ANDHRA PRADESH HIGH COURT

Pithapuram Taluk Tobacco Cigars

Vs.

State of A.P

Writ Petns. Nos. 222, 267, 288 and 317 of 1957

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

04.11.1957

JUDGMENT

Jaganmohan Reddy, J.

1. These four Writ Petitions are directed against the State of Andhra Pradesh challenging the levy of Sales-tax at six pies per rupee on the turnover of cigars and cheroots sold at less than 0-2-0, bidies, snuff, chewing tobacco or any other product manufactured from tobacco, from the date on which the Andhra Amendment Act XIV of 1955, came into force as well as the levy of sales-tax on country tobacco. Writ Petitions 222 and 267 of 1957 are filed by the Presidents of Tobacco Associations, who are also manufacturers of cigars, while W. P. No. 288 of 1957 is filed exclusively by the individual who manufactures and sells cigars and cheroots sold at less than two annas each. W. P. No. 317 of 1957 is filed by the President of the Tobacco Merchants Association, Rajahmundry, on behalf of 99 members of the Association dealers in country tobacco, cigars and cheroots. In all these petitions, the retrospective levy of sales-tax on the manufacture of cigars and the levy on the first sale of country tobacco is challenged. In order to understand the several contentions, it is necessary to give the legislative history of the levy of sales-tax on these articles.

2. Section 4 of the General Sales Tax Act, which was enacted originally in 1939 is as follows :

> "4. The provisions of this Act shall not apply to the sale of electrical energy, motor spirit as defined in the Madras Sales of Motor Spirit Taxation Act, 1939, manufactured tobacco as defined in the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, and any goods on which duty is or may be levied under the Madras Abkari Act, 1886, the Madras Prohibition Act, 1937, or the Opium Act, 1878." Manufactured tobacco was defined in Madras Tobacco Act, VIII of 1939, by Section 2-A clause (b) as amended by Act IV of 1940, as meaning cigars, cheroots, cigarette tobacco, pipe tobacco, or tobacco intended for a further process of manufacture. Therefore under Section 4 cigars, cheroots, cigarettes, beedies and snuff etc., were exempt from sales-tax.

By Section 3 of the Madras Tobacco Taxation of Sales and Licensing (Repeal) and General Sales

Tax (Amendment) Act, 1944, (Madras Act XII of 1944) which came into force on 1-4-1944, the words "Tobacco in any form whether manufactured or not" were substituted in the said Section 4 for the words "manufactured tobacco as defined in the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939," so that by reason of the amendment, tobacco in any form whether manufactured or not became exempt by virtue of Section 4 from the application of the General Sales Tax Act. This position continued upto 1-5-1953 when, pursuant to Notification No. 80 dated 24-2-1953 issued under Act IV of 1948, the suspension of Act VIII of 1939, as amended and Act IV of 1940 was cancelled so that manufactured tobacco became taxable and the re-substitution of the words "manufactured tobacco as defined in the Madras Tobacco (Taxation of Sales and Licensing) Act 1939" for the words "tobacco in any form whether manufactured or not." After this Madras Tobacco (Taxation of Sales and Registration) Act IV of 1953, was enacted repealing Act VIII of 1939.

It would then appeal that these words in Section 4 above referred were further amended and the words "taxed tobacco as defined in Section 2, Clause (13), of the Madras Tobacco (Taxation of Sales and Registration) Act, 1953, (Madras Act IV of 1953)" were substituted by Section 2 (i) of Act XIV of 1955. Section 2 (13) of Act IV of 1953 as amended by Section 3 of Act XIV of 1955 defined taxed tobacco as meaning manufactured tobacco liable to tax under the Act. Manufactured tobacco under Section 2 (9) is defined to mean cigars, cheroots, cigarettes, cigarette tobacco, pipe tobacco, beedies and snuff, but does not include any preparation or mixture of tobacco intended for a further process of manufacture. By these provisions only cigars, cheroots, cigarettes, cigarette tobacco or pipe tobacco were liable to be taxed at the rates specified in Sub-Section (3) by the seller or where the sale is effected through an agent or commission agent, the tax may be collected from the seller, agent or the commission Agent. Under Section 4 (v) as amended by Section 3 (iii) of Act XIV of 1955, a Tax on 30 per cent, of the turnover is leviable on cigars and cheroots which are sold by the person taxed at not less than two annas per cigar or cheroot.

While Section 4 thus made the General Sales Tax Act inapplicable to articles such as cigars, cheroots, cigarettes, cigarette-tobacco and pipe-tobacco, bee-dies and snuff, the sale of cigars and cheroots at less than 0-2-0 each, beedies, snuff, chewing tobacco or any other product manufactured from tobacco was made liable to sales-tax under Section 3 (i) only at the point of the first sale effected by a dealer in Andhra whose turnover is more than Rs. 10,000/- and similarly raw tobacco except the country variety thereof, whether cured or uncured, became subjected to sales-tax if the turnover was over Rs. 10,000/- as both were not exempt by Section 3 (3) under which a dealer whose turnover in any year is less than Rs. 10,000/-is not liable to pay any tax for that year under Subsection (1) or Sub-Section (2) of Section 3. This result was achieved by Act XIV of 1955 adding clauses (vii) and (viii) to Section 5 of the General Sales Tax Act, which would read thus :

> "5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees :
> (i) to (vi) XX XX XX
> (vii) The sale of cigars and cheroots at less the two annas per cigar or cheroots, and bidies, snuff, chewing tobacco or any other product manufacture from tobacco, shall be liable to tax under Section 3, Such section (1), only at the point of first sale effect 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 six pies for every rupee on his turnover;

(viii) raw tobacco (except country variety there of) 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 a dealer who is not exempt from taxation under section 3, Sub-Section (3), but at the rate of seven and has 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."
By section 5 of the Madras General Sales Tax (Andhra Amendment) Act XVI of 1956, these two clauses as well as clause (iv) relating to sale of bullion were deleted from Section 5 and a new Sub-Section (2) was substituted for the old one, Sub-Section 2 of Section 3 which sub-ss. (2-a), (2-b) and (2-c) were added effecting a corresponding amendment in clause (b) of Sub-Section 1 of the said Section. Further the tax on item 12 and 13 of Sub-Section 2-A and item (iv) of Sub-Section 2-B of section 3 was sought to be levied retrospectively from the date of the amendment of Act XIV of 1955 Section 3 (in so far as is relevant) after its amendment would read thus :

3. Subject to the provisions of this Act. : (a) every dealer shall pay for each year a tax on his total turnover for such year; and (b) the tax shall except in the case of goods specified in sub-ss. (2-A) and (2-B), be calculated at the rate of three piece for every rupee in such turnover :

Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding-house or restaurant, the tax shall be calculated at the rate of four and half pies for every rupee, if the turnover relating to those articles is not less than twenty-five thousand rupees.

2. On the first sale of any of the goods mentioned below by a seller who is not exempted from taxation under Sub-Section (3), the seller shall pay a tax at the rate specified as applicable thereto; and the tax shall be paid by the seller on his turnover in each year relating to such goods and shall be in addition to the tax to which he is liable under sub-section. (1) on his, total turnover for the year :

Provided that, in the case of goods imported into the State either from outside the territory of India or from any other State in India, the tax shall be levied on the first sale effected in the State by a seller who is not exempt from taxation under Sub-Section (3), after the import of the said goods into the State

Provided further that, in the case of an assessment made under this sub-section, the burden of proving that the sale was not the first sale made in the State by a person not exempt from taxation under sub-section (3), or was not the first sale effected by such person after the import of the said goods into the State, as the case may be, shall lie on the person assessed :

Description of goods. Rate of tax for every rupee in the turnover relating to such goods.
1 2

(i) to (xv) ??

2-A. the sale of any of the goods mentioned below shall be liable to tax at the rate specified and applicable thereto, only at the point of the first sale effected in the state by a

seller, and the tax shall be paid by the seller on his turnover in each year relating to such goods :

Description of goods. Rate of Tax.

(1) (2)
(1)to(11) ? ...
(2)Cigars and Cheroots sold at less than two annas per cigar or cheroot. Six pies for every rupee in the turnover.
(3)Bidies, snuff, chewing tobacco or any other product manufactured from tobacco. Do.
Provided that :
(a) in the case of goods imported into the State either from outside the territory of India or from any other State in India, the tax shall be levied on the first sale effected in the state after the import of the said goods into the State;
(b) In the case of any assessment made under this sub-section, the burden of proving that the sales was not the first sale effected in the State after the import of the said goods into the State shall lie on the person assessed;
(c) In the case of cloth which has not been marked fine or superfine in pursuance of a notification under the Cotton Textiles (Control) Order, 1948, the burden of proving that the cloth is not tabid to the levy of tax under item 1 shall be on the seller.

EXPLANATION: For the purpose of levy of tax under item 1, fine or superfine cotton cloth shall mean such cloth as may, by notification under the Cotton Textiles (Control) Order 1948, be classified as fine, or superfine, or in case there is no such classification or that order does not apply, such cloth as the State Government may, by general or special order, declare to be fine or superfine for the purpose of levy of tax under the said item, and such declaration may be made to take effect from such date as may be specified therein. Items 12 and 13 in this sub-section shall be deemed to have come into force on the date on which the Madras General Sales Tax and the Madras Tobacco (Taxation of Sales and Registration) (Andhra Amendment) Act, 1955, (Andhra Act XIV of 1955) came into force. Description of goods. Point of purchase liable to tax. Rate of tax for every rupee in the turnover relating to such goods.

(1) (2) (3)

(1) and (2).....
(3) Country variety of raw tobacco whether cured or un-cured. At the point of first purchase in the State. Six pies.
(4) Virginia and other similar varieties of raw tobacco whether cured or un-cured. Do. Seven and half pies.
Provided that :
(a) In the case of goods mentioned in items (3) and (4) imported into the State either from outside the territory of India or from any other State in India, the Tax shall be levied on the first purchase effected in the State after the import of such goods; and

(b) the burden of proving that any purchase effected by a person is not liable to tax under this sub-section shall lie on the person assessed.

Item (iv) in this sub-section shall be deemed to have come into force on the date on which the Madras General Sales Tax and the Madras Tobacco (Taxation of Sales and Registration) (Andhra Amendment) Act, 1955 (Andhra Act XIV of 1955), came into force.

2-C. If, in the opinion of the State Government the levy of a single point tax on any of the goods specified in sub-section (2-A) or Sub-Section (2-B) is resulting in evasion of tax or considerable loss of revenue to the State, the State Government may, by Notification in the Andhra Gazette, suspend the levy of such single point of tax on such goods, and thereupon the provisions of sub-section (1) of this section shall apply in relation to such goods and sub-section (2-A) and sub-section (2-B) shall not apply in relation thereto :
Provided that no such notification shall come into force until it is approved by a resolution of the Legislative Assembly :
X X X X
3. A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or subsection (2).
Provided that in the case of a dealer, who deals in any of the goods specified in Section-4 of the Andhra General Purchase Tax Act, 1956, the total turnover shall be the aggregate of his turnover under this Act, and his turnover in respect of the goods specified in Section 4 of the Andhra General Purchases Act, 1956, and if such aggregate turnover is not less than ten thousand rupees, he shall be liable to pay tax under this Act, only on his net turnover under this Act.
EXPLANATION. : The expression 'total turnover' in this sub-section and sub-sections (1) and (2) of Section 8-A shall mean the (gross-turnover)." Learned Advocates for the petitioners contended inter alia (a) that the levy of tax retrospectively on items (12) and (13) in sub-section (2-A) and on item (iii) in Sub-Section (2-B) of Section 3 on the date when it came into force, i.e., 1-11-1955, is ultra vires and illegal; (b) that the tax sought to be levied will operate as a clog on free enterprise and would offend the fundamental right guaranteed under Article 19(1) (g) of the Constitution inasmuch as the petitioners pay not only the central excise duty and the cigar labels fees at 0-4-0 or 0-8-0 a hundred according to their size, but also the various fees to the municipality and the license fees to the Central Excise Department.

The cumulative effect of these various levies will cause undue hardship and hamper the free pursuit of the members of the association of their trade; (c) that the levy of tax in the case of the above items and other goods irrespective of the turnover, while exempting the turnovers of other items less than Rs. 10,000/-is discriminatory and must be struck down an offending Article 14 of the Constitution as the clause is unreasonable and bears no just relation to the object sought to be achieved; (d) that it amounts to double taxation; (e) that while the intention and policy of the amending Act is a single point tax, the newly introduced sub-sections (2-A) and (2-B) are being interpreted as permitting a levy of tax on the country tobacco at the purchase point as also levy

on cigars and cheroots prepared from the very same tobacco, though there is no manufacturing or other process involved in their preparation which will amount to levy of tax on the same commodity at two points contrary to the express policy of the amending Act and is therefore illegal; and (f) that sub-section (2-B) of Section 3 does not specify the person from whom tax is liable to be collected and in the absence of such specification, the Government cannot collect tax under the said sub-section from any person.

3. The first contention urged is that no legislation can be enacted levying a tax retrospectively, but this contention put thus has no force. The Constitution of India has by Article 245 enacted that subject to its provisions the Union Parliament may make laws for the whole or any part of the territory of India and that the Legislature of a State may make laws for the whole or any part of the State, while Article 246 proceeds to distribute the legislative powers as between the parliament and the State Legislatures in the country. These articles, read with item 54 in list II of the VII schedule in respect of tax on sale or purchase of goods, vests a power in the State Legislature to enact laws without imposing any limitation or restriction in regard to their being enacted retrospectively. While this is so, the laws made by the Parliament or the State Legislatures exercising legislative power within the spheres assigned to them respectively, must be subject to the other provisions of the Constitution imposing any fetters, which make a law infringing such provisions liable to be struck down. In other words, they must be confined within the bounds of constitutional limitations. In the *Union of India v. Madan Gonal Kabra*[1], the question that fell for determination was whether the application of the Indian Income-tax Act by the Finance Act, 1950, can be made retroactively to incomes accruing or arising in the State of Rajasthan for the year 1949-50, over which the Dominion Parliament has no power to legislate before 26-1-1950. It was sought to be argued that as the Constitution could not operate retrospectively as held in *Keshavan Madhava v. State of Bombay*[2], the power of legislation confer'red upon Parliament could not effect the incomes accruing prior to the commencement of the Constitution. Patanjali Sastri, C.J., who delivered the judgment of the Supreme Court, observed with respect to this argument at p. 117 (of SCJ) :

> '"While it is true that the Constitution has no retrospective operation, except where a different intention clearly appears, it is not correct to say that in bringing into existence new legislatures and conferring on them certain powers of legislation, the constitution operated retrospectively. The legislative powers conferred upon Parliament under Article 245 and Article 246 read with List I of the 7th Schedule could obviously be exercised only after the constitution came into force and no retrospective operation of the Constitution is involved in the conferment of those powers.

[1]1954 S. C.J. 110

[2]1951 S. C.J., 182

But it is a different thing to say that Parliament in exercising the powers thus acquired is precluded from making a retroactive law. The question must depend upon the scope of the powers conferred, and that must be determined with reference to the terms of the instrument by which affirmatively, the legislative powers were created any by which, negatively, they were restricted'." *Queen v. Burah*[3],.Article 245 of the Constitution enacts that subject to the provisions of the Constitution, the Parliament may make laws for the whole or any part of the territory of India, while Article 246 proceeds to distribute legislative powers as between the Parliament and the State Legislatures in the country. Thus, those articles read with Entry No. 82 of List I of the

7th Schedule empower Parliament to make laws with respect to taxes on income for the whole of the territory of India, and no limitation or restriction is imposed in regard to retroactive legislation. It is, therefore, competent for Parliament to make a law imposing a tax on the income of any year prior to the commencement of the Constitution." This is a clear and concise statement of law which admits of no doubt that the legislatures within the spheres allocated to them are supreme, subject to the constitutional limitations. While the Courts are averse to construing a statute, particularly a taxing statute, so as to give a retrospective effect unless express words or necessary intendment compel them to do so, none the less this rule of construction cannot be confused with a constitutional limitation imposing a fetter on the power of legislature to enact retrospective law.

4. The further assumption underlying the argument that the dealer is merely the agent for collection from the consumer and the tax cannot, therefore, be levied retrospectively on him is also unwarranted. This submission is based on the argument that it is an indirect tax and also on section 8-B and clause (7) of Rule 5-A of the Madras General Sales Tax Turnover and Assessment Rules, 1939, which are as under :

> "8-B (1) No person who is not a registered dealer shall collect any amount by way of tax under this Act, nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed;
> Provided that the State Government may exempt persons who are not registered dealers from the provisions of this sub-section until such date, not being later than the 1st day of April, 1948, as the State Government may direct.
> (2) Every person who has collected or collects any amount by way of tax under this Act, on or after the 1st day of April, 1947, shall pay over to the State Government within such time and in such manner as may be prescribed, all amount so collected by him if they are in excess of the tax, if any, paid by him for the period during which the collections were made; and, in default of such payment, the amounts may be recovered as if they were arrears of land revenue. Rule 5-A (7) A registered dealer may collect amounts by way of tax or taxes under the Act subject to the following conditions :
> (i) He shall not collect any amount or amounts by way of tax or taxes under the Act at a rate or rates exceeding the rate or rates specified in section 3 or 5 or notified under Section 6 (1).

[3] ILR 4 Cal 172 (P.C)

> (ii) He shall pay in full the amount or amounts collected by him by way of tax or taxes to the State Government on or before the 30th April, of the year succeeding that in which such collection is made."

Shri Purniah relies upon certain observations of the Federal Court *in re : C. P. and Berar Sales of Motor Spirit and Lubricants Taxation Act*[4], wherein comparing an excise duty with sales-tax, Sulaiman, J., observed that "at; the time of the retail sale the retail seller will charge the extra amount from the consumer directly." Again at p. 84 (STC) , Jayakar, J., observed :

> ".....It is levied on the commodities merely as existing articles of trade and commerce,

circulating and consumed within the limits of the Province. Thus analysed, the tax appears to fall within the well known category of an 'indirect tax' in so far as it is intended to be or capable of being passed on to the consumer by an advance in prices corresponding more or less to the amount of the tax."

These observations do not, however, help the argument that the tax is leviable on the consumer to be collected by the dealer as an Agent of the Government. On the other hand the observations of Jayakar, J., already show that the tax is passed on to the consumer by an advance in prices corresponding more or less to the amount of the tax. It will be seen from the provisions of the above sections and rules that an unregistered dealer is not authorised to collect any amounts by way of tax while the registered dealer is subject to the conditions and restrictions imposed. There is nothing in these sections which justifies the contention that the dealers are merely in the position of agents collecting tax from the consumers and passing it on to the State Government without any liability on their part to pay tax. This contention is negatived by the taxing section itself, which says that every dealer shall pay for each year a tax on his total turnover. It is immaterial whether the dealer collects any tax or not, but the liability to pay is there. If a registered dealer collects the tax, then he will have to pass it on, but even otherwise he will still be liable for the tax. In a Full Bench Judgment of this Court, in The *Government of Andhra v. East India Commercial Co. Ltd*[5]*.,* Viswa-natha Sastri, J., said in the same effect at p. 48 (of Andh L. T.) thus :

"The statutory liability, however, for payment of sales-tax is laid on the dealer on his total "turn-over" whether or not he realises the tax from the purchaser."

The Allahabad High Court also in a Full Bench Judgment in the case of *Adarsh Bhandar v. Sales Tax Officer, Aligarh*[6]*,* took the same view. Mootham, C.J., observed at p. 678 (of STC) :

"I do not think that it is an essential feature of a tax on the sale of goods that the burden thereof must be capable of being passed on to the consumer. There is nothing in the U. P. Sales Tax Act, which makes it compulsory for the dealer to pass on the burden of the tax to the consumer. The Act provides that registered dealers can, if they like, realise the tax from their customers, but it is

[4]1 S. T. C. 1

[5] 1957 Andh. L. T. 43 : AIR 1957 And Pra 83

[6]8 S. T. C. 666 : AIR 1957 All 475

open to a dealer to pay the tax out of his own profits without adding it to the price paid by his customers if he so wishes.

As the Act stood prior to its amendment by U. P. Act XIX of 1956, non-registered dealers, if their turnover exceeds the prescribed limits, could not realize the tax, as such, from their customers but were bound to pay it to the Government. Like many other taxes, sales-tax is certainly a tax the burden of which can ordinarily be passed on to the consumer and in most cases, so passed on, but it cannot in my opinion be said that the tax will cease to be a tax on sales if, on any ground, the burden rests on the dealer."

In this view the tax can be retrospectively levied.

5. It is again urged that the legislature imposing a retrospective tax will operate as a clog on the free enterprise and would offend the fundamental rights guaranteed under Article 19 (1) (g) of the Constitution, not only because there are several levies such as the Central Excise Duty, Cigar label fee, various fees payable to the municipality and license fee to the Central Excise Department, but also because the retrospective operation of the tax, which these petty dealers could not pass on to the consumers from whom tax is to be collected, would cripple their trade in such a way as to force them to discontinue their business. We may at once state that there are no materials placed before us from which we can conclude that the effect of the imposition of the sales-tax retrospectively or the imposition of it on dealers selling cigars, cheroots, at less than 0-2-0 each, snuff, beedies etc., with turnovers below Rs. 10,000/-, has the effect of forcing them to discontinue the business. That apart the policy of taxation is more appropriately the province of the statesman and of the legislature rather than of the lawyer or the Courts. It is a public policy dependent not only upon the necessities of administration but also implementation of the schemes to serve the public needs.
If in the exercise of the general policy of taxation each of the units of the federation is empowered to tax on the several items assigned to it respectively, the heaviness of the burden upon an individual, unless it exceeds the constitutional limits, cannot be questioned. Article 265 of the Constitution provides that no tax shall be levied or collected except by the authority of law. The State, therefore, has the power under this Article to levy and collect taxes which power cannot be restrained, that is the fundamental rights are not immune from taxation and Prima Facie taxation cannot be said to be an abridgment of the fundamental rights. If, however, the pith and substance of the legislation is such that the taxes imposed are prohibitive or have the effect of imposing restrictions which are unreasonable and cannot be justified under clause (6) of Article 19, they can be successfully questioned as being unconstitutional. We are not here concerned with the effect of toe imposition of the licence fee or the excise duty etc., all of which may have been legitimately imposed in exercise of the legislative authority conferred upon the Union and the States and as we said unless there are materials placed before us, we cannot determine on a mere fanciful conjecture that the effect of the tax upon the petitioners is violation of these fundamental rights.

6. The next question, therefore, is whether this retroactive legislation (which the legislature was competent to enact) was obnoxious to the doctrine of equal protection of law embodied in Article 14 of the Constitution. The State, it is contended, by making the turnover of the dealers of goods, specified in sub-sections (2-A) and (2-B) of Section 3, liable to tax without any exemption, while exempting dealers of goods specified in sub-section (2) as well as other goods on their turnover of less than Rs. 10,000/-, has discriminated between these dealers without any rational basis and without any reasonable relation to the object sought to be achieved, viz., the raising of the revenue, and therefore the discrimination offends the provisions of Article 14 of the Constitution. Similar argument was raised before us in a batch of writ Petitions in *Gorantla Butehaiah Chowdary v. The State of Andhra*[7] and Batch (Unreported) (Since reported in AIR 1958 Andhra Pradesh 294), and after considering both the Indian and the American cases (which it would be unnecessary to examine again) the law was summed up as followed by my Lord the Chief Justice :

> '"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 clauses 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 such care by the constitutional law of America and incorporation in our Constitution. We have no right to conjure up possible situation 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 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."

Applying the above principles it has to be seen 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 rights guaranteed under Article 14 of the Constitution of India. In none of the writ petitions have the applicants stated any

[7] W. P. Nos 375/56

facts seeking to show that the classification was arbitrary and unconnected with the object sought to be achieved, except to say that there was discrimination between some articles and others in the imposition of sales-tax. After the arguments were heard parties took time to file further affidavits regarding this matter and the respondent, State of Andhra, in the affidavit filed on 26-9-1957, had stated that manufactured tobacco of all descriptions was originally liable to tax under the provisions of Act VIII of 1939. In Act IV of 1953, which replaced Act VIII of 1939 some of the products viz., cigars, cheroots selling at less than 0-2-0 each and snuff, bidies, chewing tobacco were excluded from the operation of the Act and under both the aforesaid Acts, tax was livable irrespective of the quantum of the turnover; but in 1955 the varieties of manufactured tobacco left out in Act IV of 1953, viz., Cigars, Cheroots, snuff, beedies, chewing tobacco were sought to be taxed and were included in the Madras General Sales Tax Act IX of 1939, by amending Act XIV of 1955.

The intention to tax cigars, cheroots selling at less than 0-2-0, snuff, beedies, chewing tobacco etc., was found to have been defeated by reason of the fact that on account of the exemption in

sub-section (3) of Section 3 only turnovers above Rs. 10,000/- could be taxed and almost all the dealers who were selling cigars, cheroots, beedies etc., had less than Rs. 10,000/- turnover and consequently the bulk of the turnover in these goods escaped tax and in order to remedy this the minimum turnover limit was lifted with retrospective effect by Act XIV of 1956, with effect from the date on which that Act came into force. That apart the other varieties of manufactured tobacco are taxed under the provisions of Act IV of 1953, without any turnover limit whatsoever and there has been no distinction or discrimination between these goods and goods sold at lesser rates. In the reply to the supplemental counter-affidavit filed in W. P. No. 317 of 1957, it is stated that at least 25 per cent. of the members are dealers having a turnover exceeding Rs. 10,000/- and that as a result of the investigations made by their association, it was stated, that the tax paid by the dealers having turnovers exceeding Rs. 10,000/- will represent nearly 75 per cent. of the total tax realisable, if all the dealers are to be taxed irrespective of the turnover, that nearly 25 out of the 99 members will have turnovers exceeding Rs. 10,000/- and more than 15 of them will have turnovers exceeding one lakh, so that the tax payable by the petty dealers will be about one-fourth of the total tax payable by all the members of the association. The reply to the counter does not give a concrete picture of the sale-tax on cigars, cheroots, chewing tobacco, snuff and beedies, in the entire State as a whole and what the yield of tax from dealers of Rs. 10,000/- and over is, as compared to the yield of tax from dealers of less than Rs. 10,000/-. It is for the petitioners to show that the classification is arbitrary and is unconnected with the object sought to be achieved.

So far as the State is concerned, it has given a plausible explanation for the classification, viz., that the object was to tax all varieties of manufactured tobacco irrespective of the price, and this was sought to be achieved by the Amending Act XIV of 1955, but having regard to the exemption limit that object could not be achieved and consequently retrospective effect has been given to achieve that object.

Having regard to the fact that in the case of taxation laws larger discretion is given to the State in the matter of classification and sufficient latitude is permissible to the State to adjust the burden of taxation on a fair and reasonable degree of equality, it does not prevent the State from adjusting its taxation in all appropriate and reasonable ways and in the absence of the petitioners placing at our disposal necessary facts demonstrating that the classification has no rational basis to the object sought to be achieved, viz., the raising of the revenue, we are satisfied that the retrospective operation of the levy of tax introduced by the amendment seeks to adjust the burden with a fair and reasonable degree of equality.

7. Mr. Neti Subrahmanyam contends that the levy of tax without the exemption limit as contemplated under Section 3 (3) of the Madras. General Sales Tax Act, would amount to double taxation, but we are unable to understand the rationale behind the argument, except the mere assertion thereof. The fact that the petitioners pay excise duty and other license fees etc., properly livable cannot justify the contention that a double tax is being levied on cigars, cheroots, selling at less than 0-2-0 each, beedies, snuff etc. The burden of several kinds of taxes and levies on a particular commodity may be heavy, but that does not mean that they are subjected to double taxation. As we understand it, by double taxation is meant tax imposed twice over upon the same individual on one passage of money in the form of one sort of income or under the same head of tax. Where the joint operation of different statutes result in liability to two different taxes it would not amount to double taxation. This contention therefore has no force.

8. Again it is submitted by Shri Ananta Babu, that the effect of the imposition of tax under

subsections (2-A) and (2--B) is not only to levy tax on country tobacco at the purchase point, but also to levy on cigars and cheroots produced from the very same tobacco, even though there is no manufacturing process involved, which amounts to levy of tax on the same commodity at two points, contrary to the policy of the amending Act which prescribes levy at single point. In other words, his contention would amount to stating that cigars and cheroots which are prepared from country tobacco sold at less than 0-2-0 each, involves no manufacturing process and must be considered to be a tax on country tobacco itself. In the supplemental counter-affidavit it is alleged that cigar and cheroots are prepared by merely sprinkling the tobacco with water, removing the stems, cutting the leaves into convenient strips and twisting the longer leaves round the shorter pieces which are used as stuffing material; that except the raw tobacco leaf no other commodity is used, and that the conversion of a tobacco leaf into a cigar is not a work of art and involves no particular skill or craftmanship. Consequently to tax the cigars at the purchase point after taxing the raw tobacco at the sale point amount to double taxation. The very counter of the petitioner would disclose that country tobacco viz., the leaf is not in the same form and has changed its character as a raw leaf to that of a finished consumable article like cigar, cheroot, bidi, snuff etc. It is not as if the leaf is consumed as cigar or cheroot. Some manufacturing process is involved in the production of these articles. Whenever any article is prepared from raw materials by giving them a form different to the raw material or changing the quality, and the property, it cannot be said to remain in the same state. The word "Manufacture" is a compound word of Latin origin "Manu" - (by hand and facere - to do) meaning something done by hand, but that meaning is not confined to anything done by hand alone and would include anything done by machine as well. As Webster Dictionary says, manufacture means the process or operation of making wares or any material products by hand, by machinery or by other agency. The Century Dictionary defines, manufacture to mean production of articles for use by giving those materials new forms, qualities, properties whether by hand labour or by machinery. It is unnecessary to examine the connotation of this word further for the determination of the question whether cigars, cheroots, beedies and snuff etc., can be considered to be country tobacco in its raw form. That these products cannot, by any stretch of the language, be said to be in the raw form, of leaf admits of no doubt and the contention of double taxation has no foundation.

9. Shri Anantha Babu, then contends that sub-section (2-B) does not specify the person from whom the tax is exigible and in the absence of such specification, the Government cannot collect tax from any person and that taxation measures should be construed strictly and in favour of the citizen. Sub-section (2-B) of Section 3 no doubt does not specify the person who is to pay the tax i.e., whether the seller or the purchaser. All that it says is that the goods specified therein shall be liable to a tax at the rate and only at the point specified as applicable therein while subsection (2-A) clearly states that the sale of any of the goods mentioned therein shall be 1 able to tax at the rate specified and applicable thereto, only at the point of the first sale effected in the State by a seller. It is contended that under Sub-Section (2-B) the point of purchase would involve the seller as well as the purchaser and while for items (i) and (ii), mica and manganese, it is the last dealer who buys it in the State that is taxable, nothing has been specified with respect to the country variety of tobacco, whether cured or uncured, except to state that at the point of first purchase in the State. Learned advocate, therefore, argues that the dealer, viz., whether the purchaser or seller, has not been specified for the purposes of levy of tax on country variety of raw tobacco at the purchase point and consequently no tax is exigible from the purchaser without such specification. Learned Advocate General, on the other hand contends that sub-sections (2-A) and (2-B) are added to Section 3 which deal with the person liable to pay tax and must be read

together and so read, the purchaser at the purchase point and the seller at the sale point must be construed as the dealer from whom tax is exigible. Several authorities have been cited in support of the proposition that taxing statutes should be strictly construed and that when the person on whom tax is levied is not specified, no tax can be levied on him and it is not permissible to levy a tax by analogy. There is no doubt that the intention to impose a tax on the subject must be shown in clear and unambiguous language and if two interpretations are possible on the reading of a taxing statute, one in favour of the subject and the other in favour of the Government, the Court have held that that which is favourable to tire subject should be given. It is also clear that while applying this rule of construction, it should not be construed so strictly or so narrowly as to completely defeat the intention and purpose of legislation. The intention to impose a tax must, therefore, depend upon the language of the statute and in construing taxing statutes no special canons of construction are prescribed. The same canons of construction as would be applicable to any other statute would also be applicable to the taxing statute in ascertaining the legislative intent and since the paramount duty of the Courts is to ascertain that intent, it has to be gathered by the language employed having regard to the context in connection with which it is employed and after applying the well established rules of construction. We will now examine a few of the relevant authorities.

10. In *Cape Brandy Syndicate v. Inland Revenue Commissioners*[8], the question was whether under the Finance Acts of 1915 and 1916 excess profits tax was leviable on a trade or business which came into existence after the war. Excess profits under these

[8](1921) 1 K. B. 64

acts were profits earned in the war years and in excess over the profits of the pre-war years and consequently the existence of a trade or business in the pre-war period was necessary to compute excess profits. The provision which came in for interpretation was that which stated that where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period. It was sought to be argued that because the provision contemplated there being no pre-war trade or business, in fixing the standard profits for a business which did not exist in pre-war years, but only came into being during the post war years, such businesses were also taxable. This contention was repelled by Rowlatt J., who made the following terse observations :

> ".....It is urged by Sri Willam Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim which does not mean that words are to be unduly restricted against the crown, or that there is to be any discrimination against the Crown in these Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment.

There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In *Partington v. Attorney General*[9], Lord Cairns made the following observations upon which the learned advocate for the petitioners placed great reliance. I am not at all sure that, in a case of this kind - a fiscal case - form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law he

must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." This passage was cited with approval in *Attorney General v. Earl of Selborne*[10], All that the above passage means is no more and no less than that the intention to impose tax must be deducible from the clear and unambiguous language of the section without importing into it any equitable construction. In our opinion, it does not by the use of the words "letter of the law" intend to suggest that a literal construction should be placed upon the words in the statute, or given the narrowest technical meaning for the purposes of interpreting it against the State or giving undue relief to the tax-payer. That would indeed be to put in the language of Rowlatt, J. "too wide and fanciful construction" with a view to unduly restricting the words against the State amounting to discrimination, or in the language of Lord Halsbury, L. C. in *Tennant v. Smith*[11],

> "Cases, therefore, under the taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of Taxation."

[9](1869) 4 H. L. 100 at p. 122 [11](1892) A. C. 150 at p. 154
[10](1902) 1 K. B. 388

11. An examination of the relevant American case law inclines us to the same view. Chief Justice Marshall in the classical case of *United States v. Wiltberger*[12], at p. 42 said :

> ".....though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maximum is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend.

The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be strong one indeed, which would justify a court in departing from the plain meaning of the words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorise us to say so." In Guy *T. Helvering v. Stuckholms Enskilda Bank*[13], Sutherland, J., remarked at p. 218 :

> ".....The intention of the law maker controls in the construction of taxing Acts
> as it does in the construction of other statutes, and that intention is to be ascertained, not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will....."
> "The rule of strict construction is not violated by permitting the words of a statute to have their full meaning, or the more extended of two meanings. The words are not to be bent one way or the ether, but to be taken in the sense which will best manifest the legislative

intent."

In *Best and Co. Ltd. v. The Corporation of Madras*[14], a Full Bench of the Madras High Court in considering section 110 and rule 7 of the Taxation rules in schedule IV of the Madras City Municipal Act, as to whether the licence fees payable by all incorporated companies in the City of Madras were payable by companies doing business in British India, whose paid up capital was in pound sterling, held that they were so liable notwithstanding the fact that the taxation rules of the Municipality were prescribed for capital expressed in rupees. Schwabe, C.J., referred to the passage of Rowlatt, J. in (1921) 1 K. B. 64 (H) as well as of Lord Russel, C.J., in *Attorney General v. Carlton Bank*[15], observed at p. 282,

> "the principle of construction to be applied to taxing statutes is that, if the words of the statute are capable of two otherwise equally apposite constructions, the construction to be adopted is that in favour of the tax-payers : but to ascertain whether the two possible constructions are equally apposite, die ordinary rules of construction of statutes are to be applied."

[12]5 Law Ed. 37 [14] ILR 47 Mad. 262
[13](1934) 79 Law E.l. 211 [15](1899) 2 Q. B. 158

12. To sum up the principle deducible from these authorities is that there are no special rules for construing a taxing statute or of applying to it too narrow or fanciful a construction for holding against the State or in favor of a citizen. The ordinary rules of construction as are applicable generally in construing a statute for ascertaining the intention of the legislature are applicable to taxing statutes also and if in so construing it, two equally opposite constructions are possible, the one in favor of the tax-payer should be adopted and that in so construing the provisions, the context as well as the other provisions of the statute must be taken into consideration.

13. Bearing in mind the above principles the intention of the legislature must be determined with reference to the scheme of taxation and thereafter to see whether the word or clause which falls for particular interpretation is susceptible of the meaning consonant with it, whatever may be its meaning in another and different connotation.
In other words, where the language of the particular provisions being interpreted is capable of taxing intent and indicates the person to be taxed, that intent must be allowed to prevail even though the provision as such, divorced from its context, may appear to be ambiguous. The other provisions of the statute which throw light upon the intent of the legislature and which may serve to show that the particular provision ought not to be construed as if it is construed alone and apart from the rest of the Act must of necessity be also construed.

14. Sub-sections (2-A) and (2-B) are added to Section 3 of the Madras General Sales Tax Act by the Andhra Amendment Act XVI of 1956, and must be read together. Section 3 (1) (a) makes every dealer liable to pay for each year a tax on his turnover for that year. A dealer has been defined by Section 2-B as meaning any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for other valuable consideration and includes persons mentioned in clauses (i), (ii) and (iii) thereof.
Similarly the dealer is referred to in defining turnover in Section 2 (i). Though a dealer is a person who is either a buyer or a seller, the taxing provision under Section 3 (1) becomes

operative when the buyer or the seller on whose turnover the tax is to be leaved either by the rules or by the provision of the statute, itself. Sub-Section (2) itself specified that it is the seller that should pay tax at the rates specified on the goods enumerated therein. In subsection (2-A) also the sale of goods enumerated therein are liable to tax at the point of first sale effected by a seller, so that it is the seller that has to pay the tax. When it comes to Sub-Section (2-B) all that is specified is the point at which the tax is to be levied, viz., at the point of purchase and in so far as items (i) and (ii) are concerned at the point of purchase by the last dealer who buys in the state and with respect to items (ii) and (iv) at the point of first purchase in the State. No doubt there is an omission to specify that it is the purchaser who is to pay at the point of purchase, an omission which if the draftsmen had been careful would not have created this problem. All the same the intention appears to us to be clear, in seeking to impose the tax on the purchaser. In so far as Mica and Manganese are concerned, it is the last dealer at the point of purchase who is liable to pay tax. With respect to the country tobacco and Virginia tobacco it would be the first dealer who buys at the point of first purchase in the State. Though the words first dealer who buys are not there, the meaning is clear from the use of the words "first purchaser," because, as the learned Advocate General contended, and in our view, quite rightly, the purchase point involves the purchaser, and the sale point the seller. It is contended by Shri Anantha Babu that the words "purchase point" as such would involve both the seller and the purchaser, but if that was the intention, there was no necessity to use the words "purchase point," because the use of the word "dealer" by virtue of the definition, would have covered both the buyer and the seller. The words, "first purchase in the State" with reference to items (iii) and (iv) of Sub-Section (2-B) of Section 3, clearly indicate the first purchase from the producer of raw and Virginia tobacco. Tax on the producer on a sale by him cannot obviously be intended to be levied as the person who grows agricultural products and has incidentally to sell the same, cannot be called a person engaged in buying, selling or supplying or distributing goods within the meaning of the definition of a dealer, that is, an agriculturist when selling the produce from his land can hardly be said to be a dealer.

On the other hand the income from the first sale of the produce from his lands would be agricultural income, as opposed to business income, liable to be taxed in exercise of the legislative power conferred by item 46 of list II of Schedule VII of the Constitution. Therefore, if the agriculturist-sellers of the produce cannot be brought within the net of taxation, it is obvious that the purchaser is clearly intended to be reached when the Legislature definitely indicated that it is "at the point of first purchase in the "State" that the tax is exigible. We, therefore, hold it so.

15. For the several reasons aforesaid, we are of the view that the applications are not tenable and we accordingly dismiss them with costs. Advocate's fee Rs. 50/- each.

Applications dismissed.