SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Central Provinces Manganese Ore Co. Ltd.

C.A.Nos. 446-449 and 450-453 of 1976

(A. N. Ray, C.J.I., M. H. Beg and P. N. Shinghal, JJ.)

29.10.1976

JUDGEMENT

BEG, J.:-

1. The eight appeals before us by special leave arise out of four Sales Tax References under Section 23 (1) of the Central Provinces and Berar Sales Tax Act, 1947, (hereinafter referred to as 'the Act'). Six common questions arose here relating to assessments for different periods on identically similar facts stated below. Five of these were decided by a Division Bench of the Bombay High Court. As it answered the main question determining liability to pay the sales tax under the Act against the State, there are four appeals against it by the State. The sixth question, which was one of law only, was referred by the Division Bench to a Full Bench, and, this was determined in favour of the State. There are, therefore, four appeals by the assessee against the Full Bench decision.

2. M/s. Central Provinces Manganese Ore Co. Ltd., the assessee, has its Head Office in London. It carries on business on an extensive scale. It owns 22 manganese ore mines in Madhya Pradesh from where manganese ore, after being excavated, is sent mostly abroad through different ports. The

Company is a registered dealer under the Act. It used to enter into contracts at places outside Madhya Pradesh for the despatch of what came to be known, in the special parlance of this company's business, as "Oriental Mixture". But, the contracts contain specifications only of strengths of manganese ore to be supplied with permissible percentages of other ingredients as admixtures. The term "Oriental Mixture" was evidently employed by the Company itself to describe a particular type of conglomerate which the unloading at one place of various types of manganese ore produced. The required average consistency or strength of manganese ore specified in the contracts, which did not contain a reference to any "Oriental Mixture", was said to be obtained in the course of this mechanical process of transportation when various grades of manganese ore were heaped together. These grades of manganese ore were transported, in railway wagons, from one or more mines, and, it appears that the order in which trucks were loaded in goods trains and unloaded was also so arranged that the mixture came into existence, as described above, in the mere process of unloading at the Port. But, this procedure did not seem to involve a process of "Manufacture", as that term is ordinarily understood, to which the assessee could be said to have subjected its manganese ore.

3. The case of the assessee company was that the "Oriental Mixture" as a taxable commodity came into existence only after the ores got mixed up in the process of unloading and not before so that it could not be taxed as "goods in existence" in Madhya Pradesh at the time when contracts relating to these goods were made. This is the crucial and simple question, largely one of fact which resulted in considerable argument before the High Court and before us also. Other questions appear to be subsidiary. Nevertheless, we have to consider them before coming to the crucial question which is : Is the process described above one of "manufacture" so that a new kind of goods, known as "Oriental Mixture" came into existence at the port where manganese ore trucks were unloaded ?

4. As the High Court pointed out, the periods involved in the four references before it were not governed by the provisions of the Constitution. They related to the following periods :

1. Reference No. 17 of 1964 for the period 1st January, 1947 to 30th September, 1947.

2. Reference No. 18 of 1964 for the period 1st October, 1947 to 31st December, 1948.

3. Reference No. 19 of 1968 for the period 1st January, 1949 to 31st December, 1949.

4. Reference No. 20 of 1964 for the period 1st January, 1950 to 25th January, 1950.

We, therefore, agree with the High Court's view that Article 286 of the Constitution, which is not retrospective in operation, could not help the assessee merely because it was there at the time of assessment.

5. The next question to be considered, which was referred to the Full Bench, flows from Explanation (II) to Section 2(g) of the Act which was amended by the C.P. and Berar Sales Tax (Amendment) Act No. XVI of 1949. Hence, the law, as found after the amending Act, could apply, if valid, only to the last two references. But, the question which arose, on the assumption that the amendment was ineffective, was whether the unamended law could be applied at all after the purported amendment.

6. Section 2 (g) of the Act, with its two explanations, before it was amended, may be reproduced here in toto. It reads as follows :

"2 (g) 'sale' with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in course of the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge :

Explanation (I) : A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale;

Explanation (II) : Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in the Central Provinces and Berar at the time when the contract of sale as defined in that Act in respect thereof is made, shall, wherever the said contract of sale is made, be deemed for the purpose of this Act to have taken place in the Central Provinces and Berar."

Section 2 of the Amending Act of 1949 provided :

"2. In Section 2 of the Central Provinces and Berar Sales Tax Act 1947 (hereinafter referred to as the said Act), -

(a) in clause (g) for Explanation (II) the following shall be substituted :-

Explanation (II) : Notwithstanding anything to the contrary in the Indian Sale of Goods Act 1930, the sale or purchase of any goods shall be deemed for the purposes of this Act, to have taken place in this province, wherever the contract of sale or purchase might have been made -

'(a) if the goods were actually in this province at the time when the contract of sale or purchase in respect thereof was made, or

(b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced or found in this province at any time after the contract of sale or purchase in respect thereof was made."

7. The submission made on behalf of the assessee, which was accepted by the High Court was that, as the amendment did not receive the assent of the Governor General under Section 107 of the Govt. of India Act, it was void. It was, however, also urged, on behalf of the assessee, that a repeal of the previously existing section did not require the assent of the Governor General at all. The argument was that the original provision was validly repealed, but, as no substitution of the new provision could take place, because the assent of the Governor General was not obtained, only the repeal survived. The result of accepting such a submission would be that the substitution will have to be split up into two distinct enactments; firstly, a repeal of the original Section 2 (g) of the Act; and, secondly, the substitution of the new provision for the repealed one. The assessee's argument was that two process, one of repeal and another of substitution are necessarily implied in such an amendment as the one before us. It was urged that both had received the assent of the Governor, but, since the substituted provision alone required the assent of the Governor General, which was not obtained, a repeal, which was assented to by the Governor, stood on its own separate footing. Thus, the result was said to be a repeal simpliciter without the enactment of the fresh provision meant to replace it.

8. It was submitted that the High Court, after finding the substituted provisions of Section 2 (g) of the Act to be invalid, had erred in holding that the repeal was also ineffective. It was contended that such a view resulted in attributing to the legislature an intention contrary to that which it had unmistakably expressed by repealing the unamended provision. It was urged that the repeal, which was clearly intended, must be held to be valid. According to this submission, neither the old unamended provision nor the replacement of it were in operation during the last two assessment periods. Of course, this argument assumes that the repeal and the new enactment are separate.

9. In Shriram Gulabdas v. Board of Revenue, Madhya Pradesh, (1952) 3 STC 343 at p. 367 = (AIR

1952 Nag 378 at p. 387) which was cited before us, it was held, on the question argued before us (at pp. 366-367) (of STC) = (at pp. 386-387 of AIR):

"..... we have already shown that the second explanation to clause (g) of Section 2, which makes an agreement of sale may have taken place outside the province, is not ultra vires the Provincial Legislature. We must make it clear that our answer to this question is in the affirmative, free from considerations arising under Article 286. We have shown that the necessary power to make the unamended explanation did exist in the State Legislature; but we have also made it clear that by virtue of Article 286 the explanation can no longer be enforced because under the present Constitution the sales tax can only be collected at the market end where the goods are delivered for consumption. We may also state that the amended Explanation II is not validly enacted because it makes drastic changes in the rules as found in the Sale of Goods Act without obtaining the assent of the Governor-General. The effect of the amended explanation going out would be to rehabilitate the old explanation as it existed because the amendment being unconstitutional, will fail to work any change in the law (see the opinion given by one of us, Hidayatullah, J., in Laxmibai v. The State, (ILR (1951) Nag 563, 608, 610) = (AIR 1951 Nag 94 at pp. 109-110) (FB)."

10. No question relating to the enforcement of the sales tax by any collection to be made after the Constitution came into force was raised in the cases before us. Only questions relating to taxability arise here. As we have already indicated, Article 286 does not stand in the way of taxability. This was held to be the correct position in the case of Shriram Gulabdas, (AIR 1952 Nag 378) (supra). It was also clearly held there that the result of the invalidity of the amended explanation was to leave the law unaltered as it stood before the amendment. We approve of this pronouncement made long ago on this very question.

11. It was urged on behalf of the assessee that the case of Shriram Gulabdas, (AIR 1952 Nag 378) (supra) contained what was merely an observation with regard to the "rehabilitation" of the pre-existing law as that question was not directly under consideration there. It was also submitted that this observation must be deemed to have been overruled by subsequent pronouncements of this Court.

12. The passage cited above by us occurs in answering the fifth question considered there which was framed as follows :

"(v) whether Explanation II to clause (g) of Section 2, which makes an agreement of sale taxable even though the sale may have taken place outside the province, is ultra vires of the Provincial Legislature ?"Other questions framed indicate that it was not only the validity of the provision, both before and after its amendment, which was directly considered and pronounced upon but the application of the concept of sale under the unamended law and its effects were also under consideration. Therefore, we think that the decision was directly on a question which necessarily

arose for determination before the Court on that occasion. We think that the view that the unamended law was in operation was not a mere obiter dictum. It was necessary to decide that question before other questions could be determined. We given out reasons below for accepting the correctness of the view taken there.

13. The following passage was also cited from Koteswar Vittal Kamath v. K. Rangappa Baliga and Co., AIR 1969 SC 504 at p. 509 = (1969) 3 SCR 40 at p. 47.

"Learned counsel for the respondent, however, urged that the Prohibition Order of 1119 cannot, in any case, be held to have continued after 8-3-1950 if the principle laid down by this Court in Firm Mehtab Majid and Co. v. State of Madras, (1963) Sup 2 SCR 435 = (AIR 1963 SC 928) is applied. In that case, Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules. 1939, was impugned. A new Rule 16 was substituted for the old Rule 16 by publication on September 7, 1955, and this new rule was to be effective from 1st April. 1955. The Court held that the new Rule 16 (2) was invalid because the provisions of that rule contravened the provisions of Article 304 (a) of the Constitution. Thereupon, it was urged before the Court that, if the impugned rule be held to be invalid, the old Rule 16 gets revived, so that the tax assessed on the basis of that rule will be good. The Court rejected this submission by holding that :

'Once the old rule been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid.'

On that analogy, it was argued that, if we hold that the Prohibition Order of 1950 was invalid, the previous Prohibition Order of 1119 cannot be held to be revived. This argument ignores the distinction between supersession of a rule, and substitution of a rule. In the case of (1963) Supp. 2 SCR 435 = (AIR 1963 SC 928) (supra), the new Rule 16 was substituted for the old R. 16. The process of substitution consists of two steps. First, the old rule is made to cease to exist, and, next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect and it was for this reason that the Court held that, on declaration of the new rule as invalid, the old rule could not be held to be revived."

14. In the above mentioned passage, this Court merely explained the argument which was accepted in the case of Firm Mehtab Majid and Co. v. State of Madras, (1963) Supp 2 SCR 435 = (AIR 1963 SC 928). After doing so, it distinguished the facts in Koteswar's case (AIR 1969 SC 504) (supra) relating to an alleged substitution of one Prohibition Order by a subsequent order which was found to be invalid. It recorded its conclusion as follows (at p. 509) :

"In the case before us, there was no substitution of the Prohibition Order of 1950 for the Prohibition

Order of 1119. The Prohibition Order of 1950 was promulgated independently of the Prohibition Order of 1119, and because of the provisions of the law it would have had the effect of making the Prohibition Order of 1119 inoperative if it had been a valid order. If the Prohibition Order of 1950 is found to be void abinitio it could never make the Prohibition Order of 1119 inoperative."

15. The argument before us is that since the word "substituted" is used in the amending Act of 1949, it necessarily follows that the process embraces two steps : One of repeal and another of the new enactment But, this argument is basically different from the argument which prevailed in Koteswar's case (supra) where a distinction was drawn between a "substitution" and "super-session". It is true that, as the term substitution was not used there, the old rule was not held to have been repealed. Nevertheless, the real basis of that decision was that what was called supersession was void ab initio so that the law remained what it would have been if no such legislative process had taken place at all. It was held that the void and inoperative legislative process did not affect the validity of the pre-existing rule. And, this precisely what is contended for by the state before us.

16. In the case before us although the word "substitution" is used in the amending Act, yet, the whole legislative process termed substitution was itself abortive. The whole of that process did not take effect as the assent of Governor-General, required by Section 107 Govt. OO India Act, was lacking. Such ineffectiveness was the very reason why, in the case of Shriram Gulabdas, (AIR 1952 Nag 378) (supra), it was held that the previous law stood unaffected by the attempted legislation called substitution. Moreover, the case of Shriram Gulabdas (supra) is a direct authority on the very provisions now before us. Other cases cited are on very different legislative provisions.

17. We do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed the natural meaning of the word "substitution" is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words "shall be substituted." This part could not become effective without the assent of the Governor-General. The State Governor's assent was insufficient. It could not be inferred that, what was intended was that, in case the substitution failed or proved ineffective, some repeal, not mentioned at all, was brought about and remained effective so as to create what may be described as a vacuum in the statutory law on the subject-matter. Primarily, the question is one of gathering the intent from the use of words in the enacting provisions seen in the light of the procedure gone through. Here, no intention to repeal without a substitution, is deducible. In other words, there could be no repeal if substitution failed. The two were a part and parcel of a single indivisible process and not bits of a disjointed operation.

18. Looking at the actual procedure which was gone through, we find that, even if the Governor had assented to the substitution, yet, the amendment would have been effective, as a piece of valid legislation, only when the assent of the Governor-General had also been accorded to it. It could not

be said that what the Legislature intended or what the Governor had assented to consisted of a separate repeal and a fresh enactment. The two results were to follow from one and the same effective legislative process. The process had therefore, to be so viewed and interpreted.

19. Some help was sought to be derived by the citation of B. N. Tewari v. Union of India, (1965) 2 SCR 421 = (AIR 1965 SC 1430) and the case of Firm Mehtab Majid and Co,. v. State of Madras, (AIR 1963 SC 928) (supra). Tewari's case (supra) related to the substitution of what was described as the "carry forward" rule contained in the departmental instruction which was sought to be substituted by a modified instruction declared invalid by the Court. It was held that when the rule contained in the modified instruction of 1955 was struck down the rule contained in a displaced instruction did not survive. Indeed, one of the arguments there was that the original "carry forward" rule of 1952 was itself void for the very reason for which the "carry forward" rule, contained in the modified instructions of 1955, had been struck down. Even the analogy of a merger of an order into another which was meant to be its substitute could apply only where there is a valid substitution. Such a doctrine applies in a case where a judgment of a Subordinate Court merges in the judgment of the Appellate Court or an order reviewed merges in the order by which the review is granted. Its application to a legislative process may be possible only in cases of valid substitution. The legislative intent and its effect is gathered, inter alia, from the nature of the action of the authority which functions. It is easier to impute an intention to an executive rule making authority to repeal altogether in any event what is sought to be displaced by another rule. The cases cited were of executive instructions. We do not think that they could serve as useful guides in interpreting a legislative provision sought to be amended by a fresh enactment. The procedure for enactment is far more elaborate and formal. A repeal and a displacement of a legislative provision by a fresh enactment can only take place after that elaborate procedure has been followed in toto. In the case of any rule contained in an executive instruction, on the other hand, the repeal as well as displacement are capable of being achieved and inferred from a bare issue of fresh instructions on the same subject.

20. In Mehtab Majid and Co.'s case (AIR 1963 SC 928) (supra) a statutory rule was held not to have revived after it was sought to be substituted by another held to be invalid. This was also a case in which no elaborate legislative procedure was prescribed for a repeal as it is in the case of statutory enactment of statutes by legislatures. In every case, it is a question of intention to be gathered from the language as well as the acts of the rule making or legislating authority in the context in which these occur.

21. A principle of construction contained now in a statutory provision made in England since 1850 has been :

"Where an Act passed after 1850 repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into operation."

(See : Halsbury's Laws of England, Third Edn. Vol. 36, p. 474: Craies on "Statute Law", 6th Edn. p. 386).

Although, there is no corresponding provision in our General Clauses Act, yet it shows that the mere use of words denoting a substitution does not ipso facto or automatically repeal a provision until the provision which is to take its place becomes legally effective. We have, as explained above reached the same conclusion by considering the ordinary and natural meaning of the term "substitution" when it occurs without anything else in the language used or in the context of it or in the surrounding facts and circumstances to lead to another inference. It means, ordinarily, that unless the substituted provision is there to take its place, in law and in effect, the pre-existing provision continues. There is no question of a "revival."

22. This question of interpretation was referred separately to the Full Bench of the Bombay High Court which drew a distinction between the two meanings of the word "substituted"; firstly, where it involved a direction as to what would have to be removed or repealed simultaneously with another as to what was to be substituted, so as to involve two directions; and, secondly, where the "substitution" merely carried one direction to modify. It is difficult to see how a single direction to substitute would be effective without implying in it another to remove what was to be displaced. Perhaps more simply and correctly stated, the difference between two meanings of the word "substituted" is one where it stands for two separable legislative processes and another where it stands for one total or completed legislative procedure, including the assent of the Governor-General, which would be covered by the words "shall be substituted." The Full Bench came to the conclusion that, in the context in which the words directing substitution occur, they do not imply that, in the event of the failure of the amendment, taken as a whole, a repeal would survive. To be able to "survive" a repeal had first to come into existence. In the situation before us no repeal came into legal existence.

23. The real question for a determination is always one of the meaning of words used in a purported enactment in a particular context. We think that the Full Bench of the High Court correctly held that there was no repeal of the existing provision when "substitution", by means of an amendment, failed to be effective. It had also rightly distinguished some of the cases cited before it on the ground that, in those cases, the process for substitution was interpreted to necessarily imply both a repeal and re-enactment out of which only the repeal which took place had survived when the re-enactment proved abortive.

24. On the question whether the particular goods existed in Madhya Pradesh at all at the time of the contracts, so that the contract could be said to be referable to them, the High Court had observed :

"...the question was whether Oriental Mixture was present in the former State of Madhya Pradesh when the contracts of sale in respect of Oriental Mixture were made by the applicant company. On this point which was purely a question of fact, the decision of the second appellate authority was final and that decision was that Oriental Mixture in the form in which the contracts to sell that commodity were made was present in the State of Madhya Pradesh at the time when those contracts were made. Therefore, that point was not open for decision before the Tribunal and it is not necessary to dilate on the facts relating to that question."

It also said :

"In Commissioner of Sales Tax, Eastern Division, Nagpur v. Husenali Admaji and Co., (1959) 10 STC 297 = (AIR 1959 SC 887) there was no evidence that at the date when the agreement for sale was made, the particular logs delivered thereunder were in Central Provinces in the shape of logs at all, and a standing tree which was in existence at the date of agreement of sale and out of which the logs were later on prepared cannot be said to be the form of the commodity in respect of which the agreement of the sale was made. The Tribunal relied on the observations in the judgment of the Supreme Court at page 310 which are to the effect that the goods must, at the date of the contract, be there in the taxing State in the form in which they are agreed to be sold. In that case, the agreement of sale can be said to be in respect of those goods. Here, as found by the second appellate authority, ore in the form of Oriental Mixture was present in the taxing State when contracts of sale in respect of Oriental Mixture were made by the Head Office of the applicant company";

25. After giving the findings set out above, on the question whether the goods existed in the State of Madhya Pradesh when they were sold and whether the contracts were referable to these goods, the High Court proceeded to consider the question whether "Oriental Mixture" itself had come into existence in Madhya Pradesh or at the port where the goods forming the "Oriental Mixture" became mixed up in the process of unloading and transportation. Apparently, what the High Court had meant by its earlier findings was not that the "Oriental Mixture" was in existence in the Madhya Pradesh, but that the ingredients which went into its composition existed in Madhya Pradesh at the time when the contracts were made. It had finally reached the conclusion that the mixture itself was formed at the ports where the ingredients were unloaded.

26. We are unable to accept the High Court's reasoning that, while the goods which went into the composition of the "Oriental Mixture" existed in Madhya Pradesh when the contracts were made. Yet, they were not taxable in Madhya Pradesh because the "Oriental Mixture" came into existence at the port. In other words, it held that a mere mixture of goods, even if it occurs in the process of unloading. converts the goods, which existed in Madhya Pradesh and were transported to the port, into a separately identifiable commercial commodity known as "Oriental Mixture." As already mentioned above, this term is not used in the contracts but is a term employed by the firm itself to indicate the specifications contained in the contracts of goods ordered. It is difficult to see what process of manufacture is gone through so as to bring a new category or genus of commercial goods into existence at the port.

27. The High Court had relied on cases where raw tobacco subjected to various processes, such as sprinkling of jaggery juice or water on it and allowing it to ferment for some time before cutting it up and packing it, was held to become a new commodity. These cases were : State of Madras v. Bell Mark Tobacco Co., (1967) 19 STC 129 (SC) : The State of Madras v. Swasthik Tobacco Factory. (1966) 17 STC 316 = (AIR 1966 SC 1000): Anwarkhan Mehboob and Co. v. State of Bombay (now Maharashtra), (1960) 11 STC 698 = (AIR 1961 SC 213).

28. Reliance was also placed on behalf of the assessee on Shaw Wallance and Co. Ltd. v. State of Tamil Nadu. (1976) 37 STC 522 = (1976 Tax LR 1765 = AIR 1976 SC 1437), where it was held that goods were actually subjected to a process of manufacturing when chemical fertilisers and fillers like "China clay", "gypsum" and other ingredients, were mixed at a "mixing works" of a company, by means of shovels, so as to conform to a particular formula. It was held there by this Court that the resulting producet was a commercially distinct commodity. Several cases of manure mixtures are referred to in the case. Now, in the case of manure mixtures, made out of different ingredients, at a "mixing works", it can perhaps be said that a chemical process is gone through. In any case the product which came into existence was known and sold as a separate commercial commodity in the market. It required a process to be gone through at what were known as mixing works of the company to convert it into that commodity. On the other hand, in the case before us, it seems to us that what has been "manufactured" by the assessee is the name "Oriental Mixture" only if the term "manufacture" can be employed at all for anything done by the assessee. What is to be determined is whether there has been the manufacture of a new product which has a separate commercially current name in the market. The mere giving of a new name by the seller to what is really the same product is not the "manufacture" of a new product. There is, it appears to us, no new process of the manufacture of goods at all by the assessee before us.

29. Again, cases in which logs of wood were cut in order to convert them into planks (e.g. Shaw Bros. and Co. v. State of West Bengal, (1963) 14 STC 878 (Cal)) could be of no assistance in the case before us. That too could be a process of "manufacture". The High Court had also made a passing reference to Nilgiri Ceylon Tea Supplying Co. v. State of Bombay, (1959) 10 STC 500 (Bom) a case decided by the Bombay High Court, where different brands of tea, purchased in bulk and "without application of any mechanical or chemical process", were mixed so as to conform to a particular mixing formula, but this mixture was held not to constitute a fresh commodity as neither processing nor alteration of the ingredients of the tea in any manner had taken place. We think that the similarity of the process to which goods sold were subjected in this case seems to make the reasoning adopted in this case more properly applicable to the cases before us than any other found in other cases mentioned above.

30. In any event, we are unable to see how, without subjecting the various grades of ores. mixed up in the process of transporting, so as to conform to the specifications given in the contract, to a process of manufacture a new commercial product as it is know in the market could not result. The ingredients were not even shown to have got so mixed up as to become inseparable. As already

mentioned above this is a case in which the term "Oriental Mixture" was nothing more than a name given by the appellant company itself to the goods which were in the State of Madhya Pradesh at the relevant time and sent from there specially in order to satisfy the specifications given in the contracts. The goods get mixed up in the process of unloading. The mere fact that the specifications in the contracts are satisfied when they get mixed up is not a good enough ground for holding that a new product has been manufactured. They could, not more constitute a new commodity than parts of some machinery sent by its manufacturer to a purchaser outside a State, so that the buyer has to just fit in the various parts together, becomes a new commodity when the parts are fitted in. The mere fitting up of parts or a mixture of goods, without employing any mechanical or chemical process of manufacture, could not, we think, result in a new commodity.

31. We therefore, answer the following six questions before the High Court as follows :

Q.1. Was the Tribunal right in holding that although the assessment order was made after the Constitution of India came into force. Article 286 was thereby not contravened because such order related to a period prior to 26-12-1950?

Ans. Yes. The provisions of Article 286 were not contravened.

Q. 2. Was the Tribunal right in holding that Explanation (II) to Section 2 (g) as was originally embodied in the Sales Tax Act, 1947, got restored on the statute-book because of the unconstitutionality of the substituted explanation enacted in the Sales Tax (Amendment) Act, 1949?

Ans. There is no question of restoration of unamended Explanation (II) to Section 2 (g) as the purported amendment itself did not take effect. Hence, the unamended provision stood as it was before the attempted amendment. The question framed rests on a misconception that there was something to be restored. As nothing was taken away, nothing was there to be restored. And there was nothing added or substituted.

Q. 3. Does the Tribunal's decision not contradict the true meaning of the language "sale of any goods which are actually in the Central Provinces and Berar at the time when the contract of sale as defined in that Act in respect thereof is made", as occurring in Explanation (II) to section 2 (g) of the Sales Tax Act, with reference to "in respect thereof" is reference to "specified or ear-marked" goods which are actually present in the taxing State when the contracts are made?

Ans. This is a question of fact as to what contracts specify and whether those goods were taxed, on

which the findings already recorded are enough to dispose it of against the assessee.

Q. 4. In any case, was the Tribunal right in its interpretation, application and use of the provisions of original Explanation (II) to Section 2 (g) of the Sales Tax Act even as they were ?

Ans. Yes.

Q. 5. Was the Tribunal right in assuming the law to be that the existence of ingredients of ores in the taxing State in question, which were sufficient if and when mixed in due proportion for yielding different varieties of standard mixtures contracted for by the overseas buyers, was in law enough to attract the tax?

Ans. There is no question of assuming anything. The process which was revealed and findings of fact given on it show that it did not result in the production of a new commodity at the port. It was only manganese ore of different grades which was unloaded at the port and given the name of "Oriental Mixture" because the ingredients got mixed up automatically in transportation and satisfied certain specifications. No new commodity was produced in this process.

Q. 6: Was the Tribunal right in holding that the Sales Tax authorities had found as a fact that the goods consisting of oriental mixture were in the Madhya Pradesh State when the contracts in respect of these goods were made?

Ans. Yes.

32. Before we part with the case we may observe that the questions could have been much more lucidly and simply and less clumsily framed.

33. The appeals of the assessee company against the decision of the Full Bench are dismissed. The appeals of the State of Maharashtra against the judgment of the Division Bench are allowed. Parties will bear their own costs.

Order accordingly.