

Babu Ram Jagdish Kumar and Co.

Vs

State of Punjab and Others (Civil Appeal No. 1028 of 1976)

Civil Appeals Nos. 1028

(N. L. Untwalia, R. S. Pathak, E. S. Venkataramiah JJ)

04.05.1979

JUDGMENT

VENKATARAMIAH, J. -

1. In these appeals by special leave, we are called upon to pronounce on the validity of Section 31 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as 'the Act'), the notification dated January 15, 1968 issued thereunder by the Government of Punjab and the liability of the appellants to pay purchase tax under the Act in respect of the turnover relating to the purchases of paddy made by them during the relevant period.

2. The appellants are dealers in paddy and engaged in the business of millers in the State of Punjab. They buy paddy from growers or katcha adatias, convert it into rice and sell rice. Most of the rice manufactured by them is purchased by the State Government under food procurement orders.

3. A brief history of the relevant provisions of the Act is as follows :

3A. Under the Act as it was originally enacted, there was no provision levying tax on the purchase turnover of the goods dealt with by a dealer as defined in the Act. The Act amended by Punjab Act 7 of 1958 which received the assent of the Government on April 18, 1958 and the amending Act came into force at once. The amending Act brought about the following changes in the Act :

3-B. In the long title of the Act, after the word "Sale", the words "or purchase" were inserted. Clause (d) of Section 2 of the Act which defined the expression 'dealer' was amended so as to bring within the scope of that expression a person who purchased any goods in the course of trade or business. The turnover relating to purchases made by a dealer subsequent to the commencement of the amending Act of certain goods was made liable to payment of tax. The word 'purchase' was defined by clause (FF) of Section 2 which was introduced by the amending Act as follows :

2. (FF) 'purchase' with all its grammatical or cognate expressions, means the acquisition of goods other than sugarcane, foodgrains, and pulses for use in the manufacture of goods for sale for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge.

(The rest of the clause is not necessary for the purpose of these cases).

4. Section 4 of the Act was amended by imposing tax on purchases also subject to Section 5 and 6 of the Act. It is, however, seen from clause (FF) of Section 2 that the purchase of foodgrains was not covered by definition and remained unaffected by the above amending Act.

5. The Act was further amended by Punjab Act 13 of 1959 which deleted the words "other than sugarcane, foodgrains and pulses" in clause (FF) of Section 2. Section 6 of the Act was repealed and substituted by a new section which read as follows :

6. Tax Free goods. - (1) No tax shall be payable on the sale of goods specified in the first column of Schedule C subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax or purchase tax on the sale or purchase, as the case may be, of goods which are declared tax-free from time to time under this section.

(2) The State Government after giving by notification not less than three months' notice of its intention so to do may by like notification add to or delete from Schedule B or Schedule C and thereupon Schedule B or Schedule C, as the case may be, shall be deemed to be amended accordingly.

6. It is seen from the above provision that the turnover relating to the sale of goods mentioned in the first column of Schedule 'C' to the Act subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof was exempted from payment of tax.

7. By Punjab Act 24 of 1959, the above Section 6 was substituted by a new section which read as follows :

6. Tax free goods. - (1) No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exception, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sale tax on the sale of goods which are declared tax-free from time to time under this section.

(2) The State Government after giving by notification not less than three months' notice of its intention so to do, may be like notification add to or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly.

8. By Punjab Act 18 of 1960, clause (FF) of Section 2 of the Act which had undergone some alteration when Punjab Act 24 of 1959 came into force was substituted by a new clause which read :

2. (FF) 'Purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge.

9. The effect of the said amendment was that the turnover relating to the purchase of goods mentioned in Schedule 'C' to the Act became liable to tax subject to the other provisions of the Act. Section 4 of the Act was also amended by the introduction of sub-section (2-A) providing that notwithstanding anything contained in sub-sections (1) and (2) of Section 4 of the Act, no tax on the sale of any goods should be levied if a tax on their purchase was payable under the Act. Originally seven items of goods had been specified by the State legislature in Schedule 'C' to the Act. By the Punjab General Sales Tax (Amendment) Act, 1965 (Punjab Act 28 of 1965) Section 31 was inserted

in the Act authorising the State Government to amend Schedule 'C'. It read as follows :

31. Power to amend Schedule C. - The State Government, after giving by notification not less than three months' notice of its intention so to do, may by notification add to, or delete from, Schedule C any goods, and thereupon Schedule C shall be deemed to be amended accordingly.

10. The words 'three months' in the above section were substituted by 'twenty days' by Punjab Act 7 to 1967.

11. In exercise of the power conferred by the above provision, the State Government issued the notification on January 15, 1968 adding paddy and rice as items (8) and (9) in Schedule 'C'. The result was that the turnover relating to the purchase of paddy and rice became exigible to payment of purchase tax under the Act in the hands of the purchasers with effect from January 15, 1968. Aggrieved by the said notification, the appellants who became liable to payment of purchase tax on the turnover relating to the purchases of paddy made by them filed petitions under Article 226 of the Constitution on the file of the High Court of Punjab and Haryana questioning the validity of Section 31 of the Act, the notification dated January 15, 1963 issued thereunder and their liability to payment of purchase tax.

12. The principal contentions urged by the appellants before the High Court were (1) that Section 31 of the Act which authorised the State Government to amend Schedule 'C' to the Act by adding certain items making the turnover relating to their purchases liable to tax was void on the ground that it suffered from the vice of excessive delegation of legislative power and therefore the notification issued thereunder was also void and (2) that the appellants who were carrying on the business of manufacturers of rice could not be denied the benefit of Section 5(2)(a) (ii) of the Act which authorised the deduction from the gross turnover the turnover relating to the sales of paddy effected in their favour notwithstanding the inclusion of paddy in Schedule 'C' to the Act. The High Court rejected both the contentions of the appellants and dismissed the writ petitions. Hence these appeals under Article 136 of the Constitution.

13. In this Court also, the very same contentions which were urged before the High Court were urged in support of the appeals with some slight variations. The first contentions urged by Mr. M. C. Bhandare, learned Counsel for the appellants was that Section 31 of the Act which authorised the State Government to vary Schedule 'C' to the Act by adding certain goods whose turnover was not liable to payment of sales tax before suffered from the vice of excessive delegation of legislative power and in the alternative he submitted that even if the said provision was otherwise valid, it could not be interpreted as including within its scope the power to issue a notification which would run counter to the express legislative policy of the Act contained in Section 5(2)(a)(ii) thereof which had been with the avowed purpose of giving assistance to manufacturing industries.

14. A review of the decisions of this Court to some of which we will presently refer shows that the delegation of power by the legislature to a local authority or to the Executive Government to vary or modify an existing law would not be unconstitutional so long as such delegation does not involve the abdication of essential legislative power by the legislature. Such delegations of legislative power have been upheld by this Court on several varied and diverse grounds such as the scheme and policy of the statute under which the power is delegated, the presence of guidelines in the statute regarding the exercise of delegated power, the lack of time for the legislature to make provision with regard to all the details involved in the administration of the law, the incapacity of the legislature to foresee

all future events, the nature of the subject-matter of legislation and the nature of the donee of power etc. Even in matters relating to taxation laws, it has been consistently held that the legislature can delegate the power to fix rates of tax provided there are necessary guidelines regarding such fixation on the ground that in a modern society, taxation is one of the methods by which economic and social goals of the State can be achieved and the power to tax, therefore, should be a flexible power and capable of being easily altered to meet the exigencies of circumstances. Such delegation has been held to be not amounting to delegation of essential legislative function.

15. In *Powell v. Apollo Candle Company Ltd.* ((1885) 10 AC 282) the Judicial Committee of the Privy Council was called upon to decide whether Section 133 of the Customs Regulation Act of 1879 of New South Wales which conferred the power on the Governor to impose tax on certain articles of import was an unconstitutional delegation of legislative powers. In holding that it was not unconstitutional, the Privy Council observed :

It is argued that the tax in question has been imposed by the Governor and not by the legislature who alone had power to impose it. But the duties levied under the Order-in-Council are really levied by the authority of the Act under which the orders are issued. The legislature has not parted with its perfect control over the Governor and has the power, of course, at any moment, of withdrawing or altering the power which they have entrusted to him. In these circumstances, their Lordships are of opinion that the judgment of the Supreme Court was wrong in declaring Section 133 of the Customs Regulation Act of 1879 to be beyond the power of legislature.

16. In *J. W. Hampton Jr. and Company v. United States* (276 US 394) the validity of the action of the President to make changes in the rates provided in the Tariff Act, 1922 under the power delegated by the Congress arose for consideration. That was challenged as a forbidden as a forbidden delegation of legislative power to executive authority. The challenge was negated by the Supreme Court of the United States on the ground that the Congress had laid down by legislative act an intelligible principle to which the person authorised to fix the rate of customs duties on imported merchandise was to conform.

17. The principle enunciated in the above two decisions has been substantially adopted and followed by this Court in two cases - (1) *Pandit Banarsi Das Bhanot v. State of M. P.* (1959 SCR 427 : AIR 1958 SC 909 : (1958) 9 STC 388) and (2) *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi* to which we shall refer hereafter.

18. In *Rajnarain Singh v. Chairman, Patna Administration Committee, Patna* ((1955) 1 SCR 290 : AIR 1954 SC 569 : 1954 SCJ 661) where an earnest attempt was made to analyse and explain the judgment of this Court in *re Delhi Laws Act, 1912* (1951 SCR 747 : AIR 1951 SC 332 : 1951 SCJ 527), Bose, J. after referring in detail to the observations made by the learned Judges in the latter case observed at page 301 :

In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above : it cannot include a change of policy.

19. In *Pandit Banarsi Das Bhanot v. State of M. P.* (supra) where this Court was called upon to

decide whether Section 6(2) of the C.P. and Berar Sales Tax Act, 1947 which authorised the State Government after giving by notification not less than one month's notice of its intention so to do by a notification after the expiry of the period of notice mentioned in the first notification to amend the Schedule II to that Act was constitutional, it was held that it was not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of the taxation laws, such as the selection of persons on whom the tax was to be laid, the rates at which it was to be charged in respect of different classes of goods and the like and that the power conferred on the State Government by Section 6(2) of that Act to amend the Schedule relating to exemption was in consonance of that Act to amend the Schedule relating to exemption was in consonance with the accepted legislative practice relating to the topic. In that connection at page 435, this Court observed :

Now, the authorities are clear that it is not unconstitutional for the legislature 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 laid, the rates at which it is to be charged in respect of different classes of goods, and the like.

20. The next case to which reference may be made is *Corporation of Calcutta v. Liberty Cinema* ((1965) 2 SCR 477 : AIR 1965 SC 1107) where the majority upheld the fixation of a tax on cinema shows by the Corporation of Calcutta even though the Calcutta Municipal Act of 1951 prescribed on limits to which the tax could go. In that case, reliance was placed on the case *Pandit Banarsi Das Bhanot v. State of M. P.* (supra) and it was held that the fixation of rate of tax could be left to a non-legislative body provided the legislature gave necessary guidance for such fixation. This Court in that case found guidance in the various provisions of the statute including the fact that the body which had been authorised to levy the rate was a municipal body whose fiscal requirements were restricted by the nature and area of its jurisdiction.

21. In *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi* (supra) *Hidayatullah, J.* (as he then was) upholding the imposition of a tax by the Delhi Municipal Corporation in exercise of the power granted to it under the Delhi Municipal Corporation Act 66 of 1957 observed at page 287 as follows :

The doctrine that Parliament cannot delegate its powers, therefore, must be understood in a limited way. It only means that the legislature must not efface itself but must give the legislative sanction to the imposition of the tax and must keep the control in its own hands. There is no specific provision in the Constitution which says that the Parliament cannot delegate to certain specified instrumentalities the power to effectuate its own will. The question always is whether the legislative will has been exercised or not. Once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the legislature the legislature can undo what the delegate has done.

22. In *Devi Das Gopal Krishnan v. State of Punjab* ((1967) 3 SCR 557 : AIR 1967 SC 1895 : (1967) 20 STC 430), the validity of Section 5 of the Act (as originally enacted) which conferred on the Government power to levy tax at such rates as the Government might fix arose for consideration. This Court held that such conferment of power on the Government to levy tax at the rates determined by it without any statutory limitation or guidance was void. This Court, however, held

that after Section 5 was amended by Punjab Act 19 of 1952 by imposing the restriction that the rates determined by the State Government should not exceed two paise in a rupee was valid as the legislature had delegated the power to the Government to determine the rates subject to the restriction mentioned above. In the course of the above decision, Subba Rao C.J. dealing with the decision of this Court in *Corporation of Calcutta v. Liberty Cinema* (supra) observed :

If this decision is an authority for the position that the legislature can delegate its power to a statutory authority to levy taxes and fix the rates in regard thereto, it is equally an authority for the position that the said statute to be valid must give a guidance to the said authority for fixing the said rates and that guidance cannot be judged by stereo-typed rules but would depend upon the provisions of a particular Act. To that extent this judgment is binding on us. But we cannot go further and hold, as the learned Counsel for the respondents asked us to do, that whenever a statute defines the purpose or purposes for which a statutory authority is constituted and empowers it to levy a tax that statute necessarily contains a guidance to fix the rates; it depends upon the provisions of each statute.

23. In *Sita Ram Bishambhar Dayal v. State of U. P.* ((1972) 4 SCC 485 : (1972) 2 SCR 141 : 1974 SCC (Tax) 294) the validity of Section 3D(1) of the U.P. Sales Tax Act, 1948 which authorised the levy of a tax on the turnover of first purchases made by a dealer or through a dealer acting as a purchasing agent in respect of such goods or class of goods, and at such rates, not exceeding two paise per rupee in the case of foodgrains, including cereals and pulses, and five paise per rupee in the case of other goods and with effect from such date, as may, from time to time, be notified by the State Government in that behalf was questioned on the ground that the delegation of power to the State Government to determine the goods or class of goods whose purchase turnover would be liable to tax and the rates of purchase tax subject to the restriction imposed in that regard by that section suffered from the vice of excessive delegation. Repelling the above contention and upholding the said provision, Hegde, J. speaking for the Court observed thus : (SCC p. 487, para 5)

It is true that the power to fix the rate of a tax is a legislative power but if the legislature lays down the legislative policy and provides the necessary guidelines, that power can be delegated to the executive. Though a tax is levied primarily for the purpose of gathering revenue, in selecting the objects to be taxed and in determining the rate of tax, various economic and social aspects, such as the availability of the goods, administrative convenience, the extent of evasion, the impact of tax levied on the various sections of the society etc. have to be considered. In a modern society taxation is an instrument of planning. It can be used to achieve the economic and social goals of the State. For that reason the power to tax must be a flexible power. It must be capable of being modulated to meet the exigencies of the situation. In a cabinet form of Government, the executive is expected to reflect the views of the legislatures. In fact in most matters it gives the lead to the legislature. However much one might deplore the "New Despotism" of the executive, the very complexity of the modern society and the demand it makes on its Government have set in motion forces which have made it absolutely necessary for the legislatures to entrust more and more powers to the executive. Text book doctrines evolved in the 19th century have become out of date. Present position as regards delegation of legislative power may not be ideal, but in the absence of any better alternative, there is no escape from it. The legislatures have neither the time, nor the required detailed information nor even the mobility to deal in detail with the innumerable problems arising time and again. In certain matters they can only lay down the policy and guidelines in as clear a manner as possible.

24. When the validity of Section 3-D of U.P. Sales Tax Act, 1948 was again challenged before this Court in *Hira Lal Rattan Lal v. State of U. P.* ((1973) 1 SCC 216 : 1973 SCC (Tax) 307 : (1973) 2 SCR 502) on the very same ground, it was again upheld by this Court with the following observations : (SCC p. 226, para 31)

The only remaining contention is that the delegation made to the executive under Section 3-D is an excessive delegation. It is true that the legislature cannot delegate its legislative functions to any other body. But subject to that qualification, it is permissible for the legislature to delegate the power to select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be levied. In the Act, under Section 3 the legislature has sought to impose multi-point tax on all sales and purchases. After having done that it has given power to the executive, a high authority and which is presumed to command the majority support in the legislature, to select for special treatment dealings in certain class of goods. In the very nature of things, it is impossible for the legislature to enumerate goods, dealings in which sales tax or purchase tax should be imposed. It is also impossible for the legislature to select the goods which should be subjected to a single point sales or purchase tax. Before making such selections several aspects such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be considered. These factors may change from time to time. Hence in the very nature of things, these details have got to be left to the executive.

25. We shall now proceed to examine the validity of Section 31 of the Act in the light of the decisions referred to above. The expression 'dealer' is defined in Section 2(d) of the Act as "any person including a Department of Government who in the normal course of trade sells or purchases any goods, in the State of Punjab". Section 2(ff) of the Act defines the expression 'purchase' as "acquisition of goods specified in Schedule 'C' for cash or deferred payment". The word 'sale' is defined in Section 2(h) of the Act as meaning "any transfer of property in goods other than goods specified in Schedule 'C' for cash or deferred payment". Sub-section (1) of Section 4 of the Act which is the charging section provides that.

Subject to the provisions of Sections 5 and 6, every dealer (except one dealing exclusively in goods declared tax-free under Section 6) whose gross turnover during the year immediately preceding the commencement of the Act exceeded the taxable quantum shall be liable to pay tax under the Act on all sales effected after the coming into force of the Act and purchases made after the commencement of East Punjab General Sales Tax (Amendment) Act, 1958.

Section 5(1) of the Act authorises the State Government to determine the rates of tax payable on the taxable turnover of a dealer not exceeding the limit prescribed therein. Sub-section (2) of Section 5 of the Act lays down the principles governing the determination of "taxable turnover". During the relevant period, sub-section (2) of Section 5 of the Act read as follows :

5. (2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom -

(a) his turnover during that period on -

(i) the sale of goods declared tax-free under Section 6;

(ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under sub-section (1-A); declared by him in a prescribed form as being

intended for resale in the State of Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India, or of goods specified in his certificate of registration or use by him in the manufacture in Punjab of any goods, other than goods declared tax-free under Section 6, for sale in Punjab and on sales to a registered dealer of containers or other materials for the packing of such goods :

Provided that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods;

#(iii) \* \* \*##

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy;

(v) sales or purchases of goods falling under Section 29;

(vi) the purchase of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India :

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled up and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction.

(vii) Such other sales or purchases as may be prescribed;

(b) the amount of sales tax included in the gross turnover.

26. Section 6 of the Act during the relevant period read as substituted by Punjab Act 24 of 1959 with the modification made by Punjab Act 7 of 1967 which substituted the words "twenty days" in the place of "three months" in sub-section (2) thereof.

27. Schedule 'A' to the Act specified certain goods which were considered as luxury goods for purposes of levy of tax at the rates prescribed by the State Government under the first proviso to Section 5(1), Schedule 'B' to the Act referred to the items of goods which were treated as tax-free goods under Section 6 and Schedule 'C' during the relevant period referred to the goods the turnover of which was subject to purchase tax. The State Government was, however, given power to amend all the three Schedules.

28. It is seen from the provisions of the Act referred to above that the legislature while directing that the tax shall be levied on the turnover of sales and purchases of goods under Section 4 left the rates of tax payable to be determined by the State Government under Section 5(1) of the Act subject to the limits prescribed therein. The legislature after specifying the goods which should be treated as luxury goods, tax-free goods and goods whose purchase turnover is liable to tax in Schedule 'A', Schedule 'B' and Schedule 'C' respectively has delegated the power to the State Government to amend Schedule 'A' under the first proviso to sub-section (1) of Section 5, Schedule 'B' under sub-section (2) of Section 6 and Schedule 'C' under Section 31 of the Act. In each of these cases, the

State Government can make the amendment only after giving previous publicity to its intention to do so thus giving an opportunity to interested parties to make representations, if any. In the case of a democratic Government this itself acts as a check on arbitrary exercise of power. At this stage, it is necessary to refer to sub-section (2A) of Section 4 of the Act and that provides that notwithstanding anything contained in sub-sections (1) and (2) of Section 4, no tax on the sale of any goods shall be levied if a tax on their purchase is payable under the Act. The Act also contains the machinery for assessment and collection of tax. It follows from the scheme of the Act that no tax is payable on the sale of goods specified in the first column of Schedule 'B' subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free. Insofar as goods included in Schedule 'C' to the Act are concerned, tax can be levied only on their purchase turnover. In the case of all other goods, tax is levied on their sales turnover subject to Section 5 and other provisions of the Act. When the State Government in exercise of its power under Section 6(2) of the Act deletes any goods from Schedule 'B', they cease to be tax-free goods and their sales turnover would become liable to payment of tax. When the State Government in exercise of its power under Section 31 of the Act includes any goods in Schedule 'C' their sales turnover would become exempt from payment of tax but their purchase turnover would become liable for payment of tax. We are of the view that the delegation of power to the State Government to determine whether any class of goods should be included or excluded from Schedule 'C' to the Act cannot be considered as unconstitutional in view of the decisions of this Court referred to above and in particular the decision in *Pandit Banarsi Das Bhanot v. State of M. P.* (supra) where Section 6(2) of the Central Provinces and Berar Sales Tax Act, 1947 corresponding to Section 6(2) of the Act was upheld by a Constitution Bench of this Court. The Constitution Bench while rejecting the challenge to Section 6(2) observed thus :

The contention of the appellant that the notification in question is ultra vires must, in our opinion, fail on another ground. The basic assumption on which the argument of the appellant proceeds is that the power to amend the Schedule conferred on the Government under Section 6(2) is wholly independent of the grant of exemption under Section 6(1) of the Act, and that in consequence, while an exemption under Section 6(1) would stand an amendment thereof by a notification under Section 6(2) might be bad. But that, in our opinion, is not the correct interpretation of the section. The two sub-sections together form integral parts of a single enactment, the object of which is to grant exemption from taxation in respect of such goods and to such extent as may from time to time be determined by the State Government, Section 6(1), therefore, cannot have an operation independent of Section 6(2), and an exemption granted thereunder is conditional and subject to any modification that might be issued under Section 6(2). In this view the impugned notification is intra vires and not open to challenge.

29. We are of the view that the case insofar as Section 31 of the Act which is also an integral part of a single enactment and which authorises the State Government to amend Schedule 'G' to the Act cannot be different from the case which was dealt with by the Constitution Bench. It is permissible for the legislature to authorise the State Government to convert tax-free goods into taxable ones, there is hardly any justification for holding that the State Government cannot be entrusted with the power to include goods in Schedule 'C' making their purchase turnover taxable.

30. It was, however, argued by Mr. M. C. Bhandare that in the instant case, the inclusion of paddy in Schedule 'C' to the Act was against the policy underlying the Act and, therefore, even though Section 31 of the Act might be constitutionally valid, the notification issued by the State

Government directing inclusion of paddy in Schedule 'C' should be held to be outside the scope of Section 31 of the Act. In other words, he contended that having regard to the scheme of the Act, it was necessary for us to read Section 31 of the Act as not delegating the power to the State Government to include paddy in Schedule 'C' to the Act. The argument of the learned Counsel was that the appellants were purchasing paddy either from agriculturists who had grown it on their land or from katcha adatias for purposes of manufacture of rice in the circumstances mentioned in Section 5(2)(a)(ii) of the Act. In either case no sales tax was being levied on the turnover relating to the sales in their favour by reason of item 39 of Schedule 'B' to the Act which declared that agricultural or horticultural produce sold by a person or a member of his family grown by himself or grown on any land in which he had an interest whether as owner or usufructuary mortgage tenant or otherwise were tax-free goods or of sub-clause (ii) of clause (a) of sub-section (2) of Section 5 of the Act which required the turnover relating to sales to a registered dealer of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods other than goods declared tax-free under Section 6 for sale in Punjab to be deducted from the gross turnover of any dealer in order to arrive at 'taxable turnover'. It was argued that the tax payable under the Act was an indirect tax and since no sales tax was leviable, the appellants could purchase paddy before the issue of the impugned notification without being saddled with the liability of payment of sales tax. The policy underlying Section 5(2)(a)(ii) of the Act was that manufacturers of goods specified in the certificate of registration obtained by them should be able to acquire raw material for their industry without incurring the extra liability of sales tax. This exemption which the appellants were enjoying was taken away indirectly by the State Government by including paddy in Schedule 'C' to the Act resulting in the imposition of purchase tax in respect of its turnover on them. Relying upon the decision of the High Court of Madras in *Syed Mohamed & Co. v. State of Madras* ((1952) 3 STC 367 (Mad HC)) it was argued that sales tax was in effect a tax on the transaction of sale of goods by one person to another and that it was unreasonable to assume that the legislature contemplated different categories of transactions depending upon the point at which the tax was levied. In support of this contention, our attention was also drawn to the observations made at page 571 in *Devi Das Gopal Krishnan v. State of Punjab* ((1967) 3 SCR 557 at 571 : AIR 1967 SC 1895 at 1904(1) : 20 STC 430 at 445) (supra) and in *State of Assam v. Ramesh Chandra Dey* ((1962) 1 SCR 986, 991 : AIR 1962 SC 107 : (1961) 12 STC 441). The learned counsel for the appellants contended that since the exemption from payment of sales tax accorded by the legislature under item 39 of Schedule 'B' and under Section 5(2)(a)(ii) of the Act was in respect of the transaction of sale, it was not open to the Executive Government to take away the exemption by including paddy in Schedule 'C' and since such inclusion was contrary to the express policy of the statute, Section 31 of the Act must be so interpreted as not delegating the power to include paddy purchased by the appellants in Schedule 'C'. We are, therefore, asked to hold that even though Section 31 was not unconstitutional, the notification was not enforceable against the appellants. The above argument is no doubt quite attractive but we do not find any substance in it since it overlooks the decision of the Constitution Bench of this Court in *Pandit Banarsi Das Bhanot v. State of M. P.* (supra) where it has been self that it is open to the legislature to delegate the power to withdraw the exemption which has been given by the legislature in respect of certain transactions specified in Schedule II to the C.P. and Berar Sales Tax Act, 1947. Moreover it cannot be said that the principal object of the Act is to encourage manufacturing industry. The Act is a fiscal legislation and its object is to collect revenue for the purpose of meeting the expenditure of the Government. It is no doubt true that while levying tax under the Act, the legislature may grant exemptions in certain cases and may decline to grant exemptions in other cases. The question whether such exemption should be given or not is only incidental or ancillary to the principal object viz. the object of levying tax for the purpose of collecting revenue. It cannot also be said that when certain goods are sold in favour of manufacturer,

the seller is always entitled to deduct such sales turnover from the gross turnover. He can do so only when such goods are specified in the certificate or registration obtained by the purchaser and they are used by him in the manufacture in Punjab of any goods other than goods declared tax-free under Section 6 of the Act for sale in Punjab. Transactions in paddy cannot, therefore, be considered as having been generally exempted from payment of tax under the Act. It is also to be seen that Section 5(2)(a)(ii) of the Act grants exemption from payment of sales tax on the turnover of goods sold in favour of a manufacturer under the circumstances mentioned therein only to the seller and not to the buyer even though indirectly the buyer may benefited thereby. If the observation made by this Court in *State of Tamil Nadu v. N. K. Kandaswami* ((1975) 4 SCC 745 : 1975 SCC (Tax) 402 : (1976) 1 SCR 38) that taxable goods, 'taxable event' and 'taxable person' are three distinct concepts is borne in mind, there will be no room for any confusion. In the instant case, the taxable event is the purchase of paddy and not its sale which alone attracts Section 5(2)(a)(ii) of the Act and taxable person, that is person liable to pay tax, is the purchaser and not the seller. The appellants cannot, therefore, complain that any exemption granted to them by the Act has been taken away. Even though the liability to pay purchase tax may be on the appellants, it is bound to have repercussions on the price at which they buy paddy and the price at which rice manufactured by them out of that paddy is sold by them. The tax payable under the Act admittedly being an indirect tax the burden would ordinarily fall on the consumer of rice and not on any of the intermediaries including the appellants. The impugned notification cannot, therefore, be treated as one issued against the policy of the statute.

31. In view of the foregoing, we hold that Section 31 of the Act and the notification issued thereunder do not suffer from the vice of excessive delegation of legislative power.

32. We may at this stage refer to one other subsidiary argument urged on behalf of the appellants. It is argued that because paddy and rice are not different kinds of goods but one and the same, inclusion of both paddy and rice in Schedule 'C' to the Act would amount to imposition of double taxation under the Act. There is no merit in this contention also because the assumption that paddy and rice are one and the same is erroneous. In *Ganesh Trading Co., Karnal v. State of Haryana* ((1974) 3 SCC 620 : 1974 SCC (Tax) 100 : STC 623) arising under the Act, this Court has held that although rice is produced out of paddy, it is not true to say that paddy continued to be paddy even after dehusking; that rice and paddy are two different things in ordinary parlance and therefore, when paddy is dehusked and rice produced, there is a change in the identity of the goods. The above decision follows the principle enunciated by this Court in *State of Punjab v. Chandu Lal Kishori Lal* ((1969) 1 SCC 695 : (1969) 3 SCR 849) in which it was held that cotton seeds when separated from cotton constituted distinct commercial goods different from cotton. The above contention has, therefore, to be rejected.

33. In the result these appeals fail and they are dismissed. The parties shall, however, bear their own costs.

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