ANDHRA PRADESH HIGH COURT

Gorantia Butchayya Chowdary

Vs.

State of Andhra

Writ Petns. Nos. 375, 687, 888 and 1172 of 1956 and 43, 56, 69, 77 and 212 of 1957

(K. Subba Rao, C.J. and Jaganmohan Reddy, J.)

25.09.1957

JUDGMENT

K. Subba Rao C. J.

1. This batch of applications has been filed under Article 226 of the Constitution of India for issuing Writs of mandamus against the respondent to forbear from enforcing against them the provisions of the Madras General Sales Tax Act (Act IX of 1939) as amended by Andhra Act XIV of 1955.

2. As the main question raised in all the applications relates to the constitutional validity of Act XIV of 1955, it is not necessary to give, in detail the facts of each case. All the applicants; are merchants carrying on export business in tobacco. They purchase tobacco in the local market with a view to export it to foreign countries like Great Britain, Hongkong, China and Japan, under the Madras General Sales Tax Act (Act IX of 1939), no sales tax is payable in regard to raw tobacco. But by Act XIV of 1955 in Section 5 of the Original Act after item (vi) item (vii) and the fallowing item (viii) were added :

> "(viii) raw tobacco (except country variety thereof) whether cured or uncured, shall be liable to tax under Section 3, sub-section (1) only at the point of the first purchase effected in the State of Andhra by a dealer who is not exempt from taxation under Section 3 sub-section (3), but at the rate of seven and half pies for every rupee on his turnover.
> Explanation : For the purpose of this item country variety of tobacco means variety of tobacco other than Virginia and other similar varieties of tobacco."

3. The constitutional validity of item (viii) is impugned on the ground that it is obnoxious to the doctrine of equal protection of laws enshrined in Article 14 of the Constitution of India. The State, the argument proceeds, by selecting Virginia tobacco from the other categories of tobacco and by imposing tax thereon has discriminated against dealers in that variety without any rational basis and without any reasonable relation to the object sought to be achieved, namely, the raising of revenue and, therefore the said discrimination offends the provisions of Article 14 of the

Constitution of India.

4. To appreciate the argument advanced, it is necessary at the out set to notice the doctrine of the equal protection of laws and its impact on the laws of taxation. The doctrine of equality of the law and the equal protection of the laws and the principle of classification which softed the rigour of the doctrine and made it capable of application to the realities of life have been so well settled and it would be pedantic on our part to attempt to trace them in detail to the classical judgments of the Supreme Court of America. The twin principles have been authoritatively restated by the Supreme Court of India in *Budhan Chowdary v. State of Bihar*[1], thus :

> "It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.
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> "The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

5. This is a concise but complete statement prescribing the limits of the rule of classification.

6. A Division Bench of this Court, of which one of us was a member in *Pitchayya v. The Government of Andhra*[2], after considering the relevant decisions, has summarised the law thus :

> "All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept; equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed.

But those propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well-nigh impossible to make laws suitable in their application to all the persons alike. So a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of all the purposes for which it is made." To this, we will add the statement of Professor Willis that:

[1]1955 SCJ 163 : AIR 1955 SC 191

[2]1956 Andh WE 322 : AIR 1957 And Pra 136

> "If any state of facts can reasonably be conceived to sustain a classification, the existence of the state of facts must he assumed. One, who assails a classification, must carry the burden of showing that it does not rest upon any reasonable basis "*

It is also necessary to bear in mind the presumption of law laid down in *Middleton v. Texas Power and Light Company*[3], at p. 157 that:

> "It must be presumed that a Legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds."

7. To the above statement, we would like to add the following caution administered by Brewer J., in *Gulf. Colorado and Santa Fo Railway Co v. Ellis*[4],

> "While good faith and a knowledge of existing conditions on the part of a Legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile and discriminating legislation is to make the protecting clauses of the 14th Amendment a mere rope of sand, in no manner restraining state action."
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> *See "Constitutional Law" by Willis, 1936 Edn., page 579.-Ed.

8. But the more difficult question is the applicability of the aforesaid twin doctrines to taxing statutes. The principle of classification was construed by the Supreme Court of America more liberally in the case of taxing statutes than in other cases. In Willis on "Constitutional Law"' at page 587, the following passage appears :

> "The Supreme Court permits a wider discretion in classification under the power of taxation if possible than it does under the Police power. One reason for this undoubtedly is the urgent need for revenue by the various Governmental agencies. A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

The Constitution does not say how cases shall be decided. All it says is that the States shall not deny to any person within their jurisdiction equal protection of the laws. It does not say when persons are within the jurisdiction of a state or what are equal laws. As a consequence the Supreme Court decides cases as it thinks they ought to be decided with no other mandate than one to decide. The Supreme Court has been practical and has permitted a very wide latitude in; classification for taxation."

9. This passage is sought to be illustrated by some of the leading decisions of the Supreme Court which we shall now proceed to consider.

[3](1918) 249 US 152
[4](1897) 165 US 150

10. By the law of Pennsylvania, all moneyed securities are subject to an annual state tax of three mills on the dollar of their actual value except bonds and other securities issued by corporations which are taxed at three mills on the dollar of the nominal or par value. In the *Bell's Gap Railroad Company v. The Commonwealth of Pennsylvania*[5], the said law was sought to be impugned on the ground that it denied the tax payers equal protection of the laws. But the Supreme Court repelled the argument. In doing so they made the following observations :

> "The provision in the XIVth Amendment that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all such as churches, libraries and the property of charitable institutions.

It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only and not tax securities for payment of money; it may allow deductions for indebtedness, and not allow them.
All such regulations and those of like character, so long as they proceed within reasonable limits and general usage are within the discretion of the State Legislature or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes especially such as are of an unusual character unknown to the practice of our Government might be obnoxious to the constitutional prohibition." This decision does not say that the tax laws are immune from Constitutional prohibitions but should be viewed with more latitude so long as they proceed within reasonable limits and general usage.

11. Where an Act Imposed a licence tax upon a manufacturer engaged in the business of refining sugar but exempted from tax those who refined the products of their own plantations, the Supreme Court held in *American Sugar Kenning Co. v. State of Louisiana*[6], that the said law did not deny the equal protection of the laws. In sustaining the law, the Court made the following observations at page 105 ;

> "To entitle a party to the exemption it must appear (1) that he is a farmer or a planter (2) that he grinds the cane as well as refines the sugar and molasses (3) that he refines his own sugar and molasses, meaning thereby the product of his own plantation. Whether he may also refine the sugar of others may be open to question : although by its express terms the act does not apply to planters who granulate syrup for other planters during the rolling seasons. The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protections of the laws." The Court found in this case that the differences between the two classes of refining had a rational basis to the object sought to be achieved, namely, the encouragement of agriculture.

[5](1888) 33 Law Ed 892
[6](1900) 45 Law Ed 102

12. Exempting steam laundries and women engaged in the laundry business, where not more than two women are employed from the licence tax imposed by Mont. Rev. Codes Section 2776,

upon the Laundry business, does not deny the equal protection of the laws to a man operating a hand laundry. See *Quong Wing v. Thomas Kirkendall*[7], Holmes J., in sustaining the law lays down the following principles : (1) A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favour certain industries or forms of industry. (2) It may make discriminations if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary (3) The particular points at which that difference shall be emphasised by legislation are largely in the power of the State.

13. The said principles are called out from the decisions cited at the Bar.

14. In *Roland C. Heisler v. Thomas Colliery Co*[8]. it was held that the differences between bituminous coal and anthracite form a just basis for their different classification under the tax laws, so that a tax may be laid upon one and not upon the other, without violating the equal protection of the laws guaranteed by the 14th amendment to the Federal Constitution. Adverting to an argument similar to that advanced before us, Mr. Justice McKenna made the following observations at Page 242 :

> "The fact of competition may be accepted. Both coals, being compositions of carbon are of course capable of combustion and may be used as fuels but under different conditions and manifestations and the difference determines a choice between the as fuels. By disregarding that difference and the greater ones which exist and by dwelling on competition alone, it is easy to erect an argument of strength against the taxation of one and not of the other.

But this may not be done. The differences between them are a just basis for their different classification; and the differences are great and important. They differ even as fuels, they differ fundamentally in other particulars. Anthracite Goal has no substantial use beyond a fuel; bituminous coal has other uses. Products of utility are obtained from it. The fact is not denied and the products are enumerated and the extent of their use. They are therefore incentives to industries, that the State in natural policy might well hesitate to obstruct or burden and to yield to the policy or consider it is well within the concession of the power of the State expressed in the cases we have cited. The distinction in the treatment of the respective coals being within the power conceded by the cases to the State, it has logical and legal justification and is, necessarily, not unreasonable or arbitrary." The differences in the two kinds of coal based upon their nature and the extent of their uses was held to be a sufficient justification for imposing less tax on bituminous coal so that there should be an incentive to industry.

15. The Supreme Court of America in *Roberts and Sahaefor Co. v. Louis L. Emmerson*[9], justified the imposition of a franchise tax upon a domestic corporation measured by its authorized capital stock. The Supreme Court restated the following

[7](1911) 56 Law Ed 350 [9] (1926) 70 Law Ed 827
[8]67 Law Ed 237

principles :

> "(1) One who challenges the validity of State taxation on the ground that it violates the

equal protection clause of the Federal Constitution cannot rely on theoretical inequalities but must show that he himself is affected unfavourably by the discrimination of which he complains.

(2) The question to be considered is whether there are such differences between the two privileges to issue the two classes of stock as to constitute proper basis for classification for purposes of taxation.

(3) To meet the constitutional requirement of equality it is enough that a classification for purposes of taxation is reasonably founded upon or related to some permissible policy of taxation."

16. So too, in *James C. Colgate v. Erwin M, Hervey*[10], the imposition of a tax on a corporation in respect of dividends earned outside the State, from which tax the dividends earned within the State were exempt was held to sustain a valid classification. The Court in coming to the conclusion laid before itself the following principles :

"1. The equality clause of the Fourteenth Amendment does not require that the amount of taxes shall be mathematically equivalent in order-to admit of exoneration from one form of taxation because of the imposition of another but if the evident intent and general operation of the tax legislation are to adjust the burden with a fair and reasonable degree of equality the constitutional requirement is satisfied.

2. The boundary between what is permissible and what is forbidden by the constitutional requirement of equal protection of laws is incapable of exact delimitation.

3. The equal protection clause of the 14th Amendment does not preclude the States from resorting to classification for the purposes of legislation, so long as the classification is founded upon pertinent and real differences as distinguished from irrelevant and artificial ones."

17. From the aforesaid statement of the principles, it is clear that the fundamental principle of classification is the same whether it relates to tax law or other laws but the approach is slightly different and greater latitude is given to a State, if the classification is made to adjust the burden on a fair and reasonable degree of equality.

18. The same principles have been restated in *New York Rapid Transit Corporation v. City of New York*[11], wherein the question for decision was the constitutional validity of the local laws of the City of New York which provided that for the privilege of exercising its franchise or franchises, or of holding property or of doing business in the City of New York, an excise tax shall be paid by every utility doing business in the City of New York during 1935 and the first six months of 1936. It was contended that the classification for the purposes oftaxation did not rest upon any ground of

[10](1935) 80 Law Ed 299

[11](1937) 82 Law Ed 1024

difference having a fair and substantial relation to the object of the legislation and the imposition of tax at different rates upon utilities and other business violated the protection clause. In repelling the contention, Mr. Justice Reed restated the following principles :

"1. A distinction in legislation is not arbitrary if any state of facts reasonably can be conceived that would sustain it.

2. The rule of equality permits many practical inequalities.

3. What satisfies this equality has not been and probably never can be precisely defined.

4. The power to make distinctions exists with full vigour in the field of taxation, where no iron rule of equality has ever been enforced upon the States."

19. The aforesaid principles guide more the perspective or the approach rather than introduce any modification in the fundamental principles governing the law of classification.

20. Where a State statute imposed higher tax on bank deposits outside the State than upon similar deposits within the State, the classification was justified in *John E. Madden v. Commonwealth of Kentucky*[12], on the ground that it was more difficult to collect and enforce the tax on deposits outside the State than on deposits within the State. At page 593, Mr. Justice Road says :

"This Court fifty years ago concluded that 'the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by the Legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programmes to local needs and usages in order to achieve an equitable distribution of the tax burden."

21. An exhaustive treatment of the aforesaid principles is also found in the judgment of a Division Bench of the Madras High Court in *Syed Mohammed and Co v State of Madras*[13], The well settled principles culled out by the learned Judges from the decided cases may be grouped thus :

1. The guarantee of equal protection of laws does not require that the same law should be made applicable to all persons or that the law should have the same operation on all persons. It prohibits only an application of different laws to persons who are in similar circumstances.

2. The requirements as to equal protection of laws do not forbid legislative classifications, provided such classifications rest on some difference germane to the purpose of the statute.

3. A classification cannot be upheld on purely fanciful grounds. 'We have no right to conjure up possible situations which might justify discriminations.'

[12](1939) 84 Law Ed 590

[13]1952-2 Mad LJ 598 : (AIR 1953 Mad 105)

4. With reference to taxing statutes, the Legislature has considerable latitude in making classifications.

5. Taxing statutes must also satisfy the test of equal protection and are liable to be struck down if they do not.

> 6. There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as arbitrary and unconstitutional to establish it beyond all doubt. We respectfully accept the aforesaid principles as laying down the correct law on the subject.

22. The above judgment was confirmed by the Supreme Court in *Syed Mohammad and Co. v. State of Andhra*[13], Das, J., as he then was, observed at p. 621 (of Mad LJ) : (at pp 315, 316 of AIR) :

> "It is well settled that the guarantee of equal protection of laws does not require that the same law should be made applicable to all persons. Article 14, it has been said, does not forbid classification for legislative purposes, provided that such classification is based on some differentia having a reasonable relation to the object and the purpose of the law in question.

As pointed out by the majority of the Bench which decided *Chiranjitlal Chowdhury v. Union of India*[14], there is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced. There is no material on the record before us to suggest that the purchasers of other commodities are similarly situate as purchasers of hides or skins."

23. Further citation is unnecessary. The law is well-settled and, if we have referred to the decisions cited at the bar, it was more in respect to the argument advanced rather than for the necessity to cover the ground which had been and with better effect trodden by other judges.

24. The law on the subject may now be summarised. Though in America at the outset the Court did not regard that the equal protection clause had any bearing on taxation, gradually the Supreme Court conceded that hostile discrimination against all persons and classes might be obnoxious to the constitutional prohibition. The power of the State to adjust its taxing system with a fair and reasonable degree of equality has never been in dispute. But this latitude in the manner of classification does not enable a State to classify so arbitrarily as to subvert the fundamental doctrine of equal protection of laws nourished and developed with so much care by the Constitutional Law of America and incorporated in our Constitution. We have no right to conjure up possible situations which might justify discrimination or, in the words of another learned Judge the discriminations are not to be supported by mere fanciful conjecture.
Subject to this caution, sufficient latitude is shown to States in the matter of classification. It is also well-settled that there is a strong presumption in favour of the validity of legislative classification and it is for the person who seeks to question it, to

[13] 1954-1 Mad LJ 619: (AIR 1954 SC 314)
[14] 1951 SCJ 29

allege and prove that the classification is obnoxious to the constitutional prohibition.
The decided cases have gone to the length of holding that if any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. Briefly stated, whether it is a taxation law or any other law, it must satisfy the test of the equality clause.

But, in the case of tax laws, presumably in view of their importance for the good administration of the country, a larger discretion is given to the State in the matter of classification. The presumption of constitutional validity raised by the Courts and the burden of proof thrown on the citizen have given sufficient latitude to the State to adjust the burden of taxation on a fair and reasonable degree of equality.

25. The next question is whether the petitioners have alleged and proved the necessary facts for this Court to hold that the classification is so arbitrary and so unconnected with the object sought to be achieved that it should be struck down as impinging upon the fundamental right guaranteed under Article 14 of the Constitution of India. Learned counsel for the petitioners relies upon the phraseology used in item (viii) in support of his contention that the Legislature itself does not treat Virginia tobacco as a product other than tobacco. In item (viii) raw tobacco, except country variety thereof, is made liable to tax at the point of the first purchase at a particular rate. In the explanation, it is stated that country variety of tobacco means variety of tobacco other than Virginia and other similar varieties of tobacco. It is. therefore, contended that the legislature itself realizes that Virginia is not a species different from tobacco and, therefore the section itself emphasizes that there cannot be any real difference between the two varieties. This argument is rather fallacious.

26. Tobacco is a genus and there are different species with distinct characteristics accentuated by the process of growing or curing. The section in our view, cannot be construed so as to imply that the Legislature accepts the fact that there are no differences between the different species Of tobacco.

27. The next circumstance relied upon is the fact that some grades of natu tobacco would fetch higher prices than some grades of Virginia. In the affidavit filed in support of Writ Petition No. 687 of 1956, the following facts are alleged :

> "One candy of country tobacco, which can be grown in the same soil as the Virginia tobacco and costs of production of which would not be even equal to the costs of production of Virginia tobacco would fetch any amount from Rs. 100/- to Rs. 280/- for WAG or WAP grades whereas the Virginia tobacco which is similarly sun-cured would sell from Rs 25/- to Rs. 150/-for VBR and VDK grades. Even in the case of Virginia tobacco grades P1, DB, B, LBY2, DG, MG would sell from Rs. 50 to Rs. 150/- only."

28. These allegations are not specifically denied in the counter-affidavits filed by the Government. But the mere fact that some lower grades of Virginia tobacco would fetch less price than the higher grades of natu tobacco, is not decisive on the question that there are no other real differences between them. It is true that in the various counter-affidavits filed by the State, no further facts are brought out to sustain the classification. Learned Counsel, therefore, is Justified in contending that it is not the duty of the Court to make a minute inspection of the field of possibilities to persuade itself somehow to sustain the tax at all events but must base its judgment on facts established in the case. Bearing in mind the said caution, we shall ascertain whether there are facts that can reasonably be conceived without pure speculation to sustain the classification.

29. Learned Counsel also relies upon the provisions of the Madras Tobacco (Taxation of Sales and Licensing) Act (Madras Act VIII of 1939) and the Madras Tobacco (Taxation of Sales and Registration) Act (Madras Act IV of 1953) in support of his contention that there is no substantial difference between Virginia tobacco and Natu tobacco for the purpose of taxation. This Legislative practice, the argument proceeds, indicates that tobacco does not admit of any differential treatment on the basis of rural differences. The mere fact that no such distinction was made for the purpose of those Acts, cannot efface the real existing differences, if any, sustaining separate treatment for the purpose of imposition of the new tax.

30. The report on the Marketing of Tobacco in India published under the auspices of the Director of Marketing and Inspection, Ministry of Food and Agriculture. Government of India gives sufficient facts pertaining to the cultivation of tobacco in India of different grades and of their export to foreign countries. It is common place that this product was introduced into India from foreign countries but it has taken deep root and has now become one of the most important commercial crops of our country, particularly in the Andhra Pradesh State. It is rich in variety and quality, catering to the tastes and requirements of the rich and the poor alike in different shapes and forms. There are many varieties of tobacco and there are different grades in the same kind of tobacco. Broadly, there are two types, Virginia and Natu, differing in taste, light, colour and texture. They also differ in the manner of cultivation, harvesting, curing and grading. Ordinarily, the process of flue-curing is adopted in the case of Virginia tobacco while that of rack, ground and pit curing is resorted to in the case of Natu tobacco. The figures shown in the above publication disclose that most of the Virginia tobacco grown in this country is exported to foreign countries and that only a limited quantity of Natu tobacco has a foreign market. Virginia tobacco is used for manufacturing medium quality cigarettes, while Natu tobacco is utilised for low quality cigarettes Natu tobacco is also much in demand for manufacturing beedies, snuff, chewing tobacco and cheroots. Virginia tobacco is consumed by the rich, or perhaps by some who ape them particularly in urban areas, while Natu tobacco in varying forms is consumed by the poorer classes and, particularly those in rural areas. Though there is overlapping of price in the lower grades of Virginia and higher grades of Natu tobacco, broadly speaking, tobacco of the Virginia type fetches higher price, for it has a foreign market and is a rich man's luxury.

31. There are obvious differences between the two categories of tobacco, in the nomenclature used, in the process of growing, curing and grading, in the market facilities foreign and inland, in the price and in the variety of uses to which they are put and also the class of consumers that take to them. The object of the Amending Act was to enhance the revenues of the State. Why did the State pick out Virginia and leave out Natu tobacco? We are told that the subsequent Act imposes a tax also on Natu tobacco though at a lower rate for the purpose of revenue. Neither the preamble to the Amending Act, nor the provisions thereof elucidate this point. The Legislative proceedings do not disclose the reason. The counter-affidavits filed by the Government do not state the reasons for this discrimination. But the aforesaid differences between the two products, as disclosed in the aforesaid official publication, appear to us to be real and they can afford a reasonable basis for the State to classify them for the purpose of taxation. It is likely we are not speculating but there is every justification for assuming - that the Legislature, having regard to the obvious difference between the two products, particularly from the point of view of prices and the class of consumers, thought that Virginia tobacco could bear the tax without detriment to the export trade, the business of the dealers and the class of consumers of that product, while any such imposition at the same rate would stifle the business in Natu tobacco and ultimately affect

the consumers of the product. To put it differently, the State classified tobacco into luxury and non-luxury categories and attempted to tax the former to the exclusion of the latter, presumably in the belief that the former could reasonably bear the burden without any serious effect on the business or profits of dealers, while exemption would encourage the business in the latter to the ultimate benefit of poor consumers. The equality clause does not prevent the State from adjusting its system of taxation in all proper and reasonable ways and we are satisfied that the general operation of the tax introduced by the amendment really adjusted the burden with a fair and reasonable degree of equality. That apart, the petitioners on whom the burden lies have failed to establish by placing before us the necessary facts that the classification for the purpose of taxation had no rational basis to the object sought to be achieved, namely, the raising of revenue. We, therefore, hold that the said amendment is not obnoxious to the fundamental right of the equal protection of laws and is constitutionally valid.

32. It is then contended that the said provision is invalid on the ground that it is in conflict with Article 286 (1) (b) of the Constitution of India, Article 286 (1) (b) reads:

> 286 (1). "No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-
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> X X X X
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> (b) in the course of the import of the goods into, or export of the goods out of, the territory of India."

33. Learned Counsel for the petitioners contends that Virginia tobacco was purchased by the petitioners to fulfil orders received by them from foreign countries and the purchase of the goods by them was in the course of export of the same out of the territory of India and, therefore, the Legislature could not impose a tax on the said goods. The facts to sustain this argument are not very clear. Assuming, without deciding, that Virginia tobacco was purchased by the petitioners with a view to export them to foreign countries to fulfill their obligations under contracts entered into by them with merchants in foreign countries, in view of the settled law on the subject, the argument would not avail them. The phrase 'in the course of the export of the goods out of the territory of India' has been authoritatively considered by the Supreme Court of India in *State of Travencore-Cochin v. Shan-mugha Vilas Cashewnut Factory, Quilon*[15], Therein, Patanjali Sastri C.J., elucidated the position clearly thus at p. 475 (of Mad LJ) : (at P. 336 of AIR):

> "The phrase 'integrated activities' was used in the previous decision to denote that 'such a sale' (i.e., a sale which occasions the export) cannot be dissociated from the export without which it cannot be effectuated and the sale and the resultant export form parts of a single transaction. It is in that sense that the two activities- the sale and the export-were said to be integrated. A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion, be regarded as an act done in the course of the export of the goods out of the territory of India' any more than the other two activities can be so regarded. As pointed out by a recent writer :
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> "From the legal point of view it is essential to distinguish the contract of sale which has its object the exportation of goods from this country from other contracts of some relating to the same goods, but not being the direct and immediate cause for the shipment of the

goods.....

When a merchant shipper in the United Kingdom buys for the purpose of export goods from a manufacturer in the same country the contract of sale is a home transaction but when he resells these goods to a buyer abroad that contract of sale has to be classified as an export transaction." This passage shows that, in view of the distinct character and quality of the two transactions, it is not correct to speak of a purchase for export as an activity so integrated with the exportation that the former could be regarded as done "in the course of the latter." The aforesaid observations do not lend scope for further argument. The petitioners' case is that the goods were purchased by them for export. But in view of the aforesaid observations, the said purchases were only preparatory to export and could not be regarded as acts done in the course of the export of the goods out of the territory of India

34. The Supreme Court again affirmed that decision in two subsequent cases. In the *State of Madras v Guriviah Naidu and Co., Ltd*[16]*.,* Das. Officiating Chief Justice, delivering the judgment of the Supreme Court, held that dealers who, after securing orders for supply of untanned hides and skins to London buyers went about purchasing untanned hides and skins of the requisite kinds and quantities in the State in order to implement such orders, were liable to pay sales tax on the amount of their purchases. The reason of the decision was stated by the learned Chief Justice in the following words :

> "Such purchases were, it is true, for the purpose of export but such purchases did not themselves occasion the export and consequently did not fall within the exemption of Article 286 (1) (b) of the Constitution as held by the Court in the *State of Travencore-Cochin v. The Bombay Company Ltd*[17]*.,* Nor did such purchases in the State by the exporter for the purpose of export come within the ambit of Article 286 (1) (b) as held by the decision of the majority of a Constitution Bench of this Court in 1953-4 STC 205 . In this view of the

[15]1953 SCJ 471 [17]1952-3 STC 434

[16]6 STC 717: AIR 1956 SC 158

> matter, there could be no question that these purchases were liable to be included in the turnover and assessed to sales tax"

35. A Division Bench of this High Court of which one of us was a member, on the basis of the aforesaid decisions held in *Deputy Commissioner of Commercial Taxes, Anantapur v. Nagen. Drappa*[18]*,* that a purchase for the purpose of export is only an act preparatory to export and not an act done in the course of the export of goods out of the territory of India, and, therefore a levy of tax under Rules 4 (2) (d) and 16 (2) does not contravene Article 286 (1) (b) of the Constitution. The question has been finally set at rest by the three decisions of the Supreme Court and it is not open to the petitioners to attempt to reopen the same before us.

36. It is then argued that though the Act purports to impose tax on the purchase of goods within the Andhra State it is a fraud on power, for, indirectly, it operates as a burden on export trade. The same argument was advanced in a slightly different form in 1953-4 STC 205 , and was rejected by the Supreme Court at p. 213 (of STC) : (at pp. 336, 337 of AIR), in the following

words :

> "Nor is it correct to say that it is necessary to extend the exemption to these transactions to avoid double taxation. It is true that in the previous decision it was indicated that the abject underlying the exemption was the avoidance of double taxation on the foreign trade of this country which is of great importance to the nation's economy. But the double taxation sought to be avoided consisted in the imposition of export duty by the Central Government and the imposition of sales tax by the State Government on the same transaction in its different aspects as an export and a sale.

Such double taxation is already avoided by our holding that the export sale and the import purchase are exempt, under clause (b) from the levy of sales tax by the State. The foreign trade of this country thus already enjoys immunity from double tax burden and suffers only one tax, namely, the export or import duty as the case may be. The claim now made for extension of the exemption under clause 1 (b) in the name of avoiding double taxation cannot be supported."

37. The same reasoning applies with equal force to the question now raised before us. The Legislature of the State does not expressly or by necessary implication impose any tax on exports. It takes into consideration only completed purchases within the State which may be preparatory for export. These purchases fall within the legislative ambit of the State. No question, therefore, of any fraud on power can conceivably arise as the power is exercised, within the strict confines allocated to the State.

38. Lastly, it is said that the words 'first purchase' in item (viii) are so vague that they cannot afford a basis for ' taxation. We do not see any justification for this comment. Item (viii) cannot be read in vacuum. Items (vii) and (viii) are added by the Amending Act in Section 5 after item (vi). Section 2 (b) defines 'dealer' to mean 'any person who carries on the business of buying or selling goods.' Section 3, the charging section, says that, subject to the provisions of this Act, every dealer shall pay for each year a

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tax on his total turnover for such year. Sub-Section (3) of Section 3 gives general exemption to dealers, whose total turnover in any year is less than Rs. 10,000/-. Section 3, which prescribes exemptions and reductions of tax in certain cases says that subject to such restrictions and conditions as may be prescribed, including conditions as to licenses and license fees, raw tobacco, except country variety, shall be liable to tax only at the point of the first purchase effected in the State of Andhra by a dealer, who is not exempted under sub-section (3) of Section 3. Item (viii) gives the rate, the person to be taxed, the first point at which he is taxed and the transaction with reference to which the tax is imposed. Having regard to the charging section and the definition of 'dealer', there is absolutely no vagueness in the matter of the imposition of tax. A dealer, who purchases raw tobacco of the Virginia type, shall be liable to tax at the point of time when his purchase is effected in the Andhra State. We do not, therefore, see any ambiguity in the provision.

39. For all the aforesaid reasons, we hold that the applications are liable to be dismissed and we accordingly do so with costs. Advocates fee Rs. 100/-

Applications dismissed.