee or 3 per cent on the taxable turnover of a dealer.

(23) Under clause (b) of sub-section (2) of section 8 of the Central Act, in case of goods other than the declared goods, rate

of tax to be calculated is either 10 per cent or the rate applicable to the sale or purchase of such goods inside the State, whichever is higher. Thus, under clause (b), the rate of tax payable in respect of goods other than declared goods falling within the scope of that clause shall be 10 per cent or if the rate applicable to the sale or purchase of such goods inside the State is higher than that, then it is the higher rate, which will be applicable under that clause. In so far as the rate of tax applicable to goods other than the declared goods under the State Act is concerned, such rate is not to exceed 6 per cent in Punjab and 7 per cent in Haryana of the turnover in case of goods other than luxury goods or declared goods and in case of luxury goods, it is not to exceed 10 per cent.

(24) The question to be determined is as to whether the application, by way of adoption, to the sales under the Central Act of the above rates as differently prevailing under the State Act from time to time as a result of amendments of those rates, by Parliament by virtue of sub-section (2) of section 8 of the Central Act amounts to delegation of legislative power of the Parliament. The order of assessment made against the petitioner deals with cotton, which, undoubtedly, according to the definition of the expression, 'declared goods' as given both in the State Act and the Central Act, is an item of declared goods. The underlying object of declaring certain goods to be declared goods by virtue of section 14 of the Central Act is to place those goods on a different footing from others on account of their special importance in the course of inter-State trade or commerce. In section 14, there are mentioned apart from cotton, goods like coal, cotton fabrics, cotton yarn, hides and skins, iron and steel, and certain articles manufactured from steel, jute, oil seeds, sugar, etc. The nature of these goods shows that considering their production and consumption and the necessity of their distribution all over the country, their importance is not peculiar to any particular State but they enjoy special importance for the entire country and hence are of special importance in the course of inter-State trade or commerce. That is why, the Parliament has placed them at a higher pedestal and on a separate basis from other goods. In order to attain the end of their facile movement and mobile flow from State to State in the course of inter-State trade or commerce, the Parliament has, as a matter of expediency and quite rightly and justifiably, chosen not to fix any uniform and rigid rate of tax for the entire country but availed itself of the rates of taxes fixed

under the respective sales tax laws of various States according to the local conditions prevalent in those States. Such rates will no doubt be different in different States. But, in a given State, the rate of tax for the 'declared goods' covered by clause (a) of sub-section (2) of section 8 of the Central Act and sold in the course of inter-State trade or commerce will be the same as is applicable to those goods liable to tax under the sales-tax law of that State. The machinery of clause (a) of sub-section (2) of section 8 of the Central Act has been devised to make uniform rate of tax applicable both under a State Act in force in a given State and under the Central Act.

(25) Since a State under a State sales tax law fixes a rate of its own and that rate would be different from the sole rate to be fixed under the Central Act and inflexibility applicable for all States, there would be two different rates in a given State applicable in respect of the same item of declared goods, one under the provisions of the State law and the other under the provisions of the Central Act. As an act of legislative wisdom, the Parliament has, taking into consideration the special importance of the 'declared goods' in the course of inter-State trade or commerce, resolved that anamoly by resorting to the enactment of the provision of clause (a) of sub-section (2) of section 8 of the Central Act. This could be done by adopting the rates applicable under the various State sales tax laws.

(26) As regards the goods other than the declared goods and falling within the scope of clause (b) of sub-section (2) of section 8 of the Central Act, the Parliament has made every person, who is a dealer registered under the Central Act, liable to pay tax at 10 per cent if the rate applicable under the State Sales Tax law to the type of goods covered by clause (b) is 10 per cent or less than 10 per cent. The Parliament has thus fixed rate of 10 per cent, if the rate applicable to those goods as fixed under a State law is 10 per cent or less then that. It is only when the rate fixed by a State law is more than 10 per cent, that that rate will be applicable to the sales of those goods effected in the course of inter-State trade or commerce. The consequence of adoption of the rates by virtue of clause (b) of section 8 of the Central Act follows only, if the rate of tax under the State sales tax law in respect of goods covered by that clause exceeds 10 per cent. The grievance of the petitioner is

two-fold. Firstly that the Parliament should have fixed the rate of its own under clause (a) and not adopted the rate applicable to sale or purchase of declared goods taking place inside a State and secondly the Parliament under clause (b) of sub-section (2) of section 8 could not adopt in respect of the goods covered by that clause a rate higher than 10 per cent as fixed under a State law. I may straight-away deal first with the second argument pertaining to the adoption of rates of tax fixed under the State Act by virtue of clause (b) of sub-section (2) of section 8 of the Central Act. Admittedly, in the State of Punjab and Haryana, the maximum rate of sales-tax fixed on sale or purchase of goods falling under clause (b) and that too on luxury goods is ten per cent as given in the first proviso to sub-section (1) of section 5 of the State Act. Therefore, in so far as the goods falling within the scope of clause (b) of sub-section (2) of section 8 of the Central Act are concerned, it is the rate of 10 per cent fixed by Parliament under clause (b), which will be made applicable to sales effected in the course of inter-State trade or commerce and assessable in these two States under the Central Act. To such sales of these goods, the rate fixed under the State Act will not apply. It is only the rate of 10 per cent fixed by the Parliament under the said clause (b) that will apply to these transactions. Thus there does not arise the question of adoption of the rate of tax fixed by the sales tax law in force in these two States by virtue of clause (b) of sub-section (2) of section 8 of the Central Act in so far as the goods covered by that clause are concerned. Apart from disposing of the second argument on this short ground, let me consider both these points together to determine, if the mere adoption of rate by Parliament under clauses (a) and (b) of sub-section (2) of section 8 of the Central Act amounts to delegation of legislative power. In order to answer that question, reference to certain Sections of the Central Act *vis-a-vis* those of the State Act is necessary to discover what exactly the Parliament has done. By virtue of the provisions of section 8(2) (a) and (b) of the Central Act, the Parliament has not in any way legislatively affected the charging section, section 4 of the State Act determinative of liability to pay tax. It has simply adopted the rate of tax which has been fixed under the provisions of the State Act as detailed earlier. The argument pressed is that such adoption by Parliament amounts to abdication of its legislative function in favour of the State legislature. The Central Act has in section 2(c) defined the term,

'dealer' and in section 2(j) the expression, 'declared goods'. The Parliament has formulated in the Central Act the principles for determination as to when a sale or purchase of goods could be said to have taken place in the course of inter-State trade or commerce by enacting section 3. As to when such sale or purchase could be said to take place outside a State is provided in section 4 of the Central Act. Section 6 of the Central Act is the charging section. It deals with liability to pay tax on sales effected in the course of inter-State trade or commerce. Section 7 deals with the registration of dealers liable to pay tax under the Central Act. These sections incorporate the basic principles of legislative policy and carry into effect the underlying object of that Act. On the subjects covered by them, no inspiration is to be derived from the corresponding provisions of the State Act as referred to earlier much less their being adopted under any of these provisions of the Central Act. Adoption of rates or State Act under section 8(2) of the Central Act in no way influences their material content or detracts from them. Section 8(2) only provides for the mode of determination of rates of tax applicable by the adoption of rates of tax fixed by State legislature. Such an adoption is not an indispensable part of legislative obligation or policy. Adoption of rates cannot result in either abdication of legislative power or amount to its excessive delegation.

(27) In a special reference made by the President of India, under article 143 of the Constitution; the question referred to the Supreme Court was as to whether extension with certain modifications of the Acts passed by State legislatures to the territory of Delhi under section 7 of the Delhi Laws Act; 1912; was constitutionally valid. Fazl Ali, J., who delivered the majority judgment of the Court (4) observed as follows:—

> "The power of introducing necessary restrictions and modifications in the provisions in question is incidental to the power to apply or adapt the law. The modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure of the essential purpose to be served by it. The power to modify certainly involves a discretion to make suitable changes, but it would be useless to give an authority the power to adapt a law without giving it the power to make suitable changes."

(4) A.I.R. 1951 S.C. 332.

His Lordship further observed as under :—

"Before I conclude, I wish to make a few general observations here on the subject of 'delegated legislation' and its limits, using the expression once again in the popular sense. This form of legislation has become a present-day necessity and it has come to stay—it is both inevitable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the legislative details and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked but by those, who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightaway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary and utilize the results of its investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise."

(28) In particular, the question whether a legislative authority should itself fix the rates of taxation or it can delegate that power and would such delegation be constitutionally valid came up for consideration before the Supreme Court in *Pandit Banarsi Das Bhanot* v. *State of Madhya Pradesh* (5). In this case constitutional vires of Section 6(1) and (2) and item 33; Schedule II of the C.P. and Berar Sales Tax Act, 1947 was challenged on the plea of excessive delegation of legislative power within the scope of article 245

(5) A.I.R. 1958 S.C. 909.

of the Constitution. It was held that the power conferred on the State Govermnent by section 6(2) of the Act to amend the Schedule relating to exemption is in consonance with the accepted legislative practice and is not unconstitutional. Their Lordships observed as follows :—

> "On these observations, the point for determination is whether the impugned notification relates to what may be said to be an essential feature of the law and whether it involves any change of policy. Now, the authorities are clear that it is not unconstitutional for the legisltaure to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied, *the rates at which it is* to be charged in respect of different classes of goods and the like."

(29) The Counsel appearing on behalf of the petitioner strongly relied on the decision given by the Supreme Court in *B. Shama Rao v. Union Territory of Pondicherry* (6), By Section 2(1) of the Pondicherry General Sales Tax Act, No. X of 1965, the Madras General Sales Tax Act, 1959 was extended to the territory of Pondicherry. A notification was issued under Section 1(2) of Pondicherry Act No. X of 1965 enforcing the provisions of the Madras General Sales Tax Act from a certain date. The legislature of the State of Mdaras amended various Sections of the Act after the Pondicherry Act had been enforced, but before the notification under Section 1(2) of that Act had ben issued. Subba Rao C. J., who delivered the judgment of the majority held:—

> "It cannot be held that the Act was not void and still born because it contained certain provisions independently of the Madras Act, viz., Section 30, which provided for the appellate tribunal and the schedule, which contained description of goods, the point of levy and the rates at which tax was to be levied. The core of taxing statute is in the charging Section and the provisions levying such a tax and defining persons, who are liable to pay such tax. If that core disappears the remaining provisions have no efficacy."

(6) A.I.R. 1967 S.C. 1480.

(30) That case is obviously distinguishable. It is the amendments by the legislature of the State of Madras, which were effected in various Sections of the Madras Act including the charging Section and about the persons, who could be proceeded against as assessees, which were enforced by the notification without at first having been extended to the territory of Pondicherry under Section 2(1) of the Pondicherry Act. No such question arises in the adoption of the rates of the State Act with the aid of Section 8(2) of the Central Act.

(31) While considering the vires of Section 15 of the Central Act on the plea that that Section provided for unguided delegation to the administrative authorities in matters of impost of sales-tax, their Lordships of the Supreme Court in *Messrs Rattan Lal and Co. and another, etc.* v. *The Assessing Authority, Patiala and another* (7), observed as follows:—

> "It is contended that there is a delegated legislation in that the maximum has been provided without indication of the circumstances, under which the tax is to be levied. This, it is said, creates unguided delegation to administrative authority, the function of the legislature. It is to be noticed that the Central Act itself gives power to the legislature to choose a rate of tax at not more than 3 per cent of the taxable turnover. The tax levied is well within that limit and, therefore, the legislature has chosen the maximum and has left it free to the authorities to impose the tax within that maximum regard being had to the requirements of revenue and the expenditure necessary for the State."

(32) The question raised on behalf of the petitioner is amply answered by the above observations of the Supreme Court.

(33) On behalf of the State, strong reliance was placed on the *State of Madras* v. *N. K. Nataraja Mudaliar* (8). The question mooted in the case was as to whether in the face of articles 301 and 303 of the Constitution providing for freedom of trade, commerce and intercourse and for prohibition against preference of one State over another

(7) A.I.R. 1970 S.C. 1742.
(8) (1968) 22 S.T.C. 376.

or discrimination between one State and another, adoption by the Central Act of varying rates of sales tax in force in various states under the State laws was constitutionally valid. Their Lordships observed as follows:—

> "An Act, which is merely enacted for the purpose of imposing tax, which is to be collected and to be retained by the State does not amount to a law giving or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, *merely because varying rates of tax prevail in different States.*
>
> The flow of trade does not necessarily depend upon the rates of sales tax, it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. It is where differentiation is based on considerations not dependent upon natural or business factors, which operate with more or less force in different localities that Parliament is prohibited from making a discrimination. *Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another.*
>
> By leaving it to the States to levy sales-tax in respect of a commodity on intra-State transactions, no discrimination is practised; and by *authorising the State from which the movement of goods commences to levy on transactions of sale Central Sales Tax at rates prevailing in the State,* subject to the limitation set out above, no discrimination can be deemed to be practised.
>
> Article 303 prohibits the making of law, which gives or authorises the giving of, any preference to one State over another, or makes or authorises the making of, any discrimination between one State and another. *Prevalence of different rates of sales tax in the States, which have been adopted by the Central Sales Tax Act for the purpose of levy of tax under that Act is not determinative of the giving of preference or making a discrimination.*"

(34) The *ratio decidendi* of the above judgments of the Supreme Court cited on behalf of the State point out that the adoption of the

rates of tax fixed under a State sales tax law by Section 8(2) of the Central Act cannot be held to suffer from constitutional invalidity.

(35) When the case came up before P. C. Pandit and Sandhawalia, JJ., the correctness of the decision given in *Messrs. Rattan Lal and Co.* v. *The State of Punjab* (7) (supra) was challenged. In that case, the counsel for the assessee relied strongly upon the Madras High Court decision given in *Larsen and Toubro Ltd., Madras* v. *Joint Commercial Tax Officer* (9). The Madras High Court struck down Section 8(2), (2-A) and (5) of the Central Act as being violative of articles 301 and 303 of the Constitution on the ground of the Parliament having adopted different rates in force in different States. The High Court took the view that application of different rates in force in States impaired the free flow of commerce and trade from one State to another and, therefore, contravened the said articles. This judgment of the Madras High Court has been over-ruled by the Supreme Court *in the State of Madras* v. *N. K. Nataraja Mudaliar* (8) (supra). The view taken by the Supreme Court that adoption of different rates was not at all violative of these articles has already been reproduced. I fully agree with the view taken by P. C. Pandit and Sandhawalia, JJ. in that judgment in holding that the adoption of the rates in force under the State Act in pursuance of the provisions of Section 8(2) of the Central Act does not amount to abdication of legislative power on the part of Parliament.

(36) The above referred to observations as reproduced from the judgments given by the Supreme Court in *Special Reference in Delhi Laws case* (4), *in Pandit Banarsi Dass Bhanot* v. *State of Madhya Pradesh* (5), *in Messrs Rattan Lal and Co. and another* v. *The Assessing Authority, Patiala and another* (7) *and in State of Madras* v. *N. K. Nataraja Mudalliar* (8), admit of no doubt that the adoption of the rates of tax applicable to sale or purchase of goods under the State sales tax law by the provisions of Section 8(2) of the Central Act cannot be struck down as constitutionally invalid.

Point No. 2.

(37) Section 9 of the Central Act deals with the power of levy and collection of tax and penalties under the Central Act. Its subsection (2), which has been set out earlier provides for the following:—

(i) that the authorities empowered to levy and collect tax or penalty under the sales tax law of the appropriate State

(9) (1967) 20 S.T.C. 150.

shall exercise those powers under the Central Act as if the tax or penalty was payable under that State law. Thus the same functionaries, namely, Assessing Authority, Appellate Authority and other authorities exercising powers under a State law have been empowered to deal with the levy and collection of tax and impose and recover penalties as provided in the provisions of the Central Act.

(ii) that while these authorities are so functioning, they will exercise all or any of the powers and follow the procedure as provided by the sales tax law of the appropriate State. In other words, the provisions of the State law relating to returns, assessments, advance payment of tax etc., shall apply to levy and collection of tax or penalties under the Central Act.

(iii) The remedial provisions pertaining to appeals, revisions, reviews, references etc. under a State law shall be utilised for carrying into effect the provisions of the Central Act.

(38) Thus, by virtue of sub-section (2) of Section 9 of the Central Act, the functionaries under a State law have been utilised for administering the law as provided in the Central Act. The procedural provisions for assessment of tax and imposition of penalties under the Central Act to be followed will be the same as given in the State law and the same course of remedies by way of appeals, revisions, references, reviews etc. will be available to parties aggrieved of the orders passed in relation to the provisions of the Central Act. There exists power in the Parliament in respect of a law exclusively legislable by it and in force in a State to confer powers and impose duties by that law upon that State and its authorities as may be necessary for administration of that law. That power is embodied in clause (2) of article 258 of the Constitution. It runs as follows :—

"(2) A law made by Parliament, which applies in any State, may, notwithstanding that it relates to a matter with respect to which the legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof."

(39) It is in exercise of that power that Section 9 (2) of the Central Act has been enacted. Availing of the services of the hierarchy

of the functionaries functioning under the State Act and conferment of powers on them, providing for procedure to be followed by them and imposition of duties upon them in terms of the procedural, remedial and other provisions devised thereunder to enable them to administer various provisions of the Central Act falls squarely within the scope of clause (2) of article 258 and cannot legitimately be contended to be unauthorised or excessive delegation on the part of the Parliament in favour of the State or the authorities administering the State Act.

(40) The provisions of Section 150 of the Delhi Municipal Corporation Act, 1957 conferring power upon Delhi Municipal Corporation to levy taxes came up for consideration before the Supreme Court in the *Municipal Corporation of Delhi* v. *Birla Cotton Spinning and Weaving Mills, Delhi and another* (10), on the point of controversy that the Section suffered from excessive delegation. Section 150 of the Act provides that the Corporation could levy any kind of optional tax by prescribing the maximum rate of tax to be levied, to fix class or classes of persons or the description or descriptions of articles and properties to be taxed and to lay down the system of assessment and exemptions, if any to be granted. Majority of the Constitution Bench comprising seven Judges took the view that the said Section did not suffer from excessive delegation and was constitutionally valid.

(41) The point of constitutional vires as now raised in respect of Section 9(2) of the Central Act was examined by a Division Bench of this Court in *Messrs. Auto Pins* v. *State of Haryana* (2) (supra) with reference to sub-section (3) of Section 9 of the Central Act as it stood prior to its amendment. Now that provision corresponds to sub-section (2) of Section 9 of that Act. It was held that adoption by Parliament of the existing legislation on the subject of sales-tax in force in States for collection of sales-tax under the Central Act did not suffer from excessive delegation. I concur with the view taken by the Division Bench in *Messrs. Auto Pins's case* (2) that sub-section (3) of Section 9 now substituted by sub-section (2) of Section 9 of the Central Act does not suffer from the vice of excessive delegation.

(42) Next, it is contended that Sections 9 and 10 of the Central Sales Tax (Amendment) Act, 1969, giving retrospective effect to the

(10) A.I.R. 1968 S.C. 1232.

amendments introduced in the principal Central Act are violative of article 14 of the Constitution. Section 9 of the Amendment Act provides that any order pertaining to the levy or collection of any tax made purporting to have been made or any action taken under the provisions of the principal Central Act before June, 9, 1969, when the Amendment Act came into force, shall be deemed to be as valid and as effective as if the order had been made or action had been taken under the Central Act as amended by the Amendment Act as if the Central Act so amended was in force on the date, when the order was passed or action was taken. Section 9 of the Amendment Act gives retrospective operation to the amendments effected by that Act in order to render nugatory the effect of the judgment delivered by the Supreme Court in *State of Mysore* v. *Lakshminarasimhian Setty and Sons* (1) (supra) which necessitated the enactment of the Amendment Act. Parliament has power as much to make a law prospectively as it has to give the law a retrospective effect or operation. By virtue of Section 9 of the Amendment Act, retrospective effect has been as if the Central Act as amended by the Amendment Act was in force on the date when an order was passed or an action was taken. This section *per se* does not reflect any element of discrimination in its retrospective operation or applicability.

(43) Section 10 of the Amendment Act provides that dealers registered under the Central Act, who had effected sales of goods in the course of inter-State trade of commerce during the period commencing from the date of the judgment given by the Supreme Court in *State of Mysore* v. *Lakshminarasimhian Setty and Sons* (1), on November 10, 1964 and terminating on June 9, 1969, when the Amendment Act came into force and who did not collect any tax under the principal Central Act on the ground that no tax could have in the absence of the enforcement of the Amendment Act, been levied or collected in respect of such sales, shall not be liable to pay tax under the principal Central Act as amended. On the basis of this Section, it is urged that the section discriminates between dealers. who had, under the Central Act as it stood prior to the enactment of the Amendment Act not collected tax and dealers, who had collected tax. Section 10 fixes the period, during which the dealers not having collected any sales-tax have been rendered exempt from liability to pay tax. That period extends from the date of the judgment of the Supreme Court to the date the Amendment Act came into force. It is quite fair and reasonable to exclude from the scope of exemption from liability to pay tax those dealers, whose sales were effected

during the said period and had collected tax. If the dealers, who had not collected tax in terms of the view as to their liability not to pay tax as taken by the Supreme Court on the date of its judgment up to the date the Amendment Act came into force, and up to which date that judgment otherwise remained operative and held the field, they could not be fastened with liability to pay tax. It will not be just and equitable to burden such dealers with liability to pay tax, which they had not collected at all. On the other hand, it will not be fair and proper to allow the dealers, who had collected the tax in respect of the sales effected in the course of inter-State trade or commerce during the period from November 10, 1964 to June 9, 1969, to retain and appropriate the tax collected by them. It will be unreasonable to demand tax from the dealers, who had not collected tax in respect of sales effected during the said period as the view taken by the Supreme Court did not enable them to do so. Section 10 has thus for the purpose of the application of the Amendment Act created two classes of dealers registered under the Central Act. One class is of those, who had not collected any tax at all during the relevant period. The other is of those, who had collected tax in the course of the said period. The two classes stand on a different footing. Under Section 10, exemption has been granted only to those, who had not collected tax at all whereas others, who had collected tax and constitute second class have by virtue of section 10 read in conjunction with section 9 of the Amendment Act been denied exemption from liability to pay tax because of their having actually collected the tax. There is rational about the classification. It is given in the statement of objects and reasons prefacing the Amendment Act that as a result of the judgment given by the Supreme Court in *State of Mysore* v. *Yaddalam Lakshminarasimhian Setty and Sons* (1), there arose the necessity of not allowing the dealers, who had collected tax to retain it for themselves, and rendering exempt the other dealers, who had not collected any tax at all by retrospective effect being given to the Amendment Act. The class of dealers, who had collected the tax have reasonably been placed on a different footing from those, who had not collected any tax. Thus the differentiation between the two classes of dealers is founded on a justifiable ground and has been devised to achieve one of the objects of the Act. There does exist nexus between the object of the Amendment Act and the classification engendered by Section 10 of the Act. Thus the argument that Section 9 of the Amendment Act contravenes article 14 of the Constitution has no substance.

(44) The question of vires of sections 2, 5, 8 and 9 of the Andhra Pradesh General Sales Tax (Amendment) Act No. IX of 1970, enforced retrospectively was recently raised before the Supreme Court in *Jonala Narasimharao.* v. *State of Andhra Pradesh* (11), on the ground that these provisions were violative of article 14 of the Constitution inasmuch as the dealers, who had collected the tax had been discriminated against the dealers, who had not collected any tax. While repelling the type of argument as raised in the present case, their Lordships observed that the tax that had already been collected, no doubt at first illegal, but due to the amendment Act that collection has become legal and as a dealer he is liable to pay that amount to the State in respect of the assessments made, that as there was nothing to show that what was sought to be recovered from the dealer was more than what he had collected, he has not suffered any loss nor any disadvantage, which would entitle him to seek remedy under article 226 of the Constitution, that the dealers, who had not collected the tax could not have collected it as the law stood and, therefore, the legislature did not think it just or proper to collect tax from those, who were not liable and that even this exemption has been given only to those persons, who could establish that they had not in fact collected it.

Point No. 4.

(45) The last point raised is that baled cotton is cotton and tax on the packing material of hessian and bardana has to be the same as prescribed for cotton.

(46) In the impugned order, respondent No. 1 has for the purpose of assessment on the hessian and bardana bifurcated baled cotton into two parts. He charged three per cent tax on bardana and hessian, in respect of which 'C' forms had been produced while he charged 10 per cent on bardana and hessian, for which no 'C' forms had been submitted. It is urged on behalf of the petitioner that this bifurcation is not open to the Assessing Authority. Cotton is one of the commodities described as 'declared goods' as defined in section 2(c) of the Central Act. In item (ii) under Section 14 of the Central Act, 'cotton' has been defined as 'all kinds of cotton, indigenous or imported in its unmanufacture state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste. Thus, baled cotton is cotton. It is covered with and packed in hessian and tightened by bardana. This bifurcation resorted to by respondent No. 1 is not

(11) C.A. Nos. 2116 and others of 1970 decided on 5th April, 1971.

permissible. In this aspect of the matter, the case of the assessee requires reconsideration in so far as the levy of tax at the rate of 10 per cent upon the portion of taxable turnover of baled cotton pertaining to hessian and *bardana* is concerned. The assessee is liable to be charged on hessian and *bardana* without bifurcation and at the rate at which cotton has been charged. The part of the assessment order relating to the levy of tax on hessian and *bardana* at 10 per cent is quashed. The rest of the order will remain intact. Respondent No. 1 directed to reconsider the levy of tax at the rate of 10 per cent in respect of hessian and *bardana* without its bifurcation after giving an opportunity of hearing to the petitioner.

(47) Subject to the direction given above, Writ Petitions Nos. 3838, of 1968, 317, 651, 2092, 2093. 2300, 2500 and 2918 of 1969, 68, 543, 1058, 2466, 2467, 2468 and 2469 of 1970 are dismissed. There will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

B. R. TULI, J.—I agree.

K.S.K.

FULL BENCH

Before Harbans Singh, C.J., Gurdev Singh and Prem Chand Jain, JJ.

GRAM PANCHAYAT, MURTHAL,—*Petitioner.*

versus

THE LAND ACQUISITION COLLECTOR,—*Respondent.*

Civil Revision No. 732 of 1970.

May 27, 1971.

Land Acquisition Act (1 of 1894)—*Section* 18(2)—*Limitation Act* (*XXXVI of* 1963)—*Sections* 12 *and* 29—*Application for reference under section* 18(2)—*Computing the period of limitation for—Time spent in obtaining the copy of the award—Whether to be excluded—Such application—Whether an application for setting aside the award as envisaged by section* 12(4), *Limitation Act.*

Held, that under sub-section (2) of section 12 of Limitation Act, a party is entitled to deduct time requisite for obtaining a copy of the decree,