CIVIL MISCELLANEOUS.

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

M/S. RATTAN LAL & CO., BHATINDA,—*Petitioner*

versus

STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 759 of 1969

December 1, 1970

Punjab General Sales Tax Act (XLVI of 1948)—Section 2(d)—Central Sales Tax Act (LXXIV of 1956 as amended by Act XXVIII of 1969)—Section 8(2)—Constitution of India (1950)—Articles 14 and 269—Purchase tax on cotton not leviable in Punjab in 1956—Central tax on purchase of cotton in an inter-State transaction—Whether can be levied after the amendment of the Central Act in 1969—Section 8(2) of the Central Act authorizing the State Legislature to vary the rates of tax of inter-State transactions—Such authorization—Whether within the bounds of delegated legislation—Power conferred by section 8—Whether arbitrary or unguided—Section 6(1A)—Whether violative of Article 14.

Held, that there was no static crystallisation of Central Sales Tax rates as existing on the date when the Central Act came into force. The rate which a State Legislature imposes in respect of inter-State transactions in a particular commodity must depend upon a variety of factors. The Legislature has contemplated that elasticity of rates consistent with economic forces is to be maintained. Hence even if under the Punjab General Sales Tax Act, 1948, no tax was leviable on the purchase of cotton in 1956, such a tax is leviable on the said purchase after the amendment of the Central Act. (Para 6)

Held, that section 8(2) of the Central Sales Tax Act is within bounds of delegated legislation. The Act has been enacted in conformity with the provisions of Article 269(1)(g) of Constitution of India and sub-clauses (2) and (3) thereof. The fixation of the rate of Central Sales Tax and the limitation imposed by the Act on the State Legislature by its provisions for the said purpose, are well within the declared purpose and the objects of the Act. The Act lays down the legislative policy underlying the statute. (Paras 10 and 11)

Held, that the dominant purpose of the Parliament in enacting the provisions of section 8(2)(b) of Central Sales Tax Act appears to be that the rates of Central Sales Tax and the General Sales Tax should not conflict and vary within the jurisdiction of the same State. The broad uniformity of the rates of the tax within the same jurisdiction is what is sought to be achieved. Equally significant is the fact that sub-clause (b) of section 8(2) of the Act does not give any unguided power to enhance the rates of Central

Sales Tax Act. All that is sought to be laid down is that the rate of Central Sales Tax in each State would follow the rate of the general sales tax prevalent therein. The State Legislature, therefore, cannot enhance the taxes beyond measure without making a corresponding and equivalent rise in the rates of their general sales tax. Section 14 itself in detail declares certain goods to be of special importance in inter-State trade of commerce thus classifying the goods into 'declared goods' and those not so. The incidence of taxation is again based on the nexus of this classification of 'declared goods' and goods other than 'declared goods'. All these factors considered together, therefore, show the clear control or guidance within which the State Legislature can move to vary the rates of Central Sales Tax. Such a circumscribed and guided power is neither arbitrary nor irrational. Hence the power conferred by section 8 on the State Legislature for varying the rates of tax is neither unguided nor arbitrary and does not amount to any excessive delegation. (Para 14)

Held, that sub-clause 1(A) to Section 6 of the Act which has been introduced by the Central Sales Tax (Amendment) Act, 1969, is not discriminatory and violative of Article 14 of the Constitution. The classification made is not arbitrary or dependent on the accident of a particular date. (Para 24)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, Mandamus, Prohibition or any other appropriate writ order or direction be issued quashing the Assessment Order dated 6th February, 1969 and restraining the respondents, their officers, servants and agents to give effect to the order passed by the respondent No. 2.

C. D. GARG AND R. N. NARULA, ADVOCATES, for the petitioner.

M. R. SHARMA, SENIOR DEPUTY ADVOCATE-GENERAL, PUNJAB for the respdents.

JUDGMENT

S. S. SANDHAWALIA, J.—Civil Writ petitions Nos. 759 and 833 of 1969 challenging the validity of the various provisions of the Central Sales Tax Act, 1956, as amended by the Central Sales Tax (Amendment) Act of 1969, have been directed to be placed before a Division Bench in view of the importance of the issues involved therein.

(2) The contentions raised on behalf of the petitioners in both the petitions are identical and primarily legal. This judgment will govern both the cases above-said.

(3) Only a brief reference to the facts is necessitated and we advert to those in Civil Writ No. 759 of 1969. The petitioner-firm of

Messrs Rattan Lal and Company carries on the business of purchase and sale of cotton within and outside the State of Punjab and has its Head Office at Bhatinda. It is registered both under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act of 1956. It is averred in the petition that cotton is one of the declared goods and is subject to levy of purchase tax only at the stage of purchase by the last dealer liable to pay tax under the General Sales Tax Act and consequently no tax is attracted on the sale of cotton within the State of Punjab. According to the definition of the word "dealer" under section 2(d) of the said Act, a person purchasing and selling goods for consumption outside the State of Punjab is not a dealer under the Act and, therefore, is not liable for levy of tax and assessment under the provisions of the same. As a necessary consequence, according to the petitioner, on an interpretation of sections 8 and 9 of the Central Sales Tax Act as it stood before the amendment of 1969, no tax on inter-State sales of cotton was leviable under the above-said provisions. Nevertheless or the assessment year 1964-65, the Assessing Authority,—vide its impugned order, dated the 6th of February, 1969, proceeded to assess the petitioner to a tax of Rs. 1,30,505.46 P. for transactions made in the course of inter-State trade or commerce. Without availing the remedies by way of appeal and revision provided by the statute, the petitioner challenged the assessment and demand of tax by way of the present writ petition which was admitted on the 26th of March, 1969. Subsequently during the pendency of the writ petition the Central Sales Tax (Amendment) Ordinance (No. 4 of 1969) was promulgated on the 9th of June, 1969, which in turn was followed by the Central Sales Tax (Amendment) Act, 1969 (Act No. 28 of 1969). In view of the changes in the law, the petitioner moved for amendment of the original writ petition which has been duly allowed.

(4) The return filed on behalf of the respondents in terms reiterates the validity of the legislation which has been challenged by the writ petition.

(5) The core of the argument on behalf of the petitioner revolves around and is directed against the validity of section 8(2) and sub-clauses (a) and (b) thereof of the Central Sales Tax Act and for facility if reference the relevant provisions may first be set down—

"8(1) * * *

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of

goods in the course of inter-State trade or commerce not falling within sub-section (1)—

(a) in the case of declared goods, shall be calculated at the *rate applicable to the sale or purchase of such goods inside the appropriate State;* and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at *the rate applicable to the sale or purchase of such goods inside the appropriate State* whichever is higher ; and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, nothwithstanding that he, in fact, may not be so liable under that law.

(2-A) * * *

(3) * * *

(4) * * *

(5) * * *

Mr. Garg on behalf of the petitioner relying on the language of the above-said provision contends that the words "rate applicable to the sale or purchase of such goods inside appropriate State" referred to the rates applicable inside the State at the fixed point of time when the Central Sales Tax Act of 1956 was enacted and came into force. The crux of the argument is that a static and fixed rate of tax existing on the 1st July, 1957 (when the Act came into force) within each State was sought to be adopted by the Central Act wholly regardless of any subsequent amendments of the rates of the General Sales Tax in the respective States. On these premises it was vehemently argued that as under the Punjab General Sales Tax Act, 1948, no tax was leviable on the purchase of cotton in 1956, therefore, no Central Tax is either leviable on the said purchases by the petitioner. The assessment and demand of tax was, therefore, assailed as devoid of legal authority.

(6) At the very outset we notice that the learned counsel cites no authority in support of this interpretation of section 8(2) which is sought to be canvassed by him. When pointedly asked he concedes that despite deep research there is no decision in his favour nor is there one in which such a contention has even been raised for adjudication before a Court of law. It is thus common ground that for

well-nigh 15 years without challenge, section 8(2) of the Act has been interpreted to imply a rate of tax varying in accordance with the amendments by the States of their respective General Sales Tax Acts over the whole of the country and tax had been levied and collected according to such rates. Quite apart from the above significant fact, we are otherwise wholly unable to accept the interpretation of section 8(2) commended by Mr. Garg, both on principle and authority. However we now deem it unnecessary to elaborate the principle to repel the argument because in our view the matter is no longer *res integra* but stands fully covered by a binding decision of their Lordships of the Supreme Court in *The State of Madras* v. *N. K. Nataraja Mudaliar* (1). The burden of Mr. Garg's argument is that there was a static crystallisation of Central Sales Tax rates, as existing on the date when the Central Act came into force, subject of course, to the right of Parliament to impugn and vary the same. This contention appears to us to be in direct contradiction with the observations of their Lordships in *N. K. Nataraja Mudaliar's case* (1). Therein the State of Madras had appealed against an elaborate Division Bench Judgment of the Madras High Court in *Larsen and Toubro Ltd. Madras* v. *Joint Commercial Tax Officer* (2), striking down sections 8(2), (2-A) and (5) of the Central Sales Tax Act as violative of Articles 301 and 303(1) of the Constitution because differential rates obtaining under diverse State Laws applied and varied the rates of Central Sales Tax in each State of the Union. The Madras High Court held that these differential rates impaired the free flow of commerce from one State to another and, therefore, were unconstitutional. Reversing the Madras view on the appeal filed by the State, Justice Shah in *N. K. Nataraja Mudaliar's case* (1), in a masterly exposition of the history, purposes and scope and scheme of the Central Sales Tax Act first noticed the argument for the assessee in the following terms:—

> "This somewhat tortuous scheme of levying tax on inter-State transactions and making it available to the State which levied it, in effect countenances levy of different rates of tax on inter-State transactions in similar goods. It is upon the prevalence of different rates of tax which, subject to adjustments, and incorporated in the Central Sales Tax Act, that the argument of the assessee is largely founded."

(1) 22 S.T.C. 376.

(2) 20 S.T.C. 150.

His Lordship in an unequivocal terms answered the same as follows :—

> "The rates of tax in force at the date when the Central Sales Tax Act was enacted have again not become crystallised. The rate which the State Legislature determines, subject to the maximum prescribed for goods referred to in section 8(1) and (2) are the operative rates for those transactions; in respect of transactions falling within section 8(2)(b) the rate is determined by the State rate except where the State rate is between the range of two and seven per cent. The rate which a State Legislature imposes in respect of inter-State transactions in a particular commodity must depend upon a variety of factors. A State may be led to impose a high rate of tax on a commodity either when it is not consumed at all within the State, or if it feels that the burden which is falling on consumers within the State will be more than offset by the gain in revenue ultimately derived from outside consumers. The imposition of rates of sales tax is normally influenced by factors political and economic. If the rate is so high as to drive away prospective traders from purchasing a commodity and to resort to other sources of supply, in its own interest the State will adjust the rate to attract purchasers. Again, in a democratic constitution political forces would operate against the levy of an unduly high rate of tax. * * * * It is clear that the Legislature has contemplated that elasticity of rates consistent with economic forces is clearly intended to be maintained.

and further.

> The Central Sales Tax though levied for and collected in the name of the Central Government is a part of the sales tax levy imposed for the benefit of the States. By leaving it to the States to levy sales tax in respect of a commodity on inter-State transactions no discrimination is practised ; and by authorising the State from which the movement of goods commences to levy on transactions of sale Central Sales Tax, at rates prevailing in the State, subject to the limitation already set out, in our judgment, no discrimination can be deemed to be practice."

The above observations in our view fully cover the case and are conclusive.

(7) Faced with the above pronouncement, Mr. Garg had first sought to contend that their Lordships of the Supreme Court in the above-said case were construing the provisions of section 8(2) of the Act in the light of the question whether the same were violative of Articles 301 and 303 and on that ground the above observations should be treated as *obiter dicta*. However, when it was pointed out on behalf of the respondents that even the *obiter dicta* of the Supreme Court is entitled to great weight if not actually binding, Mr. Garg further shifts ground to say that these are mere casual observations wholly divorced from the point. We are afraid, we cannot countenance any such suggestion. Their Lordships were expressly construing the validity of these very provisions and examining the correctness of the very elaborate judgment of the Madras High Court in *Larsen and Toubro's case* (2). It was in this context that after examining every conceivable aspect of attack that their Lordships have pronounced upon the validity of these provisions. This pronouncement appears to us to be wholly binding on this Court. In this view of the matter, the first contention of Mr. Garg cannot but fail and is rejected.

(8) We proceed, therefore, to examine the argument which has been advanced in the alternative. It is contended that if section 8(2) of the Act is construed to mean that the various State Legislatures are authorised to vary the rates of Central Sales Tax by making corresponding amendments in their respective General Sales Tax statutes, then such an authorisation is an invalid one. The vesting of such a power in the respective State Legislature is characterised as an abdication by Parliament of its inherent duty to legislate. It is argued that no legislative policy, control or guidance has been laid down for the State Legislatures for the purpose of varying the rates of Central Sales Tax and hence such legislation suffers from the vice of excessive delegation.

(9) We have been invited to enter the larger arena of controversy on the principles, scope and ambit of delegated legislation generally, but we decline to do so. The specific question before this Bench is the delegation by a Central taxing statute to the State Legislatures within the circumscribed limits prescribed therein for the purposes of varying the rate of Central Sales Tax. Such a delegation of the

taxing power in favour of another body is governed by the principles laid down in the binding precedent of the *Municipal Corporation of Delhi* v. *The Birla Cotton Spinning and Weaving Mills, Delhi and another* (3). In this case the validity of section 150 of the Delhi Municipal Corporation Act of 1957 authorising the Corporation to levy certain optional taxes was challenged on the score of excessive delegation. Their Lordships by majority (Shah and Vaidialingam JJ. Contra) upheld the validity of the above-said provision and reversed the judgment of the Delhi High Court holding to the contrary. Three main principles emerged from the majority judgments whose application in the present case is relevant. Chief Justice Wanchoo speaking for himself and Shelat J. after referring to the mass of case law with particular reference to the taxing statutes laid down as follows:—

> "A review of these authorities, therefore, leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere."

Hidayatullah J. (as he then was) speaking for himself and Ramaswami J. whilst agreeing with the conclusions arrived at by the Chief Justice Wanchoo, however, chose to base the same on a wholly different approach—

> "The doctrine that Parliament cannot delegate its powers, therefore, must be understood in a limited way. It only means that the legislature must not efface itself but must give the legislative sanction to the imposition of the tax and must keep the control in its own hands. There is no

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

specific provision in the Constitution which says that the Parliament cannot delegate to certain specified instrumentalities the power to effectuate its own will. *The question always is whether the legislative will has been exercised or not. Once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation.* If the delegate acts contrary to the wishes of the legislature the legislature can undo what the delegate has done. Even the courts, as we shall show presently, may be asked to intervene when the delegate exceeds its powers and functions."

Lastly Sikri J. went much further in subscribing to the following principle :

"Apart from authority, in my view Parliament has full power to delegate legislative authority to subordinate bodies. This power flows, in my judgment, from Article 246 of the Constitution. The word "exclusive" means exclusive of any other legislature and not exclusive of any subordinate body. There is, however, one restriction in this respect and that is also contained in Article 246. Parliament must pass a law in respect of an item or items of the relevant list. Negatively this means that Parliament cannot abdicate its functions. It seems to me that this was the position under the various Government of India Acts, the Constitution has made no difference in this respect. I read (1883) 9 AC 117 and (1885) 9 AC 282 as laying down that legislatures like Indian Legislatures had full power to delegate legislative authority to subordinate bodies. In the judgments in these cases no such word as 'policy', 'standard' or 'guidance' is mentioned."

It is in the light of the aforesaid tests enunciated by their Lordships that the argument on behalf of the petitioner is to be examined. It is obvious that section 8(2) of the Act would be well within the bounds of delegated legislation on the dictum of Sikri J. quoted above. In this context it deserves notice that Mr. Garg did not even contend that the legislative will has not been clearly exercised and

that it is not categorically spelled out from the statute. The test laid down by Hidayatullah J. (as he then was) also stands satisfied. In fact the sole argument on behalf of the petitioner was that the Act did not spell out the legislative policy nor did it give sufficient control or guidance which is requisite for the purposes of delegated legislation.

(10) We are unable to accede to this argument and in our view the criteria laid out by Wanchoo C.J. in the above-said *Delhi Municipal Corporation's case* (3) stands more than amply satisfied in the present one. It is first so if one turns to the purposes of the Act. Admittedly it has been enacted in conformity with the provisions of Article 269(1)(g) and sub-clauses (2) and (3) thereof. The various provisions of the Act make its purpose self-evident and this is patent even by a bare reference to the preamble—

> "An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State Laws imposing taxes on the sale or purchase of such goods of special importance shall be subject."

It is hence obvious that the fixation of the rate of Central Sales Tax and the limitation imposed by the Act on the State Legislature by its provisions for the said purpose, are well within the declared purposes and the objects of the Act.

(11) Chapter 2 of the Act consisting of sections 3, 4 and 5 formulates the principles for determining as to when a sale or purchase of goods takes place in the course of inter-State trade or commerce in or outside the State or in the course of Import or Export. A cursory reference to the provisions of these sections contained in this Chapter would show that the legislative policy is well and cearly spelled out. The three sections lay down the criteria as to when a sale or purchase is to be deemed to fall either within the course of inter-State trade or would have taken place outside the relevant

State and lastly as to when it takes place in the course of Import or Export. It is on an application of these principles that the liability for inter-State Sales Tax would arise. Obviously it is difficult to accede to the contention raised on behalf of the petitioner that the Act does not give any inkling of, or that it does not adequately lay down the legislative policy underlying the statute.

(12) Section 6 of the Act in Chapter 3 thereof is the charging section which lays down the liability to pay the tax. Similarly sections 8 and 15 when read together lay down adequate circumscribing limits and guidance within which the rates for Central Sales Tax are to be determined. Section 8(1) itself fixes the rate of tax in the course of inter-State commerce on sales to Government or sales to a registered dealer of goods specified in sub-section (3) thereof at a rate of 3 per cent of its turnover. Section 8(2)(a) prescribes the rate on declared goods to be the same as applicable by the General Sales Tax within the appropriate State and subject to the limitation in section 15 that it shall not exceed 3 per cent and also would not be leviable at more than one stage. Similarly section 8(2)(b) in the case of goods other than declared goods fixes the rate at 10 per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State whichever is higher. The dominant purpose of the Parliament in enacting the provisions of section 8(2)(b) appears to be that the rates of Central Sales Tax and the General Sales Tax should not conflict and vary within the jurisdiction of the same State. The broad uniformity of the rates of the tax within the same jurisdiction is what is sought to be achieved. Equally significant is the fact that sub-clause (b) of section 8(2) does not give any unguided power to enhance the rates of Central Sales Tax Act. All that is sought to be laid down is that the rate of Central sales tax in each State would follow the rate of the general sales tax prevalent therein. The State Legislature, therefore, cannot enhance the taxes beyond measure without making a corresponding and equivalent rise in the rates of their general sales tax. Again section 14 itself in detail declares certain goods to be of special importance in inter-State trade or commerce thus classifying the goods into 'declared goods' and those not so. The incidence of taxation is again based on the nexus of this classification of 'declared goods' and goods other than 'declared goods'. All these factors considered together, therefore, show the clear control or guidance within which the State Legislatures can move to vary the

rates of Central Sales Tax. It is not possible to call this circumscribed and guided power to be either arbitrary or irrational. Even in *B. Shama Rao* v. *Union Territory of Pondicherry* (4) on which reliance was sought to be placed on behalf of the petitioner, it has been observed as follows:—

> "But the core of a taxing statute is in the charging section and the provisions levying such a tax and defining persons who are liable to pay such tax."

As has been noticed above, the present Act clearly and significantly contains what their Lordships have described the 'core' of a taxing statute by itself providing for the charging sections formulating the principles under which the sales or purchase would be deemed to be inter-State or otherwise; classification of goods into declared and non-declared goods; persons who would become liable to pay the tax and further providing for the machinery for levying and collecting the same.

(13) The nature of the body to whom the delegation is made is also a factor to be taken into consideration in determining whether there is any sufficient guidance in the matter of delegation. In the *Municipal Corporation of Delhi's case* (3) where delegation had been made to the Municipal Corporation, Wanchoo C.J. had favourably noted this fact as follows:—

> "The first circumstance which must be taken into account in this connection is that the delegation has been made to an elected body responsible to the people including those who pay taxes. The councillors have to go for election every four years. This means that if they have behaved unreasonably and the inhabitants of the area so consider it they can be thrown out at the ensuing elections. This is in our opinion a great check on the elected councillors acting unreasonably and fixing unreasonable raets of taxation."

What is true in the case of a Municipal Corporation is equally, if not more true when the delegation is in favour of a responsible elected body, like the State Legislature. Lastly we must notice the fears forcibly expressed by Mr. Garg that a particular State Legislature

(4) A.I.R. 1967 S.C. 1480=20 S.T.C. 215.

may in an isolated circumstance act deliberately to raise or lower the rates with the avowed object of prejudicially affecting the trade or commerce interests of sister States. A complete answer to this argument is provided by the succint observations of Sikri J., in the *Delhi Municipal Corporation case* (3).

> "There is no need to think the delegations of the present type will lead to arbitrary taxation or rules. First, we must have faith in our representative bodies, and secondly, I agree with the learned Chief Justice and Hidayatullah, J., that in suitable cases taxation in pursuance of delegated powers by a Municipal Corporation can be struck down as unreasonable by Courts. If Parliament chooses to delegate wide powers it runs the risk of the bye-laws or the rules framed under the delegated power being challenged as unreasonable."

(14) On a careful consideration, therefore, of the various provisions of the Act we must hold that the power conferred by section 8 on the State Legislature for varying the rates of tax is neither unguided nor arbitrary and does not amount to any excessive delegation.

(15) Ere we proceed to consider the next contention of Mr. Garg, we deem it necessary to notice that the learned counsel had very fairly conceded that both the contentions noticed in detail above stand covered against him by the Division Bench judgment of this Court in *Messrs Auto Pins (India) Registered, Faridabad* v. *The State of Haryana and others* (5). Therein the validity of section 9 sub-clause (3) of the Central Sales Tax Act was challenged on the ground that it had adopted the existing machinery of the various States for the purpose of collection, enforcement and levying of penalties in the context of the Central Sales Tax along with any prospective modifications which may be made therein by the respective States of the Union. This was assailed as void for reason of excessive delegation, but this challenge was repelled and the validity of section 9 sub-clause (3) was upheld. Mr. Garg points out to no distinguishing feature which make the ratio of the *Auto Pins case* (5) (supra) inapplicable in the present one. The sole contention raised is that in *Auto Pins case* (5), the decision of their Lordships of the Supreme

(5) AI.R. 1970 P. & H. 333.

Court in *B. Shama Rao* v. *The Union of Territory of Pondicherry* (4), was neither cited nor noticed. It was hence sought to be contended that certain observations in *Shama Rao's case* (4) tend to run contrary to the ratio in the *Auto Pins' case*.

(16) We are unable to agree that the reasoning of *Shama Rao's case* (4) in any way detracts from the weight and authority of the *Auto Pins' case* (5). The peculiar facts which gave rise to *Shama Rao's case* (4) first deserve notice in order to appreciate the true ratio thereof. Therein the validity of the Pondicherry General Sales Tax Act, 1965 was challenged. The said Act had received the assent of the President on May 25, 1965. Section 2(1) of the said Act provided as follows:—

> "The Madras General Sales Tax Act, 1959 (No. 1 of 1959) (hereinafter referred to as the Act) as in force in the State of Madras immediately before the commencement of this Act shall extend and come into force in the Union Territory of Pondicherry subject to the following modifications and adaptations."

It was further provided in the Act, that it would come into force on such date as the Government may by notification appoint. Subsequently, the Pondicherry Government issued a notification, dated 1st March, 1966, bringing into force the Madras General Sales Tax Act, 1959, as extended by the Pondicherry Act to Pondicherry with effect from 1st April, 1966. What is, however, crucial was that in the meantime the Madras Legislature has amended the original Madras Act and consequently it was a new and amended Madras Act, which was brought into force under the notification. It was in the light of these facts that the Pondicherry Act was struck down as *'still-born'*. The observations of Shah and Bhargava, JJ., are as follows:—

> "In point of fact the Madras Act was amended and by reason of section 2(1) read with section 1(2) of the Principal Act it was the amended Act which was brought into operation in Pondicherry. The result was that the Pondicherry Legislature accepted the amended Act though it was not and could not be aware what the provisions of the amended Act would be. There was in these circumstances a total surrender in the matter of sales tax legislation by

the Pondicherry Assembly in favour of the Madras Legislature and for that reason we must agree with Mr. Desai, that the Act was void or as is often said *'still-born'*."

(17) From the above facts it is evident that the relevant date on which the President's assent was given (May 25, 1965) to the Pondicherry, the date on which the Act was brought into force by notification (1st April, 1966) and the intervening period within which the Madras Act was amended, were the vital factors leading to the invalidity of the Act which was characterised as *'still-born'*. That this is so is evident from the observations of K. Subba Rao, C.J., in the subsequent case of *Messrs Devi Das-Gopal Krishan, etc.* v. *State of Punjab and others* (6). Therein the learned Chief Justice, who was party to the majority judgment in *Shama Rao's case* (4), explaining and distinguishing the same observed as follows:—

"Section 1(2) of the said Act provided that the Act would come into force on such date as the Government by notification may appoint. The effect of the section was that the Madras Act as it stood on the date of the notification issued would be in force in the Union Territory of Pondicherry. Indeed it turned out that the Madras Act was amended before the said notification. This Court held that there was a total surrender in the matter of sales-tax legislation by the Pondicherry Assembly in favour of the Madras legislature and for that reason the said sections were void or still-born."

(18) It is patent that in *Auto Pins' case* (5), no such peculiar facts existed nor any factors even remotely analogous thereto were present. We, therefore, fail to see how the observations in *Shama Rao's case* (4) run counter to the ratio in the *Auto Pins' case* (5).

(19) Again in *Shama Rao's case* (4), the majority judgment noticed that the *'still-born'* Pondicherry Act did not even contain the core of a taxing statute, namely, the charging section and the provisions levying the tax or even defining the persons who were liable to pay such tax. In direct opposition to these factors, the Central Sales Tax Act which fell for construction in *M/s Auto Pins' case* (5) contains all the provisions within itself which are vital to a

(6) A.I.R. 1967 S.C. 1895.

taxing statute. This has already been noticed earlier and we would refrain from repeating ourselves.

(20) In *Shama Rao's case* (4), it was further held that there was a total surrender by the Pondicherry Assembly in favour of the Madras Legislature in the matter of sales tax legislation. Even Mr. Garg could not remotely contend that in the *Auto Pins' case* (5) any such total surrender or self-effacement by Parliament could even be suggested.

(21) For the foregoing reasons we are of the view that in the context of the Central Sales Tax Act (wherein the legislative will is clearly spelt out and the control, policy and legislative guidance is laid down in unequivocal terms), it was, therefore, rightly held in *M/s Auto Pins' case* (5) that the delegation of the powers to the State legislatures implicit in section 9(3) of the Act was not excessive.

(22) Mr. Garg then assailed the constitutionality of sub-clause (1A) to section 6 of the Act, which had been introduced by the Central Sales Tax (Amendment) Act, 1969. It was contended that the cumulative effect of this when read with the validating provisions of the amending Act was that the retrospective operation of the Central Sales Tax Act operated differently upon persons similarly situated without any nexus or any reasonable classification. The provision was, therefore, challenged as discriminatory and violative of Article 14 of the Constitution.

(23) It is convenient to set down section 3 of the Central Sales Tax (Amendment) Act, 1969, which had introduced the relevant provision which is the subject-matter of challenge—

"3. Amendment to section 6. In section 6 of the principal Act.—

(a) after sub-section (1), the following sub-section shall be, and shall be deemed always to have been, inserted, namely:—

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

of the appropriate State if that sale had taken place inside that State' ;

(b) in sub-section (2), for the word brackets and figure 'sub-section (i)' the words, brackets, figures and letter 'sub-section (1) or sub-section (1A)' shall be, and shall be deemed to have been, substituted with effect from the 1st day of October, 1958."

(24) On the basis of the above provision, the argument on behalf of the petitioner is that Article 14 is attracted because the classification which has been made is purely arbitrary dependent on the accident of a particular date. It is contended that the fixation of such a date is not on any rational basis. A complete answer to this contention is provided by the recent judgment of the Supreme Court in *Jain Brothers and others* v. *Union of India and others* (7). Therein also an identical argument was raised in the context of the validity of section 297(2)(g) of the Indian Income Tax Act, 1961. Repelling the argument, Grover J., speaking for the Court observed as follows :—

"The date, 1st April, 1962, which has been selected by the legislature for the purpose of clauses (f) and (g) of section 297(2) cannot be characterised as arbitrary or fanciful. It is the date on which the Act of 1961 actually came into force. For the application and the implementation of the Act of 1961, it was necessary to fix a date and stage of the proceedings which were pending for providing by which enactment they would be governed. According to *Hatisingh Mfg. Co. Ltd.* v. *Union of India* (8), the State undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws, but by enacting a law which applies generally to all persons, who come within its ambit as from the date on which it becomes operative no discrimination is practised.

and further.

It is well-settled that in fiscal enactments the legislature has a larger discretion in the matter of classification so long as

(7) (1970) 77 I.T.R. 107.
(8) (1960) 3 S.C.R. 528.

there is no departure from the rule that persons included in a class are not singled out for special treatment."

The above-said observations, in our view, fully meet and repel the contention raised on behalf of the petitioner.

(25) It was then contended on the basis of section 10 of the Amending Act of 1969, that the petitioner had not been given the exemptions due under the same and in any case the matter be remanded to the Income-tax Authorities for determining the quantum of exemption he is entitled to. This contention also is without merit and what is more is without any factual basis. Nowhere in the petition had any fact been averred which would bring into play the provisions of section 10. Even though expressly asked to point out, learned counsel is unable to refer to any averment or even a suggestion in the petition alleging that the petitioner had in fact not collected the Central Sales Tax, which was attracted by virtue of the charging section of the Act. Before the Assessing Authority not a hint of any such allegation or the point which is now sought to be raised was even mentioned. The remedies by way of appeal and revision were open to the petitioner, but were not availed. It is well-settled in view of *M/s Shiv Ratan G. Mohatta's case* that it is not the function of the High Court in tax matter to proceed to find facts. For all these reasons we are unable to accede to this contention as well.

(26) Lastly learned counsel had raised the point that the levy of the Central Sales Tax on hessian used for the purpose of packaging the cotton bales was without the authority of law. However, in the course of argument he gave up this point and did not press the same on the ground that it was wholly in consequential.

(27) Mr. Narula in support of his petition had merely contended himself with adopting the contentions raised by the counsel for the petitioner in Civil Writ No. 759 of 1969.

(28) No other point was raised and finding no merit in any of the contentions noticed above, we dismiss the writ petitions, but would make no order as to costs.

P. C. PANDIT, J.—I agree.

K. S. K.